City of Bentonville
Bentonville Utility Board Meeting
Tuesday, December 5th – 11:30 am
Bentonville City Hall 305 SW “A” St.
City Council Chambers

AGENDA

Call to Order
Pledge of Allegiance
Attendance
Approval of Minutes: November 7th, 2023

New Business

1. Resolution – Bid Award 2024 Street Materials– Travis Matlock, PE (pages 2-3)
2. Ordinance – Wavier of bid 2024 Holophane Lighting – Travis Matlock, PE (pages 4-8)
3. Ordinance – Waiver of bid 2024-2028 Frost Oil, Co. – Travis Matlock, PE (pages 9-15)
4. Ordinance – Waiver of bid 3-phase transformers – Travis Matlock, PE (pages 16-17)
5. Ordinance – Waiver of bid 2024 Mueller Water Meters – Preston Newbill (pages 18-19)
6. Ordinance – Waiver of bid 2024 Badger Water Meters – Preston Newbill (pages 20-21)
7. Ordinance – Waiver of bid 2024 Sensus Water Meters – Preston Newbill (pages 22-23)
8. Ordinance – Waiver of bid fleet truck purchase – Beau Thompson (pages 24-25)
9. Ordinance – Waiver of bid WRRF dewatering press – Chris Earl (pages 26-37)
10. Resolution – Budget Adjustment and Agreement With ArDOT/48” water Line – Mike Bender, PE (pages 38-45)
11. Adjournment

City of Bentonville, Arkansas Agenda Item Form

Item Details

Council Meeting Date:	12/12/2023	**Submitted By:**	Travis Matlock
Phone:	479-271-5941	**For Department(s):**	Inventory
Email:	tmatlock@bentonvillear.com		

Item Type (Check all that apply)

- [ ] Informational
- [x] Bid Award
- [ ] Enter into an Agreement
- [ ] Change Order
- [ ] Recognizing Funds
- [ ] Budget Adjustment
- [ ] Waiver of Bid
- [ ] Emergency Clause
- [ ] Ordinance
- [x] Resolution
- [ ] Informational

Title, Recommendation & Justification

Title:	Resolution to award IFB-23-60 Yearly Street Materials
Action Recommendation & Justification:	
Additional Comments for Consideration (Optional):	Lowest bidders: Benton County Stone in the amount of $409,786.00
Amount for Approval:	$ 409,786.00

Budget Impact

Is this Item Budgeted? [x] YES [ ] NO [ ] ITEM HAS NO COST [ ] OTHER:____________________

Budget Adjustment *(to be completed by Finance when applicable)*

Account Number (ORG-OBJECT)	Account Description	$ Expense	$ Revenue

Fund(s) Impacted (check all that apply) [ ] General Fund [ ] Utility Fund [ ] Street Fund [ ] Other(s):____________________

Budget Impact Notes for Consideration (Optional):

CITY OF BENTONVILLE
1-year Blanket Bid
Street Materials

Bid No. IFB-23-60

YEARLY QUANTITY	UNIT	DESCRIPTION	UNIT PRICE WITH HAUL CHARGE	EXTENSION
15,000	TON	**Our # 7008** SB2/CLASS 7 BASE **Benton County Stone**	$15.47	$232,050.00
8,000	TON	**Our # 7005** CHAT 3/4" CLASS 67 BEDDING MATERIAL **Benton County Stone**	$20.47	$163,760.00
800	TON	**Our # 7004** B-STONE (LARGE ROCK FOR DRAINAGE) **Benton County Stone**	$17.47	$13,976.00
		TOTAL BID COST		$409,786.00

THE CITY OF BENTONVILLE

City of Bentonville, Arkansas Agenda Item Form

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Council Meeting Date:	12/12/2023	**Submitted By:**	Travis Matlock
Phone:	479-271-5941	**For Department(s):**	Inventory
Email:	tmatlock@bentonvillear.com		

Item Type (Check all that apply)

- ☐ Informational
- ☐ Bid Award
- ☐ Enter into an Agreement
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- ☐ Budget Adjustment
- ☑ Waiver of Bid
- ☐ Emergency Clause

- ☑ Ordinance
- ☐ Resolution
- ☐ Informational

Title, Recommendation & Justification

Title:	Ordinance and Waiver of Bid to Holophane
Action Recommendation & Justification:	An ordinance waiving competitive bidding for the purchase and delivery of various decorative poles, arms and light fixtures on an as needed basis from Holophane, for the City of Bentonville Inventory Department. The items will be ordered on an as needed basis per the unit prices attached.
Additional Comments for Consideration (Optional):	Due to Holophane being the sole source for these items, it is neither practical nor feasible to solicit competitive bids. All totals listed are approximate only; award will be based on the unit prices attached.
Amount for Approval:	$ 3,994,781.00

Budget Impact

Is this Item Budgeted? ☑ YES ☐ NO ☐ ITEM HAS NO COST ☐ OTHER:

Budget Adjustment *(to be completed by Finance when applicable)*

Account Number (ORG-OBJECT)	Account Description	Expense	Revenue
		$	$
		$	$
		$	$
		$	$

Fund(s) Impacted (check all that apply) ☐ General Fund ☐ Utility Fund ☐ Street Fund ☑ Other(s): 2024 Inventory Items

Budget Impact Notes for Consideration (Optional):

Note: all parts shall have BEUD inventory number and Holophane part number per the customer's request.

ITEM #	QTY	BEUD Inventory Number	Holophane Part Number	Item Description	Unit $	Ext $
POLES						
1	500	BEN-1745	WDA 12 F5J 17D C03 BK LAB	Wadworth,12', 5" Fluted, Cast Aluminum, Black	$ 1,115.00	$ 557,500.00
2	10	BEN-1742	NYA 12 F5J 17D C03 BK LAB	North Yorkshire, 12', 5" Fluted, Cast Aluminum, 17" Diameter Base, Black	$ 1,550.00	$ 15,500.00
3	10	BEN-1737	CHA 12 F5J 16D C03 BK LAB	Charleston Series Pole, 12' Tall, 5" Fluted Shaft, 16" Diameter Base, Cast Aluminum, Black Finish	$ 1,550.00	$ 15,500.00
4	10	BEN-1794	WDA 12 SL4 17D C03 BK LAB	SITELINK SL4 SERIES ALUMINUM POLE, 12' TALL, 3"X3" TENON, 17" DIAMETER BASE. FINISHED HOLOPHANE BLACK, WADSWORTH BASE	$ 1,158.00	$ 11,580.00
5	5	BEN-1793	WDA 12 SL4 17D C03 BK LAB RP60A ASSY10023	SITELINK SL4 SERIES ALUMINUM POLE, 12' TALL, 3"X3" TENON, PROVISION FOR RECEPTACLE, 17" DIAMETER BASE. FINISHED HOLOPHANE BLACK	$ 1,181.00	$ 5,905.00
6	5	BEN-1792	WDA 08 SL4 17D C03 BK LAB	SITELINK SL4 SERIES ALUMINUM POLE, 8' TALL, 3"X3" TENON, 17" DIAMETER BASE. FINISHED HOLOPHANE BLACK, WADSWORTH BASE	$ 985.00	$ 4,925.00
7	5	BEN-1791	CHA 12 SL4 12D PLN BK LAB	SITELINK SL4 SERIES ALUMINUM POLE, 12' TALL, PLAIN POLE CAP, 12" DIAMETER BASE. FINISHED HOLOPHANE BLACK, CHARLESTON BASE	$ 1,511.00	$ 7,555.00
8	5	BEN-1790	CHA 12 SL4 12D C03 BK LAB	SITELINK SL4 SERIES ALUMINUM POLE, 12' TALL, 3"X3" TENON, 12" DIAMETER CHARLESTON BASE. FINISHED HOLOPHANE BLACK.	$ 1,511.00	$ 7,555.00
9	100	BEN-1740	FTA30E1-P9-BK-R	FLUTED TAPERED ALUMINUM 10" X .250" X 30' MOUNTING HEIGHT, PROVISION FOR RECEPTACLE, BLACK;	$ 5,189.00	$ 518,900.00
10	10	BEN-1518	FTA30E1-P9-BK	FLUTED TAPERED ALUMINUM 10" X .250" X 30' MOUNTING HEIGHT, BLACK;	$ 5,189.00	$ 51,890.00
11	10	BEN-2096	WDA 12 F5J 17D G12 BK LAB	WADSWORTH CAST ALUMINUM POLE, 12' TALL, 5" STRAIGHT FLUTED SHAFT WITH A 4.38"X12" TENON, 17" DIAMETER. BASE. FINISHED HOLOPHANE BLACK. TYPICALLY USED WITH HALLBROOK	$ 1,115.00	$ 11,150.00
12	10	BEN-1718	RTS 30 66B B04 NDR GR LA	30FT, 6.6 x 2.4 x 11 Gauge Wall: Tenon 2.38O.D. X 4inch LG., No Drill Pattern, Gray Paint, Less Anchor Bolts.	$ 1,500.00	$ 15,000.00

Note: all parts shall have BEUD inventory number and Holophane part number per the customer's request.

ITEM #	QTY	BEUD Inventory Number	Holophane Part Number	Item Description	Unit $	Ext $
13	10	BEN-1242	CLS 22 FTB 24D C03 BK LAB RP252A ASSY10024	COLUMBIA CAST IRON AND STEEL POLE, 22' TALL ROUND TAPERED FLUTED SHAFT WITH A 3"X3" TENON, PROVISION FOR RECEPTACLE, 24" DIAMETER BASE. FINISHED HOLOPHANE BLACK.	$ 3,989.00	$ 39,890.00
14	300	BEN-1738	CLS 22 FTB 24D C09 BK LAB	COLUMBIA CAST IRON AND STEEL POLE, 22' TALL ROUND TAPERED FLUTED SHAFT WITH A **3"X 9"** TENON, 24" DIAMETER BASE. FINISHED HOLOPHANE BLACK. LESS ANCHOR BOLTS	$ 3,950.00	$ 1,185,000.00
15	100	BEN-1243	C26CSBU055A	COLUMBIA SERIES CAST ALUMINUM CLAMSHELL BASE. 26" DIAMETER, FINISHED HOLOPHANE BLACK. DESIGNED TO FIT AROUND POLE #FTA30E1F1U931C	$ 2,094.00	$ 209,400.00
				FIXTURES		
FIXTURES						
16	500	BEN-1584	GVD3 P40 40K MVOLT MS GL3LU BK PR7 PCLL	**Granville LED** Performance Package 40, 4000 Series CCT, Auto-Sensing Voltage (120-277), Modern Style - Swing Open Design, Black, Symmetric Lunar Optic Type V, No Trim, No Finial, No Trim and Clear or No Finial, NEMA Twistlock Photocontrol Receptacle, Extended Lift Option with AS (120-277 V only)	$ 968.00	$ 484,000.00
17	400	BEN-2255	MGLEDM P5 40K MVOLT MR VH BKSD PR7 PCLL	MONGOOSE FIXTURE: LED MEDIUM (MGLEDM) 28,900 LUMENS, 4000K CCT, AUTO-SENSING VOLTAGE (120 THRU 277), MEDIUM ROADWAY, VERTICAL TENON/HORIZONTAL ARM, VITRACOAST SDRC BLACK, 7 PIN, NEMA PHOTOCONTROL RECEPTACLE, DLL PHOTOCONTROL.	$ 989.00	$ 395,600.00
18	10	BEN-1600	GSLB3 P40 40K MVOLT SC3 NPT BK PR7 PCLL	Hallbrook(R) GlasWerks II (GS) : GS,LED Multivolt 120, 208, 240, 277V Factory wired for 240V Only. UL listed, Pendant 1.5 NPT, Black, Standard, 4551 Asymmetric Distribution, None, NEMA Twistlock Photocontrol Receptacle, Protected Starter	$ 1,695.00	$ 16,950.00

Note: all parts shall have BEUD inventory number and Holophane part number per the customer's request.

ITEM #	QTY	BEUD Inventory Number	Holophane Part Number	Item Description	Unit $	Ext $
19	**10**	BEN-2093	GVD3 P40 40K MVOLT GL3LU BK RB ST TGL PR7 PCLL	Utility GranVille (GVU) : Utility Granville Standard M Housing, LED, Multivolt 120,208,240 & 277V. Factory wired for 120V only. UL Only,Black,Lunar Optics Asymmetric, IES Type III Distribution,Ribs and Bands,Painted Cast Aluminum Standard,**Gold**,NEMA twistlock photocontrol receptacle,Protected Starter	$ 1,250.00	$ 12,500.00
20	**10**	BEN-1927	GVD3 P40 40K MVOLT MS GL3LU BK SY ST TBK PR7 PCLL	Syracuse, with Utility GranVille Optic (GVU): Utility Granville Standard M Housing, LED, Multivolt 120,208,240 & 277V. Factory wired for 120V only. UL Only, Black, Lunar Optics Asymmetric, IES Type III Distribution, Syracuse Style with Cover, Painted Cast Aluminum Standard Finial, Black, NEMA twistlock photocontrol receptacle	$ 1,320.00	$ 13,200.00
ARMS						
21	200	BEN-1036	WLDF NPT15S BK	ARM LEVELING FITTER: WEST LIBERY DECORATIVE ARM FITTER, SPLIFIT 2" NOMINAL PIPE, SWIVEL, CAST ALUMINUM, BLACK	$ 176.00	$ 35,200.00
22	10	BEN-1227	CSC 15IN 2A TN BK	Cincinnati Series Crossarm (CSC) : CSC30 (Two at 180),CA,Black	$ 585.00	$ 5,850.00
23	10	BEN-1234	CCA 15IN 2A TN BK	Cleveland Series Crossarm (C): C30 (Two at 180),CA, Black	$ 750.00	$ 7,500.00
24	10	BEN-1038	WLC 72IN 2A TN BK	WLC144/2CABKHWLC Series Aluminum Roadway Arm : WLC Series Roadway Arm, 144" Roadway Arm For 2 Units at 180,Cast Aluminum, Black. REQUIRES A 3"X9" TENON	$ 1,451.00	$ 14,510.00
25	300	BEN-2239	WLC 48IN 1A TN BK	ARM WLC SERIES, ROADWAY ARM 48" ONE WAY ARM, CAST ALUM, BLACK, REQUIRES A 3" X 9" TENON	$ 802.00	$ 240,600.00
26	100	BEN-1039	WLC 72IN 1A TN BK	WLC Series Aluminum Roadway Arm : WLC Series Roadway Arm,72" Roadway One Way Arm,Cast Aluminum,Black REQUIRES A 3"X9" TENON	$ 1,106.00	$ 110,600.00
List of misc. LED fixtures in this section - 12 items						

Note: all parts shall have BEUD inventory number and Holophane part number per the customer's request.

ITEM #	QTY	BEUD Inventory Number	Holophane Part Number	Item Description	Unit $	Ext $
27	10	BEN-2259	MGLEDMLTS GRSD	LIGHT TRESSPASS SHIELD GRAY	$ 52.00	$ 520.00
28	10	BEN-2260	MGLEDMHSS	HOUSE SIDE SHIELD	$ 50.00	$ 500.00
						$ 3,994,780.00

City of Bentonville, Arkansas Agenda Item Form

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- [x] Waiver of Bid
- [ ] Emergency Clause

- [x] Ordinance
- [ ] Resolution
- [ ] Informational

Title, Recommendation & Justification

Title:	Ordinance to waive bids and purchase fuel
Action Recommendation & Justification:	Approval of an Ordinance to waive competitive bidding to fuel (unleaded and Dyed #2 Ultra Low Sulfur diesel) from Frost Oil, Co. for a 5-yr. term. Frost Oil has supplied Bentonville with fuel for the last 10-yrs. Due to market volatility and lead times related to these products, it would be neither practical or feasible to solicit competitive bids.
Additional Comments for Consideration (Optional):	Prices per gallons will be reviewed each year.
Amount for Approval:	$

Budget Impact

Is this Item Budgeted? [x] YES [ ] NO [ ] ITEM HAS NO COST [ ] OTHER:________________________________

Budget Adjustment *(to be completed by Finance when applicable)*

Account Number (ORG-OBJECT)	Account Description	Expense	Revenue
		$	$
		$	$
		$	$
		$	$

Fund(s) Impacted (check all that apply) [ ] General Fund [ ] Utility Fund [ ] Street Fund [ ] Other(s):________________________________

Budget Impact Notes for Consideration (Optional):

CONTRACT OF SALE

THIS CONTRACT OF SALE (END USER) (the "Contract") made and entered into this 16th day of December, 2023 between **Frost Oil Co**., with a business address of 1430 S. 28th Street, Van Buren, AR 72956 (hereinafter called "Seller") and **the City of Bentonville, Arkansas**, with a business address of 117 West Central, Bentonville, AR 72712 (hereinafter called "Purchaser").

WITNESSETH:

For and in consideration of the mutual promises herein contained and pursuant to the terms herein, Seller agrees to sell and deliver to Purchaser, and Purchaser agrees to purchase and receive from and pay Seller for, petroleum products of the kinds and in the quantities and under the terms and conditions specifically set forth in the Commodity Schedule(s) annexed hereto and made a part hereof.

1. Duration. This Contract shall be for a term of five (5) years, commencing on the 16th day of December, 2023, and expiring on the 15th day of December, 2028 (the "Term"). Seller shall have the right to grant temporary extensions of this Contract of up to 60 days per extension at the request of Purchaser. Any such extensions shall not be considered a renewal of this Contract.

2. Products. (a) During the Term of this Agreement and any extensions thereof, Purchaser shall purchase from Seller all of Purchaser's requirements for motor fuel products, with said motor fuel products to be delivered by Seller to the delivery locations specified in the Commodity Schedules attached hereto (the "Premises"). The Commodity Schedule(s) forming a part of this Contract and attached hereto were affixed at the signing hereof.

(b) By mutual consent this Contract may be amended from time to time by adding other or additional Schedules, substituting revised schedules or by deleting one or more items or provisions from any Commodity Schedule(s) attached hereto. Additional and revised schedules shall be so marked and initialed by authorized representatives of Seller and Purchaser and shall be affixed to and become a part of this Contract from and after the date appearing on such additional or revised schedule. Deletions shall be by notice given as provided herein and effective when accepted.

(c) At Seller's sole option, this Contract may be terminated without notice upon Purchaser's failure to pay any amount when and as due, and no forbearance, course of dealing, or prior payment shall affect these rights of termination.

3. Taxes. It is agreed that there shall be added to the Contract price specified herein, and Purchaser will assume and pay, any and all taxes, fees, duties, and/or any other charges that may now or hereafter be imposed by the federal, state, or local government or any other governmental authority, upon the products covered by this Contract, or in respect to the importation, exportation, production, manufacture, storage, inspection, sale, use, handling, distribution or transportation thereof or of this Contract. Should Purchaser claim exemption from any such tax, fees, duties, or charges, said Purchaser shall (i) furnish appropriate, properly executed exemption certificates, in accordance with applicable laws and regulations in effect at the time of sale; and (ii) shall pay all such taxes, fees, duties, and charges until such exemption is approved.

4. Price. The price of the product(s) covered by this Contract shall be as stated in the applicable Commodity Schedule(s). Purchaser shall pay via check for all goods delivered to Purchaser by Seller hereunder within fifteen (15) days from the date of each delivery. Purchases made shall be payable at Seller's principal office unless otherwise specified by Seller.

5. Credit. If Seller, in its sole determination, extends credit to Purchaser, such extension of credit shall be made on such terms and conditions that Seller may require including, without limitation, the following:

(a) If payment is not made on or before the due date, a late payment charge in an amount established by Seller from time to time, not to exceed the maximum allowed by law, may be imposed for each month (and any part thereof) which elapses from due date to the date payment is received by Seller. Seller's right to collect a late payment charge does not operate as a waiver against Seller's right of termination of this Contract or of any other right that Seller may have at law or in equity.

(b) Seller reserves the right to withdraw such credit, or modify the terms and conditions of such credit, immediately at any time on giving to Purchaser notice thereof. If credit is withdrawn, all amounts then due and owing shall become payable immediately, and all future sales by Seller to Purchaser shall be for cash (or at Seller's option certified or cashier's check, money order or other means approved by Seller) payable prior to, or upon, delivery.

(c) Seller shall have the right, but not the obligation, to offset any indebtedness owed by Seller to Purchaser against any indebtedness owed by Purchaser to Seller, whether arising from the sale of goods or product(s) under this Contract, or from any other business transaction.

(d) In the event of insolvency of Purchaser, assignment for benefit of creditors, the institution of bankruptcy, insolvency, reorganization, receivership, debt adjustment, or liquidation proceedings, by or against Purchaser, or failure of Purchaser to perform any of the obligations of payment in accordance with the terms of payment established by Seller from time to time, Seller shall have the option without notice or demand upon Purchaser to declare an event of default under the Uniform Commercial Code, and upon any such default, Seller may declare all of Purchaser's indebtedness to Seller immediately due and payable. Thereafter Seller may proceed to enforce payment and may exercise any and all rights available to it.

6. Discontinuance or Substitution of Products. Seller reserves the right upon thirty (30) days' written notice to Purchaser to discontinue the sale of

any product named herein due to the unavailability of any such product at Seller's primary source of supply. Should Seller do so, Seller shall not thereafter be obligated to make deliveries of such product. If Seller has available another, substantially similar product for sale to Purchaser in place of the discontinued one, Seller may substitute such substitute product for the one discontinued upon the consent of Purchaser, in which event this Agreement shall continue to the end of the Term.

7. Deliveries Delayed or Prevented. In the event the Seller's performance of this Contract is affected by strike, hurricane, tornado, fire, riot, war, act of terrorism or sabotage, Act of God, governmental regulations, or governmental requests or requisitions for national defense or other purposes, or failure or shortage of railway, pipe line, or vessel service normally available to Seller, or breakdown of, or injury to, or shortage in, facilities used for the production, refining, or transportation of the products described herein, or of the crude oil or other raw material from which they are made, or any other cause beyond the reasonable control of Seller, whether similar to or dissimilar from the enumerated causes, Seller may, at its, his, or their option suspend or terminate the performance of this Contract, in whole or in part, and no liability for damages shall attach against Seller on account thereof. Seller shall not be required to make up any deliveries omitted on account of any such causes.

8. Shipments. Claims regarding shortage in quantity shall be made at the time of delivery. Any claims regarding variance in quality of product(s) delivered by Seller shall be made no later than three (3) days after date of delivery. The parties hereto agree that, in the event of any claims asserted by the Purchaser hereunder, the Seller shall be given an opportunity to promptly inspect the product(s) or goods delivered and failure of the Purchaser to comply with these requirements shall operate as a waiver of any and all claims by the Purchaser.

9. Delivery/Title/Risk of Loss/Liability. (a) Delivery, passage of title, and risk of loss of the product(s) covered by this Contract shall be as follows: (i) Where delivery is made to Purchaser's business location in transportation furnished by Seller, delivery shall be complete on unloading of the tank wagon or transport truck. Where delivery is made into equipment furnished by Purchaser, if applicable, delivery shall be complete at the point of loading of such equipment. (ii) Title to product covered under the Contract shall pass to Purchaser upon delivery of product. (iii) Risk of loss of product shall pass to Purchaser upon delivery of product.

(b) Seller shall not be liable to Purchaser or to any other person for any damage to, or loss of property, or for injury to or death of persons, or for the violation by Purchaser, his agents or employees of any governmental statute, law, regulation, rule, or ordinance, arising from Purchaser's use, transportation, or storage of the products purchased under this Contract. Purchaser shall indemnify, protect and save Seller harmless from and against any and all losses, claims, liabilities, fines, environmental damages, penalties, suits and actions, judgments and costs, including attorneys' fees and the costs of litigation, which arise from, or grow out of, any injury to or death of persons or damage to or loss of property, or for violation by Purchaser, his agents or employees, of any governmental statute, law, regulation, rule, or ordinance, directly or indirectly resulting from, or in any way connected with, Purchaser's use, transportation, or storage of the products purchased hereunder, whether sustained by Purchaser or his agents or employees, or any other person, firm or corporation which may seek to hold Seller liable. This indemnity shall survive termination or expiration of this Contract. Nothing contained herein shall constitute a waiver of the City of Bentonville's tort immunity or any other immunity to which it may be entitled by law.

10. Unloading Demurrage. No bulk deliveries will be made in transport vehicles or vessels unless Purchaser shall provide adequate facilities to receive such deliveries. Purchaser shall pay demurrage, car rental, charter hire, and all damages for the time any such vehicles or vessels are held more than one (1) hour after arrival at destination.

11. Waivers. No waiver by Seller of any breach of any of the covenants or conditions herein contained to be performed by Purchaser shall be construed as a waiver of any succeeding breach of the same or any other covenant or condition.

12. Notices. All written notices required or permitted to be given by this Contract shall be deemed to be duly given if delivered personally or sent by certified mail or via reputable, national overnight courier (such as Federal Express) to Seller or to Purchaser, as the case may be, at the address set forth above or to such other address as may be furnished by either party to the other in writing in accordance with the provisions of this paragraph. The date of mailing shall be deemed the date of giving such notice, except for notice of change of address, which must be received to be effective.

13. Entirety of Contract. This Contract cancels and supersedes all prior written and unwritten agreements, attachments, schedules, appendices, amendments, promises, and understandings between the parties pertaining to the matters covered under this Contract, except any indebtedness owed to Seller by Purchaser, and is a final, complete and exclusive statement of the agreement between Seller and Purchaser. THERE ARE NO ORAL UNDERSTANDINGS, REPRESENTATIONS OR WARRANTIES AFFECTING IT. No amendment, deletion, modification, or alteration to this Contract shall have any effect unless and until made in writing and signed by an authorized representative of Seller and by Purchaser. EXECUTION OF THIS CONTRACT BY PURCHASER IS AN ACKNOWLEDGEMENT THAT NO REPRESENTATIONS NOT SET FORTH IN WRITING HEREIN HAVE BEEN MADE OR RELIED UPON BY PURCHASER.

14. Assignment. This Contract shall not be transferred or assigned by Seller or Purchaser in whole or in part, directly or indirectly, without the prior written consent of the other party hereto. No assignment or transfer shall affect the continuing primary liability of Purchaser (which liability, following assignment or transfer shall be joint and several with the assignee). No consent to any of the foregoing shall operate as a waiver in any subsequent instance. This Contract shall bind the executors, administrators, personal representatives, assigns, and successors of the respective

parties.

15. Express Warranties. Seller warrants that the product(s) supplied hereunder will conform to the promises and affirmations of fact made in Seller's or Seller's suppliers' current technical literature and printed advertisements, if any, related specifically to such product(s); that it will convey good title to the product(s) supplied hereunder, free of all liens, and that the product(s) supplied hereunder meet such specifications as have been expressly made a part of this Contract. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL OR IMPLIED. THE WARRANTY OF MERCHANTABILITY, IN OTHER RESPECTS THAN EXPRESSLY SET FORTH HEREIN, AND WARRANTY OF FITNESS FOR PARTICULAR PURPOSE, IN OTHER RESPECTS THAN EXPRESSLY SET FORTH HEREIN, ARE EXPRESSLY EXCLUDED AND DISCLAIMED.

16. Hazardous materials. Purchaser recognizes that it is handling hazardous substances and agrees that in receiving, storing, handling and using product(s) purchased from Seller hereunder for its own use, Purchaser shall in all respects exercise the strictest care required by law and that it will comply with any and all applicable federal, State and local laws, ordinances and regulations pertaining to the storage and use of petroleum products, obligations, where applicable, imposed on the "owner" and "operator" of storage tank systems, prevention of spills, leaks, venting or other unintended discharge from product containers or storage tanks and the method of cleanup or disposal of product which has leaked, spilled, vented or otherwise unintentionally discharged from containers or storage tanks. Purchaser further understands, warrants, and agrees that it has sole responsibility for the storage, maintenance and use of all product(s) purchased from Seller hereunder and for corrective action and claims of third parties resulting from any failure to comply with the above and PURCHASER WILL DEFEND, INDEMNIFY AND HOLD SELLER, ITS SUCCESSORS AND ASSIGNS, HARMLESS AGAINST ALL LOSSES, CLAIMS, CAUSES OF ACTION, PENALTIES, FINES, LIABILITIES, ATTORNEYS' FEES AND INTEREST ARISING OUT OF PURCHASER'S FAILURE TO COMPLY WITH THIS PARAGRAPH, and such failure by Purchaser shall entitle Seller to cancel any mutual contract immediately as it applies to the product(s) affected by such failure or other products which require the same standard of care.

17. Termination. (a) This Contract shall terminate upon expiration of the Term of this Contract.

(b) This Contract may be terminated by Seller, and no forbearance, course of dealing, or prior payment shall affect these rights of termination: (i) if Purchaser makes any material false or misleading statement or representation which induces Seller to enter into this Contract, or which is relevant to the relationship between the parties hereto; (ii) if Purchaser becomes insolvent or commits an act of bankruptcy or takes advantage of any law for the benefit of debtors or Purchaser's creditors, or if a receiver is appointed for Purchaser; (iii) upon Purchaser's failure to pay any amount when and as due; (iv) if Purchaser defaults in any of its obligations under this Contract; (v) upon assignment of the Contract by Purchaser contrary to the terms of this Contract; or (vi) for grounds described elsewhere in this Contract as causes for termination by Seller.

(c) Termination of this Contract by either party for any reason shall not relieve the parties of any obligation theretofore accrued under this Contract.

18. Compliance with Laws. Both parties expressly agree that it is the intention of neither party to violate statutory or common law and that if any section, sentence, paragraph, clause or combination of same is in violation of any law, such sentences, paragraphs, clauses or combination of same shall be inoperative and the remainder of this Contract shall remain binding upon the parties hereto.

19. Attorney's Fees. It is hereby agreed to and understood by the parties to this Contract that if Seller obtains a judgment against Purchaser for breach of any provision hereof, Seller's contract damages include all attorney's fees and other litigation costs and expenses incurred by Seller in obtaining such judgment.

20. Damages. IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER UNDER TORT, STRICT LIABILITY, OR WARRANTY OR WHETHER ARISING OUT OF, OR FLOWING FROM, OR IN ANY MANNER RELATED TO THE MATTERS COVERED UNDER THIS CONTRACT.

21. Jointly Drafted. This Contract shall be deemed to have been drafted by all parties hereto and, in the event of dispute, each party waives the defense of *contra proferentem*.

22. No Third-Party Beneficiary. This Contract is personal to the Purchaser and is intended for the sole use and benefit of Seller and Purchaser. Nothing contained herein shall be deemed, interpreted, or construed to create, or express any intent to create, third party beneficiary rights in favor of any person or entity, except for any indemnified party (or other person entitled to be indemnified pursuant to this Contract), and Seller and Purchaser specifically state and agree that no such intent exists.

23. Commencement. This Contract shall not be binding upon Seller until signed on its behalf by an authorized representative of Seller. Commencement of performance hereunder prior to signing as above stipulated in no case shall be construed as a waiver by Seller of this requirement.

SELLER: **Frost Oil Co**.

By: ____

Title: ______________________________________

Witness: ___________________________________

PURCHASER: **City of Bentonville, Arkansas**

By: ____

Title: ____

Witness: ____

COMMODITY SCHEDULE

PURCHASER: City of Bentonville
DELIVERY POINT: Bentonville, AR DATE: December 16, 2023
PRODUCT: Unleaded Gasoline GRADE: 87 Octane

This Commodity Schedule is attached to and made a part of, a Contract of Sale between Purchaser and Seller dated and effective as of December 16, 2023 (the "Contract"). Unless otherwise indicated, the capitalized terms used in this Commodity Schedule shall have the same meaning used in the Contract.

1. Quantity. All Purchaser's estimated annual requirements, for delivery in approximately equal monthly quantities upon reasonable notice to Seller at the storage location(s) of Purchaser in Bentonville, AR (the "Premises").

2. Delivery/Title/Risk of Loss. Delivery, title, and risk of loss shall be made or pass as set forth in the Contract.

3. Inspection. Purchaser shall have the right, at its expense, to have an inspection made at delivery point, provided such inspection shall not delay shipment. Should Purchaser fail to make inspection, it shall accept Seller's inspection and measurement.

4. Price. The price to be paid by Purchaser shall be the OPIS daily average price for 87 octane E10 gasoline, or if applicable 87 octane Conventional gasoline at Rogers, AR in effect at the time of delivery, plus Seller's margin of $.03 per gallon, plus Seller's freight rate from Rogers, AR to the Premises in effect at the time of delivery (currently $.03025 per gallon, but subject to revision if and when Seller's freight rates to all customers are increased), plus all applicable state or federal taxes and fees to which Purchaser is subject . All prices charged by Seller are subject to the provisions of applicable law.

ACCEPTED:	ACCEPTED:
SELLER:	PURCHASER:
Frost Oil Co.	**City of Bentonville, Arkansas**
By ____________________________	By ______________________________
Title: ___________________________	Title: ____________________________
Witness: _________________________	Witness: __________________________
Date _____________________________	Date ______________________________

COMMODITY SCHEDULE

PURCHASER: City of Bentonville
DELIVERY POINT: Bentonville, AR — DATE: December 16, 2023
PRODUCT: Diesel — GRADE: Dyed #2 Ultra Low Sulfur

This Commodity Schedule is attached to and made a part of, a Contract of Sale between Purchaser and Seller dated and effective as of December 16, 2023 (the "Contract"). Unless otherwise indicated, the capitalized terms used in this Commodity Schedule shall have the same meaning used in the Contract.

1. Quantity. All Purchaser's estimated annual requirements, for delivery in approximately equal monthly quantities upon reasonable notice to Seller at the storage location(s) of Purchaser in Bentonville, AR (the "Premises").

2. Delivery/Title/Risk of Loss. Delivery, title, and risk of loss shall be made or pass as set forth in the Contract.

3. Inspection. Purchaser shall have the right, at its expense, to have an inspection made at delivery point, provided such inspection shall not delay shipment. Should Purchaser fail to make inspection, it shall accept Seller's inspection and measurement.

4. Price. The price to be paid by Purchaser shall be the OPIS daily average price for Dyed #2 Ultra Low Sulfur Diesel at Rogers, AR in effect at the time of delivery, plus Seller's margin of $.115 per gallon, plus Seller's freight rate from Rogers, AR to the Premises in effect at the time of delivery (currently $.03463 per gallon, but subject to revision if and when Seller's freight rates to all customers are increased), plus all applicable state or federal taxes and fees to which Purchaser is subject . All prices charged by Seller are subject to the provisions of applicable law.

ACCEPTED:	ACCEPTED:
SELLER:	PURCHASER:
Frost Oil Co.	**City of Bentonville, Arkansas**
By ______________________________	By ________________________________
Title: _____________________________	Title: ______________________________
Witness: ___________________________	Witness: ____________________________
Date _______________________________	Date ________________________________

City of Bentonville, Arkansas Agenda Item Form

Item Details

Council Meeting Date:	12/12/2023	**Submitted By:**	Travis Matlock
Phone:	479-271-5941	**For Department(s):**	Inventory
Email:	tmatlock@bentonvillear.com		

Item Type (Check all that apply)

- [ ] Informational
- [ ] Bid Award
- [ ] Enter into an Agreement
- [ ] Change Order
- [ ] Recognizing Funds
- [ ] Budget Adjustment
- [x] Waiver of Bid
- [ ] Emergency Clause

- [x] Ordinance
- [ ] Resolution
- [ ] Informational

Title, Recommendation & Justification

Title:	Ordinance to waive bids to order 3ph transformers
Action Recommendation & Justification:	Approval of an Ordinance to waive competitive bidding to purchase 3 phase transformers from Techline, in an amount not to exceed $358,678.00 plus applicable taxes. Due to market volatility and lead times related to these products, it would be neither practical or feasible to solicit competitive bids.
Additional Comments for Consideration (Optional):	Stuart Irby has lower per unit cost, but has a much longer lead time.
Amount for Approval:	$ 358,678.00

Budget Impact

Is this Item Budgeted? [x] YES [ ] NO [ ] ITEM HAS NO COST [ ] OTHER:______________________

Budget Adjustment *(to be completed by Finance when applicable)*

Account Number (ORG-OBJECT)	Account Description	$ Expense	$ Revenue
Account Number (ORG-OBJECT)	Account Description	$ Expense	$ Revenue
Account Number (ORG-OBJECT)	Account Description	$ Expense	$ Revenue
Account Number (ORG-OBJECT)	Account Description	$ Expense	$ Revenue

Fund(s) Impacted (check all that apply) [ ] General Fund [ ] Utility Fund [ ] Street Fund [ ] Other(s):______________________

Budget Impact Notes for Consideration (Optional):

City of Bentonville Electric Utilities Department
Three Phase Pad-Mount Distribution Transformers
Bid Form

Line Item Number	BEUD Inventory Part Number	KVA	Voltage	QTY	Price Each - Techline	Lead Time (Weeks)	Price Each- Stuart Irby	Lead Time (Weeks)	Price Each - AECI	Total - Techline
1	2039 Dead Front	500	277/480	2	$43,459.00	56	$40,473.00	110	not meet spec	$86,918.00
2	2047 Dead Front	750	277/480	2	$62,112.00	56	$51,601.00	110	not meet spec	$124,224.00
3	2007 Dead Front	1000	277/480	2	$73,768.00	56	$53,554.00	110	not meet spec	$147,536.00
										$358,678.00

THE CITY OF BENTONVILLE

City of Bentonville, Arkansas Agenda Item Form

Item Details

Council Meeting Date:	12/12/2023	**Submitted By:**	Travis Matlock
Phone:	479-271-5941	**For Department(s):**	Inventory
Email:	tmatlock@bentonvillear.com		

Item Type (Check all that apply)

- ☐ Informational
- ☐ Bid Award
- ☐ Enter into an Agreement
- ☐ Change Order
- ☐ Recognizing Funds
- ☐ Budget Adjustment
- ☑ Waiver of Bid
- ☐ Emergency Clause

- ☑ Ordinance
- ☐ Resolution
- ☐ Informational

Title, Recommendation & Justification

Title:	Ordinance and Waiver of Bid to Mueller Company
Action Recommendation & Justification:	An ordinance waiving competitive bidding for the purchase and delivery of various Mueller water meters on an as needed basis from Mueller Company for the City of Bentonville Inventory Department. The items will be ordered on an as needed basis per the unit prices attached.
Additional Comments for Consideration (Optional):	Due to Mueller being the sole source for these items, it is neither practical nor feasible to solicit competitive bids. All totals listed are approximate only; award will be based on the unit prices attached.
Amount for Approval:	$ 772,178.50

Budget Impact

Is this Item Budgeted? ☑ YES ☐ NO ☐ ITEM HAS NO COST ☐ OTHER:________________

Budget Adjustment *(to be completed by Finance when applicable)*

Account Number (ORG-OBJECT)	Account Description	Expense	Revenue
		$	$
		$	$
		$	$
		$	$

Fund(s) Impacted (check all that apply) ☐ General Fund ☐ Utility Fund ☐ Street Fund ☑ Other(s): 2024 Inventory Items

Budget Impact Notes for Consideration (Optional):

CITY OF BENTONVILLE

501 SW 28th ST.
BENTONVILLE, AR 72712
PHONE: (479) 271-3145
AMY SMITH

MUELLER WATER METERS 2024

ITEM NO.		UNIT	OUR PART NO.	DESCRIPTION	UNIT COST	
1	1,500	EA.	4377	METER 5/8 X 3/4 420B, BB, SSR, 5' NODE VOGB237 (with V4 NODES)	$274.00	$411,000.00
2	150	EA.	4375	METER 1" 452, IB, SSR, 5' NODE VOKS137 (with V4 NODES)	$389.69	$58,453.50
3	2500	EA.	4586	MOUNTING KIT MI.NET TTL MS-TTL-A	$19.39	$48,475.00
4	1500	EA.	4399	NODE ONLY 5' WIRE WITH NICOR MSW-NODE6S-1P-05-PO	$169.50	$254,250.00
						$772,178.50

City of Bentonville, Arkansas Agenda Item Form

Item Details

Council Meeting Date:	12/12/2023	**Submitted By:**	Travis Matlock
Phone:	479-271-5941	**For Department(s):**	Inventory
Email:	tmatlock@bentonvillear.com		

Item Type (Check all that apply)

- [ ] Informational
- [ ] Bid Award
- [ ] Enter into an Agreement
- [ ] Change Order
- [ ] Recognizing Funds
- [ ] Budget Adjustment
- [x] Waiver of Bid
- [ ] Emergency Clause

- [x] Ordinance
- [ ] Resolution
- [ ] Informational

Title, Recommendation & Justification

Title:	Ordinance and Waiver of Bid to Henard Utility Products, INC
Action Recommendation & Justification:	An ordinance waiving competitive bidding for the purchase and delivery of various Badger water meters on an as needed basis from Henard Utility for the City of Bentonville Inventory Department. The items will be ordered on an as needed basis per the unit prices attached.
Additional Comments for Consideration (Optional):	Due to Henard being the sole source for these items, it is neither practical nor feasible to solicit competitive bids. All totals listed are approximate only; award will be based on the unit prices attached.
Amount for Approval:	$ 172,235.00

Budget Impact

Is this Item Budgeted? [x] YES [ ] NO [ ] ITEM HAS NO COST [ ] OTHER:________________

Budget Adjustment *(to be completed by Finance when applicable)*

Account Number (ORG-OBJECT)	Account Description	Expense	Revenue
		$	$
		$	$
		$	$
		$	$

Fund(s) Impacted (check all that apply) [ ] General Fund [ ] Utility Fund [ ] Street Fund [x] Other(s): 2024 Inventory Items

Budget Impact Notes for Consideration (Optional):

CITY OF BENTONVILLE

501 SW 28th ST.
BENTONVILLE, AR 72712
PHONE: (479) 271-3145
AMY SMITH

BADGER WATER METERS 2024

ITEM NO.	Qty	UNIT	OUR PART NO.	DESCRIPTION	UNIT COST	
1	1,000	EA.	4606	BADGER MODEL M25 - 5/8" X 3/4" NSF-61 POSITIVE DISPLACEMENT METER - CAST IRON BOTTOM - HR-E LCD ENCODER -7 DIAL 1 US GALLONS - NICOR CONNECTOR. PART NUMBER 107-6685	$147.65	$147,650.00
2	100	EA.	4607	BADGER MODEL M55 - 1" NSF-61 POSITIVE DISPLACEMENT METER - CAST IRON BOTTOM HR-E LCD ENCODER - 7 DIAL US GALLONS - NICOR CONNECTOR. PART NUMBER 103-4665	$245.85	$24,585.00
						$172,235.00

City of Bentonville, Arkansas Agenda Item Form

Item Details

Council Meeting Date:	12/12/2023	**Submitted By:**	Travis Matlock
Phone:	479-271-5941	**For Department(s):**	Inventory
Email:	tmatlock@bentonvillear.com		

Item Type (Check all that apply)

- [ ] Informational
- [ ] Bid Award
- [ ] Enter into an Agreement
- [ ] Change Order
- [ ] Recognizing Funds
- [ ] Budget Adjustment
- [x] Waiver of Bid
- [ ] Emergency Clause

- [x] Ordinance
- [ ] Resolution
- [ ] Informational

Title, Recommendation & Justification

Title:	Ordinance and Waiver of Bid to Core and Main
Action Recommendation & Justification:	An ordinance waiving competitive bidding for the purchase and delivery of various Sensus water meters on an as needed basis from Core and Main, for the City of Bentonville Inventory Department. The items will be ordered on an as needed basis per the unit prices attached.
Additional Comments for Consideration (Optional):	Due to Core and Main being the sole source for these items, it is neither practical nor feasible to solicit competitive bids. All totals listed are approximate only; award will be based on the unit prices attached.
Amount for Approval:	$ 114,775.50

Budget Impact

Is this Item Budgeted? [x] YES [ ] NO [ ] ITEM HAS NO COST [ ] OTHER:______________

Budget Adjustment *(to be completed by Finance when applicable)*

Account Number (ORG-OBJECT)	Account Description	Expense	Revenue
		$	$
		$	$
		$	$
		$	$

Fund(s) Impacted (check all that apply) [ ] General Fund [ ] Utility Fund [ ] Street Fund [x] Other(s): 2024 Inventory Items

Budget Impact Notes for Consideration (Optional):

CITY OF BENTONVILLE

501 SW 28th ST.
BENTONVILLE, AR 72712
PHONE: (479) 271-3145
AMY SMITH

SENSUS WATER METERS 2024

ITEM NO.	QNTY.	UNIT	OUR PART NO.	DESCRIPTION	UNIT COST	
1	100	EA	4002	2" T2 OMNI METER T21G1BA	$950.00	$95,000.00
2	1	EA	4004	3" T2 OMNI METER T31G1BA	$1,192.50	$1,192.50
3	2	EA	4376	4" T2 OMNI METER T41G1AA	$2,295.00	$4,590.00
4	1	EA	4007	6" T2 OMNI METER T61G1AA	$4,286.00	$4,286.00
5	5	EA	4001	2" T2 DROP ASSEMBLY T29G1BA	$740.00	$3,700.00
8	1	EA	4003	3" T2 DROP ASSEMBLY T39G1BA	$867.00	$867.00
9	2	EA	4005	4" T2 DROP ASSEMBLY T49G1AA	$890.00	$1,780.00
10	2	EA	4006	6" T2 DROP ASSEMBLY T69G1AA	$1,680.00	$3,360.00
						$114,775.50

THE CITY OF BENTONVILLE

City of Bentonville, Arkansas Agenda Item Form

Item Details

Council Meeting Date:	12/12/2023	**Submitted By:**	Beau Thompson, Travis Matlock
Phone:	479-271-3140	**For Department(s):**	Water Utilities and Electric Department
Email:	bthompson@bentonvillear.com		

Item Type (Check all that apply)

- ☐ Informational
- ☐ Bid Award
- ☐ Enter into an Agreement
- ☐ Change Order
- ☐ Recognizing Funds
- ☐ Budget Adjustment
- ☑ Waiver of Bid
- ☑ Emergency Clause

- ☑ Ordinance
- ☐ Resolution
- ☐ Informational

Title, Recommendation & Justification

Title:	Waiver of Bid for the purchase of (5) half ton truck replacements
Action Recommendation & Justification:	Ordinance requesting City Council approval of a Waiver of Bid Request to purchase five half-ton trucks from Superior Auto Group. The 1/2 ton crew cab was not included in the state bid process and no contract was awarded. Superior has the trucks on the lot and they will be available Jan. 1. All five trucks are replacements within our existing fleet. All the trucks are experiencing mechanical issues and are more than 10 years of age.
Additional Comments for Consideration (Optional):	Staff is requesting the replacement of 5 trucks that are no longer reliable for use by the departments and maintenance cost are escalating. There is an immediate need for the replacement due to the several existing trucks being inoperable. The trucks being replaced are 3020-17, 3020-18, 3020-19, 3040-14 and 3010-48.
Amount for Approval:	$ 225,300.00

Budget Impact

Is this Item Budgeted? ☑ YES ☐ NO ☐ ITEM HAS NO COST ☐ OTHER:________________

Budget Adjustment *(to be completed by Finance when applicable)*

Account Number (ORG-OBJECT)	Account Description	Expense	Revenue
		$	$
		$	$
		$	$
		$	$

Fund(s) Impacted (check all that apply) ☐ General Fund ☐ Utility Fund ☐ Street Fund ☐ Other(s):________________

Budget Impact Notes for Consideration (Optional):

The purchase is within the budgeted amount for 2024.

2023 MODEL YEAR Superior Dodge, Jeep, Ram, Chrysler

RAM 1500 CLASSIC TRADESMAN CREW CAB 4X4

For more information visit: www.ramtrucks.com
or call 1–866–RAMINFO

FCA US LLC

THIS VEHICLE IS MANUFACTURED TO MEET SPECIFIC UNITED STATES REQUIREMENTS. THIS VEHICLE IS NOT MANUFACTURED FOR SALE OR REGISTRATION OUTSIDE OF THE UNITED STATES.

MANUFACTURER'S SUGGESTED RETAIL PRICE OF THIS MODEL INCLUDING DEALER PREPARATION

Base Price: $44,430

RAM 1500 TRADESMAN CREW CAB 4X4
Exterior Color: Bright White Clear–Coat Exterior Paint
Interior Color: Black / Diesel Gray Interior Colors
Interior: Heavy–Duty Vinyl 40/20/40 Split Bench Seat
Engine: 5.7L V8 HEMI® MDS VVT Engine
Transmission: 8–Speed Automatic 8HP70 Transmission

STANDARD EQUIPMENT (UNLESS REPLACED BY OPTIONAL EQUIPMENT)

FUNCTIONAL/SAFETY FEATURES

Advanced Multistage Front Air Bags
Supplemental Front Seat–Mounted Side Air Bags
Supplemental Side–Curtain Front and Rear Air Bags
Supplemental Side Air Bags
Parkview® Rear Back–Up Camera
Trailer–Tow with 4–Pin Connector Wiring
Class III Bumper Hitch
7–Pin Wiring Harness
Locking Tailgate
Anti–Lock 4–Wheel Disc Brakes
Electronic Stability Control
Speed Control
Sentry Key® Theft Deterrent System
Tire Pressure Monitoring Display

INTERIOR FEATURES

Ram Clean Air System
Uconnect® 3 with 5–Inch Touch Screen Display
6 Speakers
Integrated Voice Command
Media Hub with USB and Auxiliary Port
Power Front Windows with 1–Touch Up / Down
Tilt Steering Column
Vehicle Information Center
Front Armrest with Three Cupholders
40/20/40 Split Bench Seat
Rear Folding Seat
Rear Under–Seat Storage Compartment
Black Vinyl Floor Covering

EXTERIOR FEATURES

17–Inch x 7.0–Inch Steel Wheels
P265/70R17 BSW All–Season Tires
Halogen Quad Headlamps
Automatic Headlamps
Black Front Bumper
Black Rear Bumper
Black Grille

OPTIONAL EQUIPMENT (May Replace Standard Equipment)
Customer Preferred Package 26B

Remote Keyless–Entry with AllSecure®	$190
Class IV Receiver–Hitch	$445
Destination Charge	**$1,995**

TOTAL PRICE: * $47,060

WARRANTY COVERAGE
5–year or 60,000–mile Powertrain Limited Warranty.
3–year or 36,000–mile Basic Limited Warranty.
Ask Dealer for a copy of the limited warranties or see your owner's manual for details.

5 YEAR / 60,000 MILE
POWERTRAIN WARRANTY

$45,060.00

11/07/2023

Assembly Point/Port of Entry: WARREN, MICHIGAN, U.S.A. S.L. SHIP TO: SOLDTO:
VIN: 1C6–RR7ST4PS–575513 L4–VON: 0025 0721–0

THIS LABEL IS ADDED TO THIS VEHICLE TO COMPLY WITH FEDERAL LAW. THE LABEL CANNOT BE REMOVED OR ALTERED PRIOR TO DELIVERY TO THE ULTIMATE PURCHASER.

* STATE AND/OR LOCAL TAXES IF ANY, LICENSE AND TITLE FEES AND DEALER SUPPLIED AND INSTALLED OPTIONS AND ACCESSORIES ARE NOT INCLUDED IN THIS PRICE. DISCOUNT, IF ANY, IS BASED ON PRICE OF OPTIONS IF PURCHASED SEPARATELY.

EPA DOT Fuel Economy and Environment — Gasoline Vehicle

Fuel Economy These estimates reflect new EPA methods beginning with 2017 models.

17 MPG combined city/hwy
15 city 20 highway
5.9 gallons per 100 miles

Standard pickups range from 12 to 70 MPGe. The best vehicle rates 132 MPGe.

You spend $7,000 in fuel costs over 5 years compared to the average new vehicle.

Annual fuel cost $3,000

Fuel Economy & Greenhouse Gas Rating (tailpipe only): 3 (1–10, 10 Best)

Smog Rating (tailpipe only): 5 (1–10, 10 Best)

This vehicle emits 528 grams CO2 per mile. The best emits 0 grams per mile (tailpipe only). Producing and distributing fuel also creates emissions; learn more at fueleconomy.gov.

Actual results will vary for many reasons, including driving conditions and how you drive and maintain your vehicle. The average new vehicle gets 28 MPG and cost $8,000 to fuel over 5 years. Cost estimates are based on 15,000 miles per year at $3.40 per gallon. MPGe is miles per gasoline gallon equivalent. Vehicle emissions are a significant cause of climate change and smog.

fueleconomy.gov
Calculate personalized estimates and compare vehicles

Smartphone QR Code™

GOVERNMENT 5–STAR SAFETY RATINGS

Overall Vehicle Score		★★★★
Based on the combined ratings of frontal, side and rollover. Should ONLY be compared to other vehicles of similar size and weight.		
Frontal Crash	Driver	★★★★
	Passenger	★★★★
Based on the risk of injury in a frontal impact. Should ONLY be compared to other vehicles of similar size and weight.		
Side Crash	Front seat	★★★★★
	Rear seat	★★★★★
Based on the risk of injury in a side impact.		
Rollover		★★★
Based on the risk of rollover in a single–vehicle crash.		

Star ratings range from 1 to 5 stars (★★★★★) with 5 being the highest.
Source: National Highway Traffic Safety Administration (NHTSA)
www.safercar.gov or 1–888–327–4236

The safety ratings above are based on Federal Government tests of particular vehicles equipped with certain features and options. The performance of this vehicle may differ.

PARTS CONTENT INFORMATION

FOR VEHICLES IN THIS CARLINE:
U.S./CANADIAN PARTS CONTENT: 69%
MAJOR SOURCES OF FOREIGN PARTS CONTENT:
MEXICO : 22%
NOTE: PARTS CONTENT DOES NOT INCLUDE FINAL ASSEMBLY, DISTRIBUTION, OR OTHER NON–PARTS COSTS.
FOR THIS VEHICLE:
FINAL ASSEMBLY POINT:
WARREN, MICHIGAN, U.S.A.
COUNTRY OF ORIGIN:
ENGINE: MEXICO
TRANSMISSION: UNITED STATES

Snow Plow Prep Disclaimer
This vehicle not factory equipped for Snow Plow installation – See dealer for details.

City of Bentonville, Arkansas Agenda Item Form

Item Details

Council Meeting Date:	12/12/2023	**Submitted By:**	Chris Earl
Phone:	479-696-0273	**For Department(s):**	Water Resource Recovery Facility
Email:	chrise@bentonvillear.com		

Item Type (Check all that apply)

- [ ] Informational
- [ ] Bid Award
- [ ] Enter into an Agreement
- [ ] Change Order
- [ ] Recognizing Funds
- [ ] Budget Adjustment
- [x] Waiver of Bid
- [ ] Emergency Clause

- [x] Ordinance
- [ ] Resolution
- [ ] Informational

Title, Recommendation & Justification

Title:	Agreement with PW Tech for the WRRF Volute Dewatering Press Drum Overhaul.
Action Recommendation & Justification:	Approval of an Ordinance to waive competitive bidding to enter into an agreement with PW Tech for the purchase and installation of (4) ES-350 series Ring Recharge. This is a sole source item that was not budgeted for 2024, but should fall under account 44-40 for unexpected repairs. The Volute Dewatering Press malfunctioned unexpectedly one week after the 2024 budget was approved. We are requesting to make this purchase in 2023 because of a 10 week delay time for delivery. Additionally, we are limited to approximately 10 weeks of solid storage space in our digesters.
Additional Comments for Consideration (Optional):	PW Tech will not only complete the install, but will also train our maintenance team how to complete the process. This will allow a savings in the future. Going forward we will only need to purchase parts to install ourselves.
Amount for Approval:	$ 46,427.34

Budget Impact

Is this Item Budgeted? [ ] YES [x] NO [ ] ITEM HAS NO COST [ ] OTHER:______________________________

Budget Adjustment *(to be completed by Finance when applicable)*

Account Number (ORG-OBJECT)	Account Description	Expense	Revenue
		$	$
		$	$
		$	$
		$	$

Fund(s) Impacted (check all that apply) [ ] General Fund [ ] Utility Fund [ ] Street Fund [ ] Other(s):____________________________

Budget Impact Notes for Consideration (Optional):

Shupe & Associates, Inc.
6160 Getty Dr. – North Little Rock, Arkansas 72117 Phone: (501) 834-4271 - Fax: (501) 834-6169

November 14, 2023

Chris Earl
Manager

City of Bentonville (Water Resource Recovery)
1901 NE "A" Street
Bentonville, AR 72712

Chris,

This is to inform you that Shupe & Associates is the sole source representative for the state of Arkansas for PW Tech and all parts ordered should come to us.

If you have any questions, we will be glad to work with you, and assist in any way possible.

Sincerely,

Phil Shupe

Phil Shupe

PROPOSAL

TO:	**City of Bentonville, AR** 1901 NE A Street Bentonville, AR 72712
PROJECT / REF:	**Bentonville, AR WWTP Drum Overhaul Proposal**
PROPOSAL TYPE:	Budget Price and Scope
SPEC. SECTIONS:	N/A
DATE:	01 November 2023
PWT #:	VDP-AR-17078
REV:	0
SIZING INFORMATION:	Sized to service installed unit
MANUFACTURERS REP:	Phil Shupe Shupe & Associates, Inc 870-672-1660
NOTES:	
REVISION NOTES:	
PREPARED BY:	Corey Whitehead | Joseph Collar
PROPOSAL CONTENT	• Scope Pricing and summary • Scope Details • Exceptions and Exclusions • Governing Conditions and Warranty Notes • Price • Data Sheets • GA Drawings • PWTech Terms and Conditions and Warranty

cope Pricing and Summary

DESCRIPTION	Price Each	QUANTITY	ITEM SUBTOTALS
ES-350 series Ring Recharge	$ 8,562.35	4	$ 34,249.40
Labor and travel	N/A	4 days	$ 7,500.00
		Subtotal	$ 41,749.40
		Delivery Charge	$ 650.00
		TOTAL	**$ 42,399.40**

*Volute is registered with the U.S. Patent and Trademark Office as a registered trademark of AMCON

SCOPE DETAILS

1. PWTech - ES-350 series Ring Cartridge Recharge

- Set includes cartridge of fixed and moving rings.
- Moving Rings are manufactured from SS304.
- Fabrication includes laser cutting, hand grinding, and electro-polishing.
- Price for standard service replacement/recharge materials
  - Assumes return of worn cartridges

2. Field Services:

- On-site services for:
  - One (1) trip consisting of four (4) consecutive days (8 hours per day, Monday-Friday) by a PWT field service engineer and/or qualified manufacturer's representative
- Services include:
  - Functional testing and calibration of equipment
- Phone consultation regarding installation will also be provided.
- Should additional services be deemed necessary by the PURCHASER, the additional services can be procured from PWT on a per diem basis. The current rate is $1000 per day plus travel.

3. Delivery and Freight

- Delivery is approx. ten (10) weeks from receipt of written acceptance of Submittal documents [x]

[x] **PLEASE NOTE:** While seller believes this estimated delivery time to be a valid and realistic estimate, due to the unpredictable nature of current parts shortages, this does not constitute any form of guarantee regarding the delivery schedule.

EXCLUSIONS AND EXCEPTIONS:

The Following items are specifically excluded from this scope unless specifically noted otherwise:

- Taxes, permits, and bonding
- Unloading of delivered equipment on site and storage

GOVERNING TERMS AND CONDITIONS AND WARRANTY

This scope is subject to Process Wastewater Technologies, LLC. Standard Terms and Conditions and Standard Warranty as attached. The following items are specific to this project:

Payment Terms:

Payment terms for this scope are as per the table below:

Trigger	Amount		Terms			Condition
PO	**100**	%	due NET	7	days	On Receipt of PO by PWTech

Validity

Validity of this proposal is strictly 30 days. Written authorization from seller is required to extend this.

Warranty

PWTech warrants that the Products shall be free from defects in material and workmanship for the shorter period of: (i) twelve (12) months from the date of start-up; (ii) the warranty period for the third party good or service embodied in the Product; or (iii) eighteen (18) months from the delivery of the specified Product.

Process Wastewater Technologies, LLC. Standard Terms and Conditions

These terms and conditions ("Terms") shall exclusively govern the sale of all goods ("Products") and related services ("Services") by Process Wastewater Technologies, LLC. ("PWT") to the party ("Buyer") that issued a Purchase Order in accordance with, and/or signed and accepted the PWT Proposal ("Proposal"), and upon execution, the "Order" along with the Terms and the PWT Standard Limited Warranty attached hereto, the "Agreement").

Item 1. ACCEPTANCE

Buyer may accept this Agreement by executing the Proposal and returning it to PWT or by issuing a written purchase order that is accepted in writing by PWT or by executing an acceptance of offer in lieu of purchase order. No oral acceptance shall be effective. This Agreement is intended by the parties as a final expression of their agreement and is intended as a complete and exclusive statement of the terms of their Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection. No agent, employee or representative of PWT has any authority to bind PWT to any affirmation, representation or warranty concerning the equipment, components or related services sold under this Agreement, unless an affirmation, representation or warranty made by an agent, employee or representative is specifically included within this Agreement, otherwise it has not formed a part of the basis of this Agreement and shall not in any way be enforceable.

Item 2. CANCELLATION

Once the Buyer has executed the Proposal and submitted it to PWT, Buyer shall have no right to cancel this Agreement or any part thereof, except under the conditions specified in this provision or otherwise agreed to in writing by both parties. Any cancellation by Buyer of this Agreement must be in writing and shall be deemed effective upon receipt by PWT. In the event of cancellation by Buyer prior to the commencement of production of the Products specified under the applicable Order, Buyer shall pay PWT a cancellation charge equal to all of the costs incurred by PWT under the applicable Order up to the time of cancellation, plus fifteen percent (15%) of the full Order amount. In the event that production of the Products under the Order has commenced prior to cancellation, Buyer shall pay a cancellation charge equal to all of the costs incurred by PWT under the applicable Order up to the time of cancellation, plus an amount equal to the greater of: the value of the Products already completed under the applicable Order; or fifteen percent (15%) of the full order amount under the applicable Order.

Item 3. PRICES

Unless otherwise stated in the Proposal, prices are in United States Dollars (US$) and are F.O.B. Point of Origin. Charges for Services not stated in the Proposal (including, but not limited to, on-site technical assistance performed by a factory technical representative) are not included and must be purchased pursuant to a separately executed agreement between the parties.

Item 4. VALIDITY

Unless otherwise specified and subject to PWT's acceptance as described herein, the Proposal is valid for (30) thirty days and is subject to review thereafter. Prices may be extended beyond thirty (30) days only if confirmed in writing by PWT.

Item 5. PAYMENT TERMS

Buyer's payments shall be made in accordance with the terms and conditions of the Proposal. If no payment terms are set forth in the Proposal, then the payment terms are (a) thirty percent (30%) of the purchase price under the applicable Order shall be invoiced net five (5) days upon execution of the Proposal by Buyer; (b) sixty percent (60%) of the purchase price under the applicable Order shall be invoiced net thirty (30) days upon shipping, or upon PWT's offer to ship; (c) five percent (5%) of the purchase price to be invoiced net thirty (30) days upon delivery of Operation and Maintenance manuals and (d) the remaining five percent (5%) will be invoiced net thirty (30) days upon completion and/or performance of all related Services under the applicable Order. Interest will be charged on the unpaid invoiced balance at the rate of one and a half percent (1½%) per month for any amount received after thirty (30) days from the date of invoice. Any collection costs and/or attorney fees incurred by PWT in order to collect payment due will be invoiced to the Buyer, and Buyer agrees to pay said costs. In addition to the foregoing rights, PWT may suspend the shipping of any Products if the Buyer has failed to PWT in a timely manner.

Item 6. FEES AND TAXES

Buyer shall pay directly or reimburse PWT for payment of any and all applicable customs, sales, use, excise or other fees and taxes associated with the production and delivery of Products and PWT's performance under this Agreement. Buyer is responsible for and bears the risk of establishing, if applicable, a valid exemption from any tax, and shall indemnify, defend and hold PWT harmless for any loss, cost, or expense relating to any such exemption.

Item 7. DELAYED SHIPPING

Unless otherwise specified in the Proposal, if Buyer specifies a shipping date more than eight (8) months from the date of Buyer's acceptance of the Proposal, the price stated in the Proposal for the same goods shall be increased by a figure equal to the greater of (a) one percent (1%) per month (or part thereof), or (b) the average percentage increase of the stainless-steel and electronics commodity prices measured among the Consumer Price Index and the Producer Price Index or their successor indices as of the date of such acceptance and the shipping date. If PWT incurs a delay in production of the Products due to force majeure events or supply chain issues of more than three (3) months or its suppliers have materially increased its costs as reasonably demonstrated to Buyer by PWT, then the Products costs shall be adjusted by the percentage increase of the stainless steel commodity price as measured by Producer Price Index or its successor index as of the date of such acceptance and the manufacturing date of the Products.

Item 8. FINANCIAL RESPONSIBILITY OF BUYER

If at any time before shipment, Buyer's financial ability to pay becomes impaired or unsatisfactory, PWT shall have the right to require Buyer to make payment or provide other assurances in full before shipment. In addition, if at any time before shipment, any proceeding is brought by or against Buyer under the bankruptcy or insolvency laws, PWT shall have the right to cancel an Order and/or terminate this Agreement and Buyer shall pay PWT a cancellation charge equal to all of the costs incurred by PWT up to the time of termination, plus fifteen percent (15%) of the purchase amount under the applicable Order(s).

Item 9. SHIPPING

Unless otherwise specified, all equipment and components will be shipped in one lot by the lowest cost method at the discretion of PWT. Any additional shipping requests by Buyer may be subject to additional shipping and handling charges. All shipments shall be F.O.B. – point of origin - the PWT manufacturing facility. Delivery to the carrier shall constitute delivery to Buyer for purpose of transfer of title, risk of loss or damage in transit. Buyer is responsible for obtaining any desired cargo insurance and shall pursue any loss or damage claims solely with the carrier.

Item 10. DELIVERY SCHEDULE

Unless otherwise specified, delivery dates under this Agreement and each Order are approximate, and failure to meet an exact delivery date shall not constitute a breach of this Agreement.

Item 11. INSPECTION

Upon reasonable advance written notice, Buyer or Buyer's representative may inspect the Products prior to shipment at the PWT point of origin at a time mutually agreeable to both parties. Inspection will be allowed only inasmuch as such inspection does not unreasonably interfere with PWT's production work flow. Complete details of any requested inspection must be submitted to PWT in writing, at least two weeks in advance of the requested inspection date. Any inspection under this provision must be completed prior to shipment of any goods under the applicable Order.

Item 12. OFFER BASIS

This Agreement is exclusively based upon drawings and specifications in the possession of PWT at the time of this Agreement and the applicable Order. PWT expressly reserves the right to modify the price and other terms of this Agreement as reasonably determined by PWT, should additional drawings, documents, amendments, clarifications or other addenda be required to produce or deliver the Products under an applicable Order.

Item 13. LIMITED WARRANTY

PWT's warranty liability under this Agreement is limited to the terms listed in the PWT Standard Limited Warranty that accompanies these Terms and is incorporated herein by reference. No other warranty, express of implied, is made with respect to the Products and/or services provided under this Agreement.

Item 14. MEET AND CONFER

The parties shall amicably work together to negotiate and resolve any controversy or dispute arising out of, or in connection with this Agreement or its interpretation, performance or non-performance or breach thereof. In particular, in the event of a disagreement, the parties shall meet and confer and attempt in good faith to resolve their differences. At the written request of the aggrieved party, a face-to-face meeting between decision-makers of the parties shall be arranged at the offices of the non-aggrieved party. Such a meeting shall occur within thirty (30) days of the delivery of the written request of the aggrieved party, unless otherwise agreed by the parties.

Item 15. FORCE MAJEURE

Neither party will be deemed in default of this Agreement to the extent that performance of its obligations (other than payment of money) or attempts to cure any breach are delayed or prevented by reason of any event beyond the reasonable control of such party, including any act of God (*i.e.*, fire, earthquake, natural disaster), act of government (*i.e.*, war, terrorism, embargo), or any other act or circumstance that is beyond the reasonable control of such party, provided that such party gives the other party prompt written notice thereof. Any delays caused by Buyer which impact costs associated with the Products may result in additional fees.

Item 16. GOVERNING LAW

Subject to Section 14, all disputes and matters arising under, in connection with, or incidental to this Agreement shall be litigated, if at all, in and before the Circuit Court of Baltimore County, Maryland, USA to the exclusion of other courts of other states, the United States or other countries and to the exclusion of other venues. The parties expressly consent to the exclusive jurisdiction of this court and agree that this venue is convenient and not to seek a change of venue or to dismiss this action on the grounds of forum non conveniens, and not to remove any litigation from that court to a federal court. This Agreement shall be construed in accordance with and governed by the substantive laws of the State of Maryland, to the extent state law applies. An action for breach of this Agreement must be commenced within one (1) year after the cause of action has accrued.

Item 17. WAIVER AND MODIFICATION

No waiver by either party of any breach, default or violation of any term, warranty, representation, agreement, covenant, condition or provision of this Agreement shall constitute a waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, agreement, covenant, condition or provision. No modification, amendment, extension, renewal, rescission, termination or waiver of any of the provisions contained in this Agreement, or any future representation, promise or condition in connection with the subject matter of this Agreement, shall be binding upon either party unless in writing and signed by both parties.

Item 18. SEVERABILITY

Any provision of this Agreement which is invalid, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective solely to the extent of such invalidity, prohibition or unenforceability without invalidating the remaining provisions hereof, and any such invalidity, prohibition or unenforceability in any such jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Item 19. ASSIGNMENT AND DELEGATION

Buyer shall not have the right to assign or delegate this Agreement or its interest in or obligations under this Agreement without the prior written consent of PWT, which shall not be unreasonably withheld. The merger, acquisition, reorganization, or other restructuring of Buyer shall not constitute an assignment under the terms of this Agreement provided the surviving entity has assumed all of the obligations of PWT under this Agreement pursuant to a written confirmation. Subject to the foregoing, the rights and obligations of the parties to this Agreement shall be binding upon, and enforceable by their respective heirs, successors and permitted assigns.

Item 20. CONFIDENTIALITY

The parties recognize that, in the course of their dealings, each may come into possession of information relating to the business of the other which is not generally known in the industry, which reasonably or logically may be considered to be confidential or proprietary and which might reasonably be expected to do harm to the other if divulged ("Confidential Information"). Each party agrees to keep the Confidential Information confidential and not to disclose it, in whole or in part, to any third persons whatsoever, nor even to any of its own employees except those having a "need to know," and otherwise to protect the confidentiality of such Confidential Information in accordance with reasonable industry practices. Confidential Information of a party shall no longer be subject to the foregoing restrictions (a) if it is or becomes available to the public through no fault of the other party, (b) if it is otherwise known to the other party as shown by written records of the other party at the time of disclosure of the Confidential Information, (c) if, subsequent to disclosure hereunder, it is obtained by the other party on a non-confidential basis from a third party who has the right to disclose such information or (d) if it is required to be disclosed pursuant to a court order, so long as the non-disclosing party is given adequate notice and the ability to challenge the required disclosure. Confidential Information will include the terms and conditions of this Agreement. Each receiving party shall immediately notify the disclosing party in writing if the receiving party reasonably determines that there has been an unauthorized access, use or receipt of the disclosing party's Confidential Information.

Item 21. NOTICES.

Any notice given under this Agreement shall be given when delivered in person or by registered or certified mail, postage prepaid, return receipt requested or by other delivery service providing evidence of receipt to the party to whom such notice is to be given at the address set forth above or at such other address as either party shall hereafter give notice of to the other in writing.

Item 22. INDEPENDENT CONTRACTOR.

Buyer has no authority to bind PWT in any contractual manner or to represent to others that the relationship between the other is other than stated herein.

Item 23. INTELLECTUAL PROPERTY

Except as expressly set forth in this Agreement, this Agreement does not grant either party any rights, implied or otherwise, to the other party's intellectual property (including, but not limited to, firmware, technology, data, or software) or any third party's intellectual property. Buyer acknowledges that, as between the parties, PWT retains all right, title, and interest in and to all components of the PWT Products and related intellectual property rights (collectively, the "PWT IP"). PWT hereby grants the Buyer a non-exclusive, irrevocable, worldwide, perpetual, royalty-free right and license to the PWT intellectual property solely as it is embodied in the Products and solely for the purposes of operating and using the Products.

Item 24. INDEMNIFICATION

Buyer hereby agrees to defend, indemnify and hold harmless the PWT, its directors, officers, employees, agents, and any assignee from and against any and all losses, damages, injuries, claims, suits, demands, judgments, decrees, losses, costs, expenses and liabilities, including, but not limited to attorneys' fees and courts costs asserted against, imposed upon or incurred by PWT arising from: any claim that manufacture or use of the Products (or their specifications) infringes upon a third party intellectual or proprietary right, including, but not limited to, patent, copyright, trademark, trade secret or any other intellectual or proprietary right where Buyer provided the specifications therefore.

Process Wastewater Technologies, LLC Standard Limited Warranty

Item 1. LIMITATION OF LIABILITY

EXCEPT AS OTHERWISE SET FORTH HEREIN, THE PRODUCTS ARE PROVIDED "AS IS" AND PWT DOES NOT MAKE ANY OTHER STATUTORY, EXPRESS WARRANTIES OR ANY IMPLIED WARRANTIES WITH RESPECT TO THESE PRODUCTS AND SERVICES PROVIDED HEREIN, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, INFRINGEMENT, TITLE, OR OF FITNESS FOR A PARTICULAR PURPOSE OR USE.

PWT does not assume and expressly disclaims any liability for (i) SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES which anyone may suffer as a result of the sale, delivery, service, use, or loss of use, of any Products and/or services provided by PWT, or (ii) any charges or expenses of any nature which are incurred without the prior written consent of PWT. Without limiting the foregoing, PWT does not warrant that any Products provided are free from any claim of any third person by way of infringement or the like, and PWT expressly disclaims any liability for any claim of infringement or the like that may result from the sale, delivery, service, use, or loss of use of any Products and/or services provided by PWT.

PWT's total liability under this Agreement or in connection with any claim involving any Products or services is expressly limited to the purchase price of the goods set forth in the applicable Order and/or services in respect of which damages are claimed.

Item 2. DEFECTS WARRANTY

Unless otherwise set forth in the Proposal, PWT warrants that the Products shall be free from defects in material and workmanship for the shorter period of: (i) twelve (12) months from the date of start-up; (ii) the warranty period for the third party good or service embodied in the Product; or (iii) eighteen (18) months from the delivery of the specified Product.

PWT's sole obligation and Buyer's exclusive remedy under this Agreement is expressly limited to the repair or replacement of any Product or parts of the Product or at the option of PWT, a refund of the purchase price, of any Product or parts which are return to PWT freight prepaid; provided that PWT determines in its sole discretion that the Product is defective, failed prematurely or has faulty workmanship or materials.

Item 3. PRODUCTS OF OTHER MANUFACTURERS

Unless otherwise set forth in the Proposal, PWT makes no warranty with regard to any products not manufactured by PWT, including but not limited to, electrical components, firmware, equipment and motors.

Item 4. TYPES OF DAMAGES AND CLAIMS FOR WHICH PWT LLC IS NOT RESPONSIBLE

The following non-exclusive list of items are specifically not covered by the PWT Standard Limited Warranty and, in the event of their occurrence, will render the PWT Defects Warranty null and void:

- defects which are caused by improper installation, improper or abnormal use or operation, or improper storage or handling;
- defects caused by the failure of the Buyer to perform and log normal preventative maintenance;
- defects caused by the use of replacement parts not approved in writing by PWT;
- defects caused by repairs by persons not authorized in writing by PWT;
- defects caused by modifications or alterations made by the Buyer; and/or
- any damage to our any Product occurring while it is in the possession of the Buyer.

Item 5. EQUIPMENT SAFETY PARAMETERS~~:~~

With respect to operation of the Products, it is the responsibility of the Buyer to define and provide any safety device(s) or associated safety device(s) (other than that which is ordinarily furnished by PWT) which may be necessary and/or required, and to establish safety procedures and operational instructions to safeguard the operator(s) during maintenance, cleaning, or any use of the Products whatsoever, and to subsequently ensure that the Products are operated in conformance with all applicable safety procedures, laws, regulations and instructions.

It is also the responsibility of the Buyer to enforce all safety regulations and operational instructions and to maintain the Product in a safe condition (e.g., guards in place; warning, caution and/or important labels affixed; electrical boxes secure; interlocks operational; etc.). In particular, all warning, caution and/or important labels must be maintained in a readable condition, and if necessary, replaced with new labels.

Additionally, as the nature of the Product does not always make it possible to fully prevent operator access from rotating components, maintenance or cleaning of any nature must not be performed on the Products without first disconnecting all power.

Item 6. OPERATOR SAFETY COMPLIANCE~~:~~

Buyer warrants and agrees that because it has sole control over the Product, it shall be solely responsible for safety compliance. Operator access and use of Products, and full compliance with all provisions of the Operator Safety section of PWT Instruction Manuals are essential and the user's responsibility; the provisions of that section being expressly incorporated herein.

City of Bentonville, Arkansas Agenda Item Form

Item Details

Council Meeting Date:	11/28/2023	**Submitted By:**	Mike Bender
Phone:	479-271-3140	**For Department(s):**	Water Utilities
Email:	mbender@bentonvillear.com		

Item Type (Check all that apply)

- ☐ Informational
- ☐ Bid Award
- ☑ Enter into an Agreement
- ☐ Change Order
- ☐ Recognizing Funds
- ☑ Budget Adjustment
- ☐ Waiver of Bid
- ☐ Emergency Clause
- ☐ Ordinance
- ☑ Resolution
- ☐ Informational

Title, Recommendation & Justification

Title:	ARDOT Utility Relocation Agreement, ARDOT Project 090512 (Hwy 112)
Action Recommendation & Justification:	Resolution authorizing the Mayor and City Clerk to enter into an agreement with the Arkansas State Highway Commission for relocation of utilities associated with ARDOT Project 090512 - Springdale Bypass - Hwy 12 P.E. Route 112, Section 2, Benton County. A budget adjustment is required for this project.
Additional Comments for Consideration (Optional):	Total expected project cost is estimated at $24,015,418.48 including engineering, easement acquisition, and construction associated with relocation of 12,696 linear feet of 48-inch water transmission main. This project is 99.53% eligible for reimbursement yielding $23,902,546.01 to be paid by ARDOT and $112,872.47 to be borne by the City. Final costs will be based on final actual total costs. A budget adjustment of $755,477.00 was approved by the City Council in June 2023 which is included in the total costs listed above and qualifies for reimbursement.
Amount for Approval:	$

Budget Impact

Is this Item Budgeted? ☐ YES ☑ NO ☐ ITEM HAS NO COST ☐ OTHER:

Budget Adjustment *(to be completed by Finance when applicable)*

Account Number (ORG-OBJECT)	Account Description	Expense	Revenue
503020-33410	State Capital Grant	$	$ 23,902,546.
503020-47320	Improvements Other - Water Imp	$ 23,259,941.48	$
		$	$
		$	$

Fund(s) Impacted (check all that apply) ☐ General Fund ☐ Utility Fund ☐ Street Fund ☐ Other(s):

Budget Impact Notes for Consideration (Optional):

ARKANSAS STATE HIGHWAY COMMISSION
HIGHWAY - UTILITY CONSTRUCTION/RELOCATION AGREEMENT

State Job No **090512** (Utilities) County **Benton**

Federal Aid Project **CMF-0004(74)** Route **112** Section **2**

Job Location **Springdale Bypass - Hwy. 12 P. E.** Utility Owner **Bentonville Water**

THIS AGREEMENT, made and entered into this ______ day of ______________________, 20 ____, by and between the Arkansas State Highway Commission, acting by and through the duly authorized representatives of the Arkansas Department of Transportation, with headquarters at Little Rock, Arkansas, hereinafter referred to as the "Department," and the ***Bentonville Water** of **Bentonville, AR*** acting by and through its duly authorized representatives, hereinafter referred to as the "Owner" WITNESSETH:

The Department proposes to make highway improvements as specified under the above referenced job number and the Owner will adjust or relocate its existing facilities as set out in the attached plans and cost estimate.

The Department will participate in the cost of said adjustment/relocation to the extent that eligibility is hereinafter established.

Payment will be made on **actual cost** basis as mutually agreed between Owner and Department.

This agreement is governed by all applicable State and Federal laws, rules, and regulations including the Arkansas State Highway Commission Utility Accommodation Policy adopted by Commission Minute Order 2010-146 as amended and supplemented, the Federal Aid Program Guide on Utility Adjustments and Accommodation on Federal Aid Highway Projects as amended and supplemented, and the provisions of 23 CFR § 645 as amended and supplemented.

DESCRIPTION OF WORK: **See Exhibit A on Page 4**

The Department agrees that the required adjustment is **99.53%** eligible for reimbursement for the total cost which is estimated to be **$24,015,418.48** of which **$23,902,546.01** is to be paid by the Department and **$112,872.47**is to be borne by Owner.

Owner will not commence work until authorized by the Department, and will then endeavor to begin within **395 calendar** days and complete within **365 calendar** days thereafter.

On completion of said work, Owner is responsible for the cleanup and restoration of the work area including the disposal of surplus materials and debris.

Final billing must include all supporting detail. Owner shall also submit one (1) set of as-built drawings at this time.

Payment will be 100% of lump sum bills and actual cost bills, at the discretion of the Department a 10% retainage can be withheld and released upon completion of an audit review. All final bills for utility relocation are subject to review and audit by state and/or federal auditors.

Expenses incurred under an actual cost agreement may be billed to the Department monthly in increments of $5,000.00 or more.

Owner must maintain cost records and accounts to support the agreed adjustment/relocation work. Said records to be retained and available for inspection for a period of three (3) years from date of final payment.

Owner shall be responsible for any and all hazards to persons, property, and traffic.

With respect to traffic control, Owner shall adhere to the requirements of the Manual of Uniform Traffic Control Devices as amended and supplemented.

To the extent applicable to this agreement, the Owner shall comply with the Buy America and Build America, Buy America requirements (as specified in 23 U.S.C. 313, 23 CFR 635.410 and the Infrastructure Investment and Jobs Act (IIJA)). The Owner is not required to change its existing standards for materials as long as these requirements are met. These requirements take precedence over regulations pertaining to the accommodation or regulation of the Owner's facilities (as specified in 23 CFR 645) on contracts and agreements involving Federal-Aid Highway Program funding and precedence over regulations which allow the Owner to furnish materials from company stock (as specified on 23 CFR 645.117(e)). Company Stock materials that do not meet these requirements may not be permanently incorporated into a Federal-Aid Highway Program funded project. The Owner must provide a definitive statement that all products permanently incorporated into the project are covered under these requirements. This requirement is fulfilled via proper signature and submission of the statement of charges form. In some circumstances, a waiver of these requirements may be granted by the Federal Highway Administration, to be determined on a project-by-project basis.

Owner shall be responsible for and shall hold harmless the Arkansas State Highway Commission, the Department and their officers and employees from any and all claims, actions, causes of action, suits, damages, losses or liability whatsoever, arising out of Owner's performance of the work subject to this Agreement.

Notwithstanding anything hereinbefore written, neither the Owner nor the Department by execution of this Agreement waives or relinquishes any rights which either may legally have within the limits of the Law or Constitution, either State or Federal.

Bentonville Water

Stephanie Orman
Name (Typed or Printed)

Mayor
Title

Signature

FEDERAL TAXPAYER IDENTIFICATION #

Kirby Romines
Name (Typed or Printed)

City Clerk
Title

Signature

ARKANSAS HIGHWAY COMMISSION
Acting By and Through The
ARKANSAS DEPARTMENT of
TRANSPORTATION

(For) Director

Right of Way Division Head

Section Head-Utilities Section

EXHIBIT A

Adjust water facilities to clear highway construction by abandoning 12,696LF of 48" water main complete with appurtenances. Restore service by installing 14,522LF of 48" water main complete with appurtenances. Of the 12,696LF being abandoned 12,636 is on private property; therefore, the reimbursement factor is 12,636/12,696=99.53%.

The Department has agreed, under Section 14.1 of the Department's Utility Accommodation Policy, to authorize the advancement of reimbursement payments for the Preliminary Engineering and Construction phases of the Owner's relocation activity..

Owner will perform work with contract forces through competitive bids.

Summary of Cost

Preliminary Engineering	$	755,477.00
Construction Cost	$	20,574,200.00
Easement Acquisition	$	2,685,741.48
TOTAL COST	$	24,015,418.48

Reimbursable Cost $24,015,418.48 X 99.53% = $23,902,546.01

ARKANSAS DEPARTMENT OF TRANSPORTATION

ARDOT.gov | IDriveArkansas.com | Lorie H. Tudor, P.E., Director

10324 Interstate 30 | P.O. Box 2261 | Little Rock, AR 72203-2261
Phone: 501.569.2000 | Voice/TTY 711 | Fax: 501.569.2400

November 6, 2023

Mike Bender
Bentonville Water
3200 SW Municipal Dr.
Bentonville, AR 72712

RE: Job 090512 (Utilities)
CMF-0004(74)
Springdale - Hwy. 12 P. E.
Route 112 Section 2
Benton County

Dear Mr. Bender:

The estimate of cost and plans covering your proposed adjustments on the referenced job have been reviewed and an agreement prepared in accordance with the proposal. The original and one (1) copy of the agreement are enclosed for your review and execution.

This agreement has been prepared on the Department's standard utility relocation agreement. Reimbursement will be made on the actual cost payment procedure. If reimbursement is being sought, materials used are to be in compliance with Buy America and Build America, Buy America provisions under guidelines of 23 U.S.C. 313, CFR 635.410 and the Infrastructure Investment and Jobs Act (IIJA).

Attached is a certification of compliance for the above mentioned Buy America provision, please sign and return with the signed and witnessed original agreement to this office for further handling. The extra copy is for your file until you receive the approved agreement and Work Order Letter. The adjustment work must not be started prior to authorization from this office.

Sincerely,

Chad Coats

Chad Coats
Utilities Specialist
Utilities Section
Right of Way Division

Enclosures
C: "C" file

ARKANSAS DEPARTMENT OF TRANSPORTATION
BUY AMERICA
CERTIFICATE OF COMPLIANCE

Date: ____________________________,
20________

WE, ____
(Utility Company)

Address ____

____

Hereby certify that we are in compliance with the "Buy America" requirements of the Federal regulations 23 U.S.C. 313 and CFR 635.410 of this project.

Job Number: ______________________________

Job Name: ____

____

As required, we will maintain all records and documents pertinent to the Buy America requirement, at the address given above, for not less than 3 years from the date of project completion and acceptance; if we do not provide the records and documents during invoicing, then we will maintain all records and documents pertinent to the Buy America requirement for not less than three (3) years from the date conditional final payment has been received. These files will be available for inspection and verification by the Department and/or FHWA.

We further certify that the total value of foreign steel as described in the Buy America requirements for this project does not exceed one-tenth of one percent (0.1%) of the total contract price or $2,500.00, whichever is greater.

Signed by: ______________________________ Title ______________________________
(Officer of Organization)

Subscribed and sworn to before me this _____ day of ________________________,
__________.

______________________________________ My Commission Expires: ____________________
(Notary Public/Justice of the Peace)

ARKANSAS DEPARTMENT OF TRANSPORTATION
BUILD AMERICA, BUY AMERICA
CERTIFICATE OF COMPLIANCE

Date: ______________________________, 20________

WE, ____
(Utility Company)

Address: ____

____

Hereby certify that we are in compliance with the "Build America, Buy America" (BABA) requirements of the Infrastructure Investment and Jobs Act (IIJA) of this project.

Job Number: ______________________________

Job Name: ____

____

As required by the IIJA we certify that all "construction materials" included in this project comprised of an article, material, or supply other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that is or consists primarily of:

- Non-ferrous metals;
- Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- Glass (including optic glass);
- Lumber; or
- Drywall.

Signed by: ______________________________ Title: ______________________________
(Officer of Organization)

Subscribed and sworn to before me this _____ day of ______________________________, __________.

______________________________ My Commission Expires: ____________________
(Notary Public/Justice of the Peace)