

**ENGINEERING SERVICES AGREEMENT  
BETWEEN  
CITY OF JONESBORO, ARKANSAS  
AND  
ETC ENGINEERS, INC.  
FOR  
DESIGN AND DEVELOPMENT SERVICES  
FOR  
PARKS AND RECREATION PROJECTS**

*June 2, 2003*

THIS IS AN AGREEMENT made as of ~~April 30, 2003~~, between the City of Jonesboro, City Hall, 314 W. Washington, P. O. Box 1845, Jonesboro, Arkansas, 72403 (OWNER) and ETC Engineers Inc., 1510 South Broadway, Little Rock, Arkansas 72202 (ENGINEER) OWNER intends to employ ENGINEER to provide professional engineering services required to develop various Bond Issue Projects (hereinafter called the PROJECT).

OWNER and ENGINEER in consideration of their mutual covenants herein agree in respect of the performance of professional engineering services by ENGINEER and the payment for those services by OWNER as set forth below.

ENGINEER shall provide professional engineering services for OWNER in design and development phases of the Project to which this Agreement applies, serve as OWNER's professional engineering representative for the Project as set forth below, and shall give professional engineering consultation and advice to OWNER during the performance of services hereunder.

**SECTION 1 BASIC SERVICES OF ENGINEER,**

- 1.1 General. ENGINEER shall perform the following general services:
- 1.1.2 Consult with OWNER to clarify and define OWNER's requirements for the Project and review OWNER provided available data.
  - 1.1.2 Advise OWNER as to the necessity of OWNER's providing or obtaining from others special services and data required in connection with the Project and assist OWNER in obtaining such data and services.
  - 1.1.3 Provide analyses of OWNER's needs with evaluation and comparative studies of prospective solutions.
- 1.2 The tasks to be performed in this Project are:
- See Attachment A

## SECTION 2 ADDITIONAL SERVICES OF ENGINEER

- 2.1 General. If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the following types which are not considered normal or customary Basic Services and are not covered in Section I - Basic Services. These additional services will be paid for by OWNER as the parties agree at the time such services are authorized.
- 2.1.1 Preparation of applications and supporting documents for governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effect on the requirements of the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
- 2.1.2 Services resulting from significant changes in extent of the Project and revising previously accepted studies and reports or other documents when such revisions are for OWNER's convenience or due to causes beyond ENGINEER's control.
- 2.1.3 Preparing to serve or serving as a consultant or witness for OWNER in any litigation or other legal or administrative proceeding involving the Project, except as specified in Section 1 - Basic Services.
- 2.1.4 Investigations involving detailed consideration of operations, maintenance and overhead expenses, except as necessary to perform items in the Basic Services in Section 1; and the preparation of rate schedules, earnings and expense statements, special feasibility studies, appraisals and valuations; special detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with construction performed by the OWNER - except as specifically provided for as part of Basic Services in Section 1.
- 2.1.6 Furnishing the services of special consultants for other than the normal civil engineers, field civil technicians and CAD technicians and normal civil design incidental thereto, except as specifically provided for as part of Basic Services in Section 1.
- 2.1.7 Services in connection with change orders to reflect changes requested by the OWNER and services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of material, equipment, or energy shortages.
- 2.1.8 Additional or extended services made necessary that is not specifically caused by major omissions in the Contract Documents.
- 2.1.9 Deed record searches, field surveying and related office calculations to prepare detailed property and boundary surveys for use in preparing legal descriptions for OWNER's use in acquiring property or easements.
- 2.1.10 Additional services in connection with the Project, including services normally furnished by OWNER, and services not otherwise provided for in this Agreement.

## SECTION 3 OWNER'S RESPONSIBILITIES

OWNER shall:

- 3.1 Provide criteria and information as to OWNER's requirements for the Project, including planning objectives and constraints.
- 3.2 Assist ENGINEER by placing at his disposal all available information pertinent to the Project.
- 3.3 Furnish to ENGINEER all available existing studies, reports and other available data pertinent to the Project, obtain or authorize ENGINEER to obtain or provide additional reports and data as required, and furnish to ENGINEER services of others required for the performance of ENGINEER's services hereunder, and ENGINEER shall through the exercise of its professional judgement be entitled to use and reasonably rely upon all such information and services provided by OWNER or others in performing ENGINEER's services under this Agreement.
- 3.4 Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform his services.
- 3.5 Examine all studies, reports, plans, specifications, sketches and other documents presented by ENGINEER, obtain advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.
- 3.6 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
- 3.7 Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as OWNER may require or ENGINEER may reasonably request with regard to legal issues pertaining to the Project.
- 3.8 Designate in writing a person to act as OWNER's representative with respect to the services to be rendered under this agreement. Such person will have complete authority to transmit instruction, receive information, interpret and define OWNER's policies and decisions with respect to materials, equipment, elements and systems pertinent to ENGINEER's services.

Fee will be billed using Direct Labor costs times a multiplier of 2.9. Direct labor costs (chargeable salaries without fringe benefits) are costs incurred by the ENGINEER's personnel for time such personnel are directly utilized on the Project. The salaries of any personnel assigned are subject to modifications by the ENGINEER throughout the term of the Agreement as part of scheduled company-wide personnel evaluation.

The ENGINEER shall also be paid actual non-overhead out-of-pocket expense costs as shown in Attachment B. including: geotechnical/soils testing, copying and reproduction costs in excess of those listed in Attachment B, software licenses provided to OWNER, and other miscellaneous costs incurred specifically for this project.

For work performed by subcontractors and subconsultants payment shall be at the actual cost to the ENGINEER for such services.

- 3.9 Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services.
- 3.10 Provide all legal notices necessary for the Project.
- 3.11 Furnish, or direct ENGINEER to provide, necessary Additional Services as stipulated in Section 2 of this Agreement or other services as required.
- 3.12 Bear all costs incident to compliance with the requirements of this Section 3.

#### **SECTION 4 PERIOD OF SERVICES**

- 4.1 The provisions of this Section 4 and the various rates of compensation for ENGINEER's services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the project through its completion. Accordingly, upon receipt of written authorization to proceed OWNER and ENGINEER will develop a mutually agreeable project schedule and ENGINEER shall proceed with performance of the services called for in this Agreement
- 4.2 ENGINEER's Basic Services under this Agreement will be considered complete when the Project has been accepted substantially by the OWNER.
- 4.3 ENGINEER's Additional Services will be performed and completed within the time period agreed to in writing by the parties at the time such services are authorized.
- 4.4 If any time period within or date by which any of ENGINEER's services are to be completed is exceeded through no fault of ENGINEER, all rates, measures and amounts of compensation and the time for completion of performance shall be subject to equitable adjustment.
- 4.5 If OWNER has requested significant modifications or changes in the extent of the Project, the time of performance of ENGINEER's services and his various rates of compensation shall be adjusted appropriately.

#### **SECTION 5 PAYMENT TO ENGINEER**

- 5.1 Methods of Payment for Services and Expenses of ENGINEER.
  - 5.1.1 For Basic Services. OWNER shall pay ENGINEER for Basic Services rendered under Section I not to exceed fees according to the following:

See Attachment B

- 5.1.2 For Additional Services. OWNER shall pay ENGINEER for Additional Services rendered under Section 2 in the manner and amount agreed to in writing by the parties at such time as the Additional Services are authorized.
- 5.2 Times of Payment
- 5.2.1 ENGINEER shall submit monthly statements for Basic and Additional Services rendered. In response to ENGINEER's monthly statements, OWNER shall make payment of approved amounts within 45 days after receipt of the statements.
- 5.2.2 If OWNER fails to make any payment due ENGINEER for services and expenses within 45 days after receipt of ENGINEER's statement therefore, the amount due ENGINEER shall include a charge at the maximum lawful rate of 0.83 percent per month (or 10 percent annual) from said 45th day, and in addition ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses and charges.
- 5.3 Other Provisions Concerning Payments.
- 5.3.1 In the event of termination by OWNER under paragraph 6.1, progress payments due ENGINEER for services rendered through the termination date and all approved termination related costs shall constitute total payment for such services.

## **SECTION 6 GENERAL CONSIDERATIONS**

- 6.1 Termination. The OWNER may terminate all or a portion of the work covered by this Agreement for its convenience. The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. If the Agreement is terminated under this paragraph, the ENGINEER shall be paid for all services rendered through the effective date of termination. The ENGINEER shall stop immediately all project related activities upon receipt of termination notice. When requested by the OWNER, the ENGINEER shall perform additional tasks designated by the OWNER to facilitate a smooth transfer of the project work completed as of the termination date. The ENGINEER shall be compensated for these additional services at the same rates as set forth in Paragraph 5.1.1. This contract will be terminated upon the completion of said projects.
- 6.2 Reuse of Documents. All documents prepared by ENGINEER pursuant to this Agreement are instruments of service in respect of the Project. They are intended to be suitable for reuse by OWNER or others on extensions of the Project. Any reuse other than for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER, or to ENGINEER's independent professional associates, subcontractors or consultants.
- 6.3 Controlling Law. This Agreement is to be governed by the law of the City of Jonesboro, County of Craighead and/or State of Arkansas.

## 6.4 Successors and Assigns.

- 6.4.1 OWNER and ENGINEER each binds himself and his partners, successors, executors, administrators, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements and obligations of this Agreement.
- 6.4.2 Neither OWNER nor ENGINEER shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except as stated in paragraph 6.4.1 and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent ENGINEER from employing such independent consultants, associates and subcontractors, as he may deem appropriate to assist him in the performance of services hereunder.
- 6.4.3 Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than OWNER and ENGINEER.
- 6.5 Cost Control. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions and utilitarian considerations of operations and maintenance costs prepared by ENGINEER hereunder will be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional. It is recognized, however, that ENGINEER does not have control over the cost of labor, material, equipment or services furnished by others or over market conditions or methods of determining their prices, and that any utilitarian evaluation of any work to be performed on the basis of the Report must of necessity be speculative until completion of its detailed design. Accordingly, ENGINEER does not guarantee that proposals or actual costs will not vary from opinions, evaluations or studies submitted by ENGINEER to OWNER hereunder.
- 6.6 Rights. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than OWNER and ENGINEER, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party.
- 6.7 Access to Records. The ENGINEER and any Subcontractors are to maintain all documents, accounting records and other evidence pertaining to cost incurred and to make such materials available at their respective offices at all reasonable times during the contract period, and for three years from the date of final payment under the contract, for inspection by authorized representatives of the OWNER, or any governmental agency providing any portion of project funding, and copies thereof shall be furnished, if requested.

Attachment A

**Task list for: Water sprayground at Allen Park Community Center  
and a Bathhouse at Earl Bell Community Center Pool**

- Task 1: Finalize concept plan based upon preliminary design drawings provided by owner.
- Task 2: Prepare design documents.
- Task 3: Provide construction oversight services including obtaining bids and contract administration.

## ATTACHMENT B

<b>PHASE I:</b>	<b>PROJECT DESIGN SERVICES</b>	<b>6% OF THE PROJECT CONSTRUCTION COST</b>
<b>PHASE II:</b>	<b>CONSTRUCTION INSPECTION</b>	<b>3 1/2% OF THE PROJECT CONSTRUCTION COST</b>

### ADDITIONAL CHARGES AND REIMBURSABLE EXPENSES

Per Diem	No Charge
Mileage	No Charge
Travel Expenses (car rental, fares, etc)	No Charge
Soils/Geotechnical Testing	At Cost
Advertizing for Bids	At Cost
Copying/Reproduction of Construction Plans and Specifications	At Cost
(Copies for City and Parks Dept. use, up to 10 copies)	No Charge
Copies of Plans and Specs for Contractor Use	Billed to Contractor
Other Copying Expenses	At Cost



**SECTION 7 EXECUTION**

7.1 This Agreement (consisting of pages 1 through 7 inclusive and attachments thereto) constitutes the entire agreement between OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

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

ENGINEER:

ETC ENGINEERS, INC.

BY: 

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President