



**Finance Committee
Meeting Agenda
March 26, 2024
5:00 PM
City Council Chambers**

City Council Members:

Gayatri Agnew	Ward 1, Position 2
Cindy Acree	Ward 2, Position 1
Bill Burckart	Ward 3, Position 2

If you would like to attend virtually, please log in at the following link:

<https://us02web.zoom.us/j/89139307844?pwd=ZWVhRby9RVElhd1pyZzluVmdHZz09>

Call to Order/Roll Call

City Council Items To Be Considered

- 1. Section I Item 1 from the City Council** **Resolution**
Agenda: Resolution accepting Budget
Adjustment for the Bentonville
Municipal Airport

Budget adjustment moving previously accepted grant funds in the amount of \$32,500.00 from Capital account 101650-47390 to Professional Services account 101650-43210 for the purpose of funding an economic impact study for the Bentonville Municipal Airport. A budget adjustment will be required to allocate funds that have already been accepted.
- 2. Section I Item 2 on the City Council** **Resolution**
Agenda: Resolution accepting Arkansas
Aeronautical Grant for the Bentonville
Municipal Airport

Resolution accepting an 80/20 grant in the amount of \$300,000.00 from the Arkansas Aeronautical Commission providing funding to construct an access road serving new hangar development area. A budget adjustment in the total of \$300,000.00 to recognize the funds to Account #101650-3341 State Operating Grant and appropriate the same to Account #101650-47390 – Improvement other than Buildings.
- 3. Section I Item 3 on the City Council** **Resolution**
Agenda: Resolution authorizing a
Budget Adjustment for CitiWorks
Software Solution Subscription

Authorizing an agreement with Azteca Systems LLC AKA "Trimble" for the purpose of CitiWorks Software Solution. This is a term contract and in accordance with the attached agreement, funds will be budgeted annually for maintenance costs.

4. **Section I Item 5 on the City Council** **Resolution**
Agenda: Resolution Expressing the Willingness to Utilize Federal-Aid for NE J Interchange Project
Recognizing the City of Bentonville's willingness to participate in all responsibilities to apply and utilize (STBGP-A) federal-aid funds for the NE J Street Interchange project. No budget adjustment is needed at this time.
5. **Section I Item 7 on the City Council** **Resolution**
Agenda: Resolution accepting a Bid Award for Contract Mowing of Parks Facilities
Bid Award of IFB 24-04, in the amount of \$53,217.00, to Martel's Landscaping for Mowing Services for Parks and Recreation. No budget adjustment is needed.
6. **Section I Item 8 on the City Council** **Resolution**
Agenda: Resolution entering into a Professional Services Agreement with Toole Design
Request authorizing the Mayor and City Clerk to enter into a professional services agreement with Toole Design, in the amount of \$203,700.00, for design and construction oversight of multiple sidewalk projects. This firm was selected in accordance with the City's Purchasing Policy for professional services. No budget adjustment is needed.
7. **Section II Item 1 on the City Council** **Resolution**
Agenda: Resolution to Enter an Agreement for 48" Transmission Water Main Extension Design
Resolution to enter into agreement with Freese and Nichols, Inc. for the design of a 14,000', 48" water transmission line from SW 28th Street to the I street pump station in the amount of \$1,145,670.00. No budget adjustment is needed for the professional engineering service. Utility Board Approved 5-0.



City of Bentonville, Arkansas Agenda Item Form

Item Details

Council Meeting Date:		Submitted By:	
Phone:		For Department(s):	
Email:			

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:	
Action Recommendation & Justification:	
Additional Comments for Consideration (Optional):	

Amount for Approval:	\$
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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
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, Arkansas

City Hall

305 SW A Street Bentonville, AR 72712

TECHNICAL DESCRIPTION

This Technical Description details the scope of services and schedule for the evaluation of the economic contribution of Thaden Field on the economy of Benton County.

Airport Economic Contribution Services

Task 1 – Collect Data and Information from VBT

In this task, the project team will obtain necessary information from VBT about the economic activity at the airport. This information includes details about VBT's employment (tenants and airport employees), capital expenditures, operational expenses, visitors, enplanements/deplanements, and other relevant economic data. The project team (likely 1 or 2 team members) expects to visit the airport during this task.

Task 2 – Obtain IMPLAN Model Data for Arkansas or Specified Region

Relevant IMPLAN data will be required to complete this effort. The cost of this data is \$7,600.

Task 3 – Generate Economic Model

This task will include the execution of an IMPLAN model, using standard assumptions and modeling processes, based on the activities included in the study. The project team will provide for each activity in the study: direct, indirect, and induced impacts in terms of output, employment, tax revenue, and wages. This activity is scheduled for completion within 90 days of the final collection of data and information from task two.

Task 4 – Create Deliverables

The methods and results will be documented in a whitepaper (expected to be 8 to 15 pages in length), brief (standalone) executive summary, an updated 2023 animation of filed flight plans ([2022 version](#)), a PowerPoint presentation, and other similar materials to support outreach and implementation. The draft documents are scheduled for completion within 30 days of completion of task three. These documents will be comparable in quality and detail to the economic impact study reports that ITRE has prepared in the samples shown below. The project team (likely 1 or 2 team members) expects to visit the airport during this task to present to relevant stakeholders at a mutually agreeable date/time.

Project Samples (Aviation)

Animation for Thaden Field Airport (VBT): <https://youtu.be/BHwGKSbEgGg>

NCDOT State of Aviation: <https://www.ncdot.gov/divisions/aviation/pages/state-of-aviation.aspx>

ACRP Report on Economic Impact Studies: <https://www.trb.org/Publications/Blurbs/183067.aspx>

THIS AGREEMENT

Entered into and effective as of the date of the last signature below between the City of Bentonville (herein "COB") and North Carolina State University, on behalf of the Institute for Transportation Research and Education, Raleigh, North Carolina (herein as "ITRE").

The attached Technical Description is incorporated into this agreement and is referred to herein as the "**Technical Description.**"

In consideration of the promises made to each other as set forth below, COB and ITRE mutually agree as follows:

1. ITRE shall perform the tasks described in the Technical Description. COB and ITRE shall provide mutual assistance to each other when necessary to complete such work in a timely fashion.
2. ITRE hereby appoints Daniel Findley as its coordinator for this project, and COB hereby appoints Debbie Griffin as its coordinator. It is understood that both coordinators have sufficient access to the human and technical resources in their respective organizations to facilitate the entire project and to assure its timely completion.
3. The timely performance of this agreement is essential. COB and ITRE agree to provide the information and services to each other such that this project can be completed by March 31, 2025.
4. COB agrees to pay ITRE the total amount of \$32,500. This consideration includes all services, expenses, subcontracts, and other costs expended or obligated by ITRE under this agreement and COB shall not be liable for any other payments except for those incurred by COB in pursuit of its performance under this contract.
5. It is understood that ITRE may employ or subcontract with persons who are, or who are not, currently employed by the State of North Carolina. However, ITRE agrees not to employ or subcontract with any person employed by COB during the term of this contract. This agreement cannot be transferred by ITRE to another party.
6. This agreement can be amended only by mutual consent except, however, minor adjustments can be made by the project coordinators to take advantage of unforeseen opportunities or solve unforeseen problems. Such adjustments, however, may not alter this agreement's scope or purpose, change the total compensation or timing of payments, or degrade the overall quality of the work. ITRE shall keep a log of all such adjustments and shall provide it to COB at the end of the project or earlier on demand.
7. This Contract is null and void unless executed by both parties on or before April 1, 2024.

City of Bentonville

ITRE-NCSU

Title

Director

Date

Date

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO UTILIZE PREVIOUSLY ACCEPTED GRANT FUNDS, IN THE AMOUNT OF THIRTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$32,500.00); ADJUSTING THE 2024 BUDGET TO RECOGNIZE SAID FUNDS FROM ACCOUNT #101650-47390 – CAPITAL ACCOUNT; APPROPRIATING THE SAME INTO ACCOUNT #101650-43210 – PROFESSIONAL SERVICES; AND FOR OTHER PURPOSES.

WHEREAS, the Bentonville Municipal Airport is requesting a budget adjustment of previously accepted grants funds;

WHEREAS, this is for the purpose of funding an economic impact study for the Bentonville Municipal Airport; and

WHEREAS, a budget adjustment will be required to allocate funds that have already been accepted.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BENTONVILLE, ARKANSAS:

Section 1: The Mayor and City Clerk are authorized to utilize previously accepted grant funds, in the amount of thirty-two thousand five dollars (\$32,500.00) to fund an economic impact study for the Bentonville Municipal Airport;

Section 2: The 2024 Budget is adjusted to recognize thirty-two thousand five dollars (\$32,500.00) of grant funds into Account #101650-47390 – Capital Account and appropriate the same to Account #101650-43210 – Professional Services;

Section 3 - Severability Provision: If any part of this Resolution is held invalid, the remainder of this Resolution shall continue in effect as if such invalid portion never existed; and

Section 4 - Repeal of Conflicting Resolutions: All Ordinances, Resolutions, or Orders of the City Council, or parts of the same, in conflict with this Resolution are repealed to the extent of such conflict.

PASSED this _____ day of _____, 2024.

APPROVED:

Stephanie Orman, MAYOR

ATTEST:

Malorie Marrs, CITY CLERK



City of Bentonville, Arkansas Agenda Item Form

Item Details

Council Meeting Date:		Submitted By:	
Phone:		For Department(s):	
Email:			

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:	
Action Recommendation & Justification:	
Additional Comments for Consideration (Optional):	

Amount for Approval:	\$
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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
		\$	\$
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):



February 21, 2024



Hugh McDonald
SECRETARY OF COMMERCE

Jerry Chism
DIRECTOR
DIVISION OF AERONAUTICS

BENTONVILLE MUNICIPAL AIRPORT
THE HONORABLE STEPHANIE ORMAN
Mayor of the City of Bentonville
305 SW A Street
Bentonville, AR 72712
E: sOrman@bentonvillear.com

COMMISSIONERS

James "Jay" Brain
Rogers

Samuel Jackson
Blytheville

Will Dawson
Clinton

Lloyd Wofford
Jonesboro

Jeff Standridge
Conway

Tim Stockdale
Hot Springs

Shannon Hobbs
Colt

Dear Mayor Orman:

During the February 21, 2024 meeting of the Arkansas Aeronautics Commission, an 80-20% Grant Request was approved for Bentonville Municipal Airport. The request approved provides funding in the amount of \$300,000.00 to construct access road serving new hangar development area.

This grant has been assigned Grant #4243-24 for identification purposes. When corresponding with our office regarding this project, please be sure to use this number. Contact us immediately if you will not be able to complete the project for amount approved. ***The Commission will not be responsible for any additional project costs unless this Agency has received notification in advance.***

The Commission has asked that we call your attention to Page Three (3) of your Application for State Airport Aid. ***This project should be started immediately and completed within one year.*** To avoid cancellation of the grant, notify us if circumstances beyond your control prevent completion within the allotted time.

Payment of this grant will be made upon completion of your project. Please remember that grant funds are contingent upon the Division's appropriation for the fiscal year. Request payment of this grant in writing and include your documentation for the project at that time.

Sincerely,



Jerry Chism, Director

cc: State Senator Jim Dotson; State Representative Mindy McAlindon

JC:kg

Arkansas Department of Commerce
Division of Aeronautics
Clinton National Airport/Adams Field
2315 Crisp Drive • Hangar 8
Little Rock, Arkansas 72202
FLY.ARKANSAS.GOV

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ACCEPT A GRANT, FROM THE ARKANSAS AERONAUTICAL COMMISSION, IN THE AMOUNT OF THREE HUNDRED THOUSAND DOLLARS (\$300,000.00); ADJUSTING THE 2024 BUDGET TO RECOGNIZE SAID FUNDS INTO ACCOUNT #101650-33411 – STATE OPERATING GRANT; APPROPRIATING THE SAME INTO ACCOUNT #101650-47390 – IMPROVEMENT OTHER THAN BUILDING; AND FOR OTHER PURPOSES.

WHEREAS, the Arkansas Aeronautical Commission has awarded the City an 80/20 grant in the amount of three hundred thousand dollars (\$300,000.00);

WHEREAS, this will fund an access road serving new hangar development area at the Bentonville Municipal Airport; and

WHEREAS, a budget adjustment will be needed to appropriate funds.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BENTONVILLE, ARKANSAS:

Section 1: The Mayor and City Clerk are authorized to enter into a grant agreement with Arkansas Aeronautical Commission, in the amount of three hundred thousand dollars (\$300,000.00) to fund an access road serving new hangar development;

Section 2: The 2024 Budget is adjusted to recognize three hundred thousand dollars (\$300,000.00) of grant funds into Account #101650-33411 – State Operating Grants and appropriate the same to Account #101650-47390 – Improvement other than Building;

Section 3 - Severability Provision: If any part of this Resolution is held invalid, the remainder of this Resolution shall continue in effect as if such invalid portion never existed; and

Section 4 - Repeal of Conflicting Resolutions: All Ordinances, Resolutions, or Orders of the City Council, or parts of the same, in conflict with this Resolution are repealed to the extent of such conflict.

PASSED this _____ day of _____, 2024.

APPROVED:

Stephanie Orman, MAYOR

ATTEST:

Malorie Marrs, CITY CLERK



City of Bentonville, Arkansas Agenda Item Form

Item Details

Council Meeting Date:		Submitted By:	
Phone:		For Department(s):	
Email:			

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:	
Action Recommendation & Justification:	
Additional Comments for Consideration (Optional):	

Amount for Approval:	\$
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Budget Impact

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

Budget Adjustment (to be completed by Finance when applicable)

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		Expense	Revenue
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		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, Arkansas

City Hall

305 SW A Street Bentonville, AR 72712



Budget Adjustment - CitiWorks Software Subscription

Account Number (ORG-OBJECT)	Account Description	Expense	Revenue
101050-43310	Technical/Data Processing	1,500.00	
105020-43310	Technical/Data Processing	6,000.00	
203810-43310	Technical/Data Processing	19,500.00	
503020-43310	Technical/Data Processing	24,000.00	
503030-43310	Technical/Data Processing	6,000.00	
503040-43310	Technical/Data Processing	10,500.00	
503530-43310	Technical/Data Processing	7,500.00	

March 7, 2024

ATTN: Preston Newbill
Deputy Director Water Utility
City of Bentonville, AR
117 W Central Ave
Bentonville, AR 72712-5256

Re: Sole Source Letter

Dear Preston,

Thank you for your interest in Cityworks (the "Offering").

This letter confirms that the Offering is a product, designed, created, and owned exclusively by Azteca Systems, LLC, a Trimble Company ("Trimble"). Within the United States of America, Trimble is the sole source provider of the Offering and related maintenance and support services.

Please feel free to contact the undersigned at George_Mastakas@trimble.com if you have any questions.

Sincerely,

DocuSigned by:

5DA74A419CA046C...

George Mastakas
Vice President
Azteca Systems, LLC, a Trimble company

Certificate Of Completion

Envelope Id: FFC77CD3F0AB48E3AA9E96AC608DC223

Status: Completed

Subject: Complete with DocuSign: Sole Source Letter_Cityworks_City of Bentonville, AR_2024.03.07.docx

Source Envelope:

Document Pages: 1

Signatures: 1

Envelope Originator:

Certificate Pages: 5

Initials: 0

Carlos Abaunza

AutoNav: Enabled

13450 W Sunrise Blvd

Envelopeld Stamping: Disabled

Suite 600

Time Zone: (UTC-05:00) Eastern Time (US & Canada)

Sunrise, FL 33323

cabaunza@e-builder.net

IP Address: 24.206.91.104

Record Tracking

Status: Original

Holder: Carlos Abaunza

Location: DocuSign

3/7/2024 8:33:33 AM

cabaunza@e-builder.net

Signer Events**Signature****Timestamp**

George Mastakas

george_mastakas@trimble.com

VP, Local Government and Utilities

Azteca Systems Holdings, LLC

Security Level: Email, Account Authentication
(None)

DocuSigned by:



Sent: 3/7/2024 8:34:04 AM

Viewed: 3/7/2024 8:58:29 AM

Signed: 3/7/2024 8:58:54 AM

Signature Adoption: Pre-selected Style

Using IP Address: 73.63.47.102

Signed using mobile

Electronic Record and Signature Disclosure:

Accepted: 3/7/2024 8:58:29 AM

ID: 58af4ca9-fd37-41f5-8c5c-3fb18eebb62a

In Person Signer Events**Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp**

Carlos Abaunza

carlos_abaunza@Trimble.com

Lead Counsel

e-Builder, Inc.

Security Level: Email, Account Authentication
(None)**COPIED**

Sent: 3/7/2024 8:34:05 AM

Electronic Record and Signature Disclosure:

Accepted: 3/6/2024 4:16:51 PM

ID: 70e49e39-28fc-4cef-8a25-6fc7334b6bee

Emily Davies

emily_davies@trimble.com

Deal Desk Associate

Cityworks

Security Level: Email, Account Authentication
(None)**COPIED**

Sent: 3/7/2024 8:34:05 AM

Viewed: 3/7/2024 10:04:30 AM

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	3/7/2024 8:34:05 AM
Certified Delivered	Security Checked	3/7/2024 8:58:29 AM
Signing Complete	Security Checked	3/7/2024 8:58:54 AM
Completed	Security Checked	3/7/2024 8:58:54 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

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Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of a DocuSign envelope instead of signing it. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures

electronically from us.

How to contact E-Builder:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: jcaza@e-builder.net

To advise E-Builder of your new e-mail address

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at jcaza@e-builder.net and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc. to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in the DocuSign system.

To request paper copies from E-Builder

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to jcaza@e-builder.net and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with E-Builder

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to jcaza@e-builder.net and in the body of such request you must state your e-mail, full name, US Postal Address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows® 2000, Windows® XP, Windows Vista®; Mac OS® X
Browsers:	Final release versions of Internet Explorer® 6.0 or above (Windows only); Mozilla Firefox 2.0 or above (Windows and Mac); Safari™ 3.0 or above (Mac only)
PDF Reader:	Acrobat® or similar software may be required to view and print PDF files
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	Allow per session cookies

** These minimum requirements are subject to change. If these requirements change, you will be asked to re-accept the disclosure. Pre-release (e.g. beta) versions of operating systems and browsers are not supported.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to

other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC CONSUMER DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify E-Builder as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by E-Builder during the course of my relationship with you.



ORDER FORM

Order Date:	Date of the last signature below
Trimble Entity Name ("Trimble") and Address:	Azteca Systems, LLC, a Trimble company 11075 South State, Suite 24, Sandy, Utah 84070
Customer Entity Name ("Customer") and Address:	Bentonville (AR), City of 117 W Central Ave Bentonville, AR 72712-5256
Billing Contact Name and E-Mail Address:	Preston Newbill pnewbill@bentonvillear.com (479) 271-3140
Initial Term:	03/31/2024 - 03/30/2027
Miscellaneous:	<i>Purchase orders issued by Customer are issued for administrative purposes only; terms and conditions contained in any such purchase order shall be null and void.</i> <u>Post-Termination Customer Data Access.</u> For 30 days from the expiration or termination of the Agreement, Trimble will make Customer Data available to Customer upon request for export or download as provided in the Agreement for the applicable Product. Additional fees may apply.

Licensed Software:

Description	Number of Authorized Users	Annual Term	Total
Server AMS Premium Cityworks Online Enterprise License Agreement (ELA), Includes the Identified Products for up to 50 Named Logins: Respond Mobile Native Apps (for iOS/Android) Office (limited use for Admin and Reporting only) --Includes the following Add-ons: Storeroom Equipment Checkout Contracts Cityworks for Excel Cityworks Analytics AMS eURL (Enterprise URL) Operational Insights Workload Web Hooks OpX Projects OpX Contracts OpX Budgets 1 Sandbox Use of Cityworks AMS Application Programming Interfaces (APIs) with commercially available Cityworks-centric applications that are licensed and maintained by authorized Cityworks partners Use of Cityworks AMS Application Programming Interfaces (APIs) with third party system integrations	50 Named Logins	Year 1: 03/31/2024 - 03/30/2025	\$75,000.00
		Year 2: 03/31/2025 - 03/30/2026	\$82,500.00
		Year 3: 03/31/2026 - 03/30/2027	\$90,000.00

All Licensed Software is for the indicated term and not perpetual. Annual fee herein is based on 50,001 - 75,000 population range. Trimble reserves the right to adjust the annual fee accordingly to align with the Customer's actual population range.

Addendums:

1. Trimble General Transaction Terms (the "General Terms")
2. Supplemental Terms for Software and Subscriptions (the "Software Terms")
3. Supplemental Terms for Support and Maintenance (the "Support Terms")
4. Supplemental Terms for Services (the "Services Terms")
5. Supplemental Terms for Hardware (the "Hardware Terms")
6. Supplemental Terms for U.S. Public Entities
7. Availability Service Level Agreement; Data Security and Restoration
8. Third-Party Consultant/Contractor Acknowledgment

TERMS AND CONDITIONS

1. Terms and Conditions. All offerings are made available by Trimble subject to the terms and conditions set forth in this Order and the above referenced Addendums.

2. Annual Renewals; Additional Software Products and Licenses. This Order will automatically renew for subsequent 12 month term(s) at then-current pricing, unless either party provides the other with notice of cancellation at least 30 days prior to the expiration of the then-current term. Additional Software Products & Licenses may be added to this Agreement with either an acknowledgement of an official Cityworks quote signed by Licensee and additional fees, if necessary or applicable being paid, or receipt of Purchase Order from Licensee in response to an official Cityworks quote and additional fees, if applicable, being paid.

3. Payment Terms. All fees are due net 30 from the date of the Trimble invoice.

- **Annual Licensed Software:** Trimble will invoice **\$75,000.00** upon execution of this Order Form and will invoice Year 2 in the amount of **\$82,500.00** upon **03/01/2025** , and Year 3 in the amount of **\$90,000.00** upon **03/01/2026** .

4. Annual Price Increase. At each renewal, Trimble has a right to increase the annual fees by the greater of (a) CPI plus two percent (2%) or (b) seven percent (7%). "CPI" shall mean for all Urban Consumers, the U.S. City Average, for all items, 1982-84=100 (the "CPI-U"), as published by the Bureau of Labor Statistics, U.S. Department of Labor, and shall be for the prior twelve months as of the date the calculation is made. Trimble will use commercially reasonable efforts to notify Customer of the new pricing no later than sixty (60) days prior to the expiration of the prior term.

5. Electronic Invoices. Customer hereby consents to the receipt of invoices electronically at the indicated e-mail address(es) and accepts such invoices as if received by mail. Customer's e-mail address may be changed by written notice given by Customer to Trimble at: customer_master@trimble.com. Customer is responsible for maintaining a current e-mail address and shall under no circumstances be excused from payment of applicable charges by its failure to access its designated e-mail address.

6. Due Authority. By signing below, the signatory represents that he/she (i) is an authorized representative of Customer and (ii) has the authority to legally and functionally commit the Customer.

[Signature Page to Follow]

ACCEPTANCE

Accepted and agreed:

CUSTOMER:

Signature: _____

Print Name: _____

Title: _____

Date: _____

TRIMBLE:

Signature: _____

Print Name: _____

Title: _____

Date: _____

Addendum #1

Trimble General Transaction Terms *Version 1.1 (Last updated: October 7, 2023)*

Trimble's provision of Offerings is governed exclusively by these Trimble General Transaction Terms (the "**General Terms**"). The Order, the SOW, these General Terms, any applicable Supplemental Terms, and all other terms referenced or incorporated therein, collectively constitute the "**Agreement**". Any conflict or inconsistency in the Agreement will be resolved in the following order of precedence: (1) the Order, (2) any applicable Supplemental Terms, (3) these General Terms, (4) the SOW, and (5) the Documentation.

1. **Definitions.** Capitalized terms have the meaning associated with them in this Section 1 (Definitions) or with the definition provided elsewhere in the Agreement.
 - 1.1. "**Affiliate**" means an entity that, directly or indirectly, owns or controls, is owned or controlled by or is under common ownership or control with a party, where "ownership" means the direct or indirect ownership of more than fifty percent (50%) of an entity's outstanding voting rights or other equivalent voting interests.
 - 1.2. "**Customer**" is the entity or person identified in the Order or SOW.
 - 1.3. "**Dispute(s)**" means any dispute, claim, or controversy arising from or related to the Agreement.
 - 1.4. "**Documentation**" means Trimble's then-current usage guidelines, standard technical documentation, acceptable use policies, support policies, service level commitments, or other policies referenced in the Agreement.
 - 1.5. "**Hardware**" means hardware products specified in the Order.
 - 1.6. "**High Risk Activities**" means any mission critical, hazardous, strict liability, or other activity(ies) where use or failure of the Offerings could lead to death, personal injury, or physical or environmental damage. Examples of High Risk Activities include, but are not limited to: aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles, autonomous vehicles, air traffic control, emergency services, or weaponry systems. High Risk Activities do not include utilization of Offerings for administrative purposes, to store configuration data, engineering and/or configuration tools, or other non-control applications, the failure of which would not result in death, personal injury, or physical or environmental damage. These non-controlling applications may communicate with the applications that perform the control, but must not be directly or indirectly responsible for the control function.
 - 1.7. "**Intellectual Property Rights**" means any and all right, title and interest in and to any and all trade secrets, patents, copyrights, service marks, trademarks, know-how, trade names, rights in trade dress and packaging, moral rights, rights of privacy, publicity, database rights and similar rights of any type, including any applications, continuations or other registrations with respect to any of the foregoing, under the laws or regulations of any foreign or domestic governmental, regulatory or judicial authority, and the right to sue for, settle and release past, present and future infringement of any of the foregoing.
 - 1.8. "**Law(s)**" means all applicable local, state/provincial, federal and international laws, rules, regulations, directives, ordinances and conventions, including, but not limited to, those related to data privacy and data transfer, international communications and export of technical or personal data.
 - 1.9. "**Licensed Software**" means the object code form of Trimble's proprietary installed software product for deployment on premises or on a device, as well as any Documentation, maintenance releases, and features and functionality enhancements, and application programming interfaces (APIs), in each case as may be made available pursuant to the Order. For clarity, Licensed Software excludes firmware.
 - 1.10. "**Offerings**" means Trimble's Hardware, Software, Services, Support, and other Trimble goods or services specified on an Order or SOW.
 - 1.11. "**Order**" means the quotation, proposal, sales agreement or similar documents provided by Trimble and accepted by Customer.
 - 1.12. "**Services**" means any services described in the Order or a Statement of Work, including, without limitation, training, enablement, implementation, configuration, hosting, or content provision.
 - 1.13. "**Software**" means the Licensed Software and/or Software-as-a-Service specified on an Order.
 - 1.14. "**Software-as-a-Service**" or "**SaaS**" means a Trimble proprietary cloud service, as well as any Documentation, features and functionality enhancements, and application programming interfaces, in each case as may be made available pursuant to the Order.
 - 1.15. "**Statement of Work**" or "**SOW**" means a statement of work or similar agreement governing the provision of Services.
 - 1.16. "**Supplemental Terms**" are any additional Trimble terms and conditions referenced in the Order as "Supplemental Terms."
 - 1.17. "**Support**" means support and/or maintenance for Software, and as may be further described in the applicable Supplemental Terms, Documentation, or otherwise as specified by Trimble in writing.
 - 1.18. "**Trimble**" means Trimble Inc. or its Affiliate identified on the Order or SOW, or if none is specified, as set forth in Exhibit A (Trimble Entities; Governing Law; Exclusive Venue/Jurisdiction) based on the applicable Customer location.
 - 1.19. "**Trimble IP**" means the Offerings, Documentation, and any written and electronic materials, proprietary information, documentation, code, technology, systems, infrastructure, equipment, and trade secrets developed, provided or used by Trimble or its subcontractors to produce and provide the Offerings together with all Intellectual Property Rights therein, together with all modifications, improvements, changes thereto or derivative works thereof, including without limitation: (a) proprietary electronic architecture and other non-literal elements of the Offerings developed by Trimble, (b) functional and technical specifications and other technical, training, reference or service information, documentation and manuals and updates thereto, (c) APIs, customized applications and computer programs, (d) processes, methods, algorithms, ideas, and other "know how," (e) data and information provided or sourced by Trimble, (f) Offerings which Customer has the right to use via a subscription, and (g) network equipment and architecture.

2. **Orders; Validity.** An Order is valid for acceptance by Customer within the period indicated in the Order and if no such period is provided, for thirty (30) calendar days from the issue date. The Agreement is formed by Customer's execution of the Order. Changes to an Order or belated acceptance by Customer are not valid unless Trimble accepts them in writing, and Trimble's partial or complete delivery against an Order modified by Customer, or acceptance of payment, shall not be deemed to be an acceptance of the modification. Orders that Customer has accepted cannot be canceled for any reason without Trimble's prior written consent.

3. **Payment Terms; Invoicing**

- 3.1. Fees are as set forth in the Order or SOW. Fees do not include applicable sales taxes, value added taxes, goods and services taxes, export or import charges, transportation or insurance charges, customs and duty fees, personal property taxes, surcharges and fees, or similar charges, all of which are Customer's responsibility to pay. Unless Customer provides Trimble with direct payment authority or a valid exemption certificate for the appropriate jurisdiction, Customer will pay Trimble all such taxes, charges, and fees invoiced by Trimble in connection with the Offerings. Customer will pay any foreign exchange transaction fees and any foreign exchange profits or losses incurred on such transactions.
- 3.2. Trimble will issue invoices in accordance with the billing frequency stated in the Order or SOW. Customer consents to the receipt of invoices electronically at the email address(es) it provided to Trimble for billing purposes, and accepts such invoices as if received by mail. Customer is responsible for maintaining current email address(es) with Trimble. Trimble's transmission of an invoice to the provided billing email address(es) (regardless of whether actually received by Customer) shall be considered delivery of that invoice by Trimble. Trimble's failure to issue an invoice in accordance with this Section 3 (Payment Terms; Invoicing) shall not be deemed to be a waiver by Trimble of its right to receive payment pursuant to the Agreement, but Customer shall not be obligated to make such payment until an invoice for such payment is issued by Trimble to Customer.
- 3.3. Unless otherwise set forth in the Order or SOW, payments are due net 30 days from the date of invoice. Customer will make payment in the currency indicated on the Order or SOW. Trimble is entitled to offset payments against prior debt balances in Customer's account. Subject to any Laws to the contrary or as otherwise expressly stated in the Agreement, payments are not refundable. No credit, carryover, or refund will be given for any unused Offerings (e.g., services hours, data usage) allocated or available for use during an indicated period of time.
- 3.4. Delinquent payments not subject to a bona fide dispute will bear interest at the lesser of 1.5% per month or the maximum rate permitted by applicable Law. If Customer does not object in writing to an invoiced amount by the invoice due date, Customer will be deemed to have acknowledged the correctness of that invoice and to have waived its right to dispute that invoice. A dispute as to a portion of any invoice or amount owed will give Customer the right to withhold or delay payment of the disputed portion only. Customer will be liable for all costs of collection of past due amounts (including attorneys' fees).
- 3.5. Trimble may suspend Customer's access to or Trimble's provision of Offerings, as applicable, on five (5) business days prior notice if Customer fails to timely pay any invoice not subject to a bona fide payment dispute or fails to use diligent good faith efforts to resolve a bona fide payment dispute (unless cured during the notice period).
- 3.6. For any breach of Customer's payment obligations under any Order(s), Trimble may, without limiting Trimble's other rights and remedies, declare Customer's unbilled future fees under any and all Orders immediately due and payable.
- 3.7. Trimble has the continuing right to review Customer's credit and, if reasonably determined necessary by Trimble, change Customer's payment terms, and may at any time demand advance payment, satisfactory security (such as, but not limited to, a confirmed, irrevocable letter of credit acceptable to Trimble), or a guarantee of prompt payment prior to shipment or service activation.
- 3.8. Offerings purchased or licensed under Trimble's United States General Services Administration ("GSA") Schedules are subject to all of the pricing and other terms and conditions described in the applicable GSA Schedule.

4. **Term and Termination**

- 4.1. **Term.** The term and any renewals thereof applicable for an Offering (collectively, the "Term(s)") shall be as set forth in the Order, SOW, or Supplemental Terms. Different Offerings may have different Terms.
- 4.2. **Termination.** Either party may terminate the Agreement if the other party (a) fails to cure a material breach of the Agreement (including a failure to pay fees), or fails to provide a written plan of cure reasonably acceptable to the non-breaching party, within thirty (30) days after the non-breaching party's receipt of written notice specifying such breach or failure, (b) becomes designated by an applicable governmental entity as a business with which a party is prohibited from doing business with (e.g., via governmental sanctions program), or (c) seeks protection under insolvency or comparable proceeding, or if such proceedings are instituted against that party and not dismissed within sixty (60) days.
- 4.3. **Survival.** These Sections survive expiration or termination of the Agreement: 1 (Definitions), 3 (Payment Terms; Invoicing), 4.3 (Survival), 6 (Warranty Disclaimers), 7 (Limitations of Liability), 8 (Indemnification), 9 (Confidentiality), 11 (Personal Information; Data Protection), 12 (Miscellaneous), any other provisions identified in any applicable Supplemental Terms referencing this provision, and any other term or provision in the Agreement that applies to events occurring following termination or expiration. Except where an exclusive remedy is provided, exercising a remedy under the Agreement, including termination, does not limit other remedies a party may have.

5. **Customer Obligations**

- 5.1. **High Risk Activities.** Customer will not use the Offerings for High Risk Activities. Customer acknowledges that the Offerings are not intended to meet any legal obligations for High Risk Activities. Trimble and its suppliers specifically disclaim any responsibility for, and will not be liable in any manner arising from, any use of the Offerings in connection with High Risk Activities.
- 5.2. **Compliance with Laws.** Customer shall comply with all Laws in connection with its use or receipt of the Offerings.
- 5.3. **Dependencies and Compatibilities.**
- (a) Offerings may (i) require certain dependencies, including, without limitation, internet connection, electronic communications, hardware, data connections, operating systems, third-party products and services, other Trimble products and services, satellite

signals, etc. (collectively, “**Dependencies**”), and (ii) allow compatibility and/or interoperability with other products or services made available by Trimble, Customer, or a third party (collectively, “**Compatibilities**”).

- (b) Dependencies and Compatibilities may require payment of a separate fee and are governed by their respective terms of service, end user license agreement, or other agreement, and not by the Agreement. Unless otherwise expressly agreed upon by the parties in writing, Customer is responsible for all Dependencies and Compatibilities. Trimble may modify the Offerings from time to time, and Trimble does not guarantee that the Offerings will continue to operate or be compatible with any Dependencies or Compatibilities. Trimble makes no warranty or guarantee, and will have no liability or obligations under the Agreement, with respect to any Dependencies, Compatibilities, or other factors outside of Trimble’s control.
- (c) Customer represents and warrants that it shall, and shall use best efforts to require any provider of any Dependencies and Compatibilities to: (i) establish and maintain industry standard technical, organizational, physical, and administrative safeguards designed to ensure the security and integrity of the Offerings; and (ii) comply with the security controls, configuration requirements, and access limitations imposed by Trimble, as may be modified by Trimble from time to time.

6. WARRANTY DISCLAIMERS.

THE LIMITED WARRANTY TERMS, IF ANY, EXPRESSLY SET FORTH IN ANY APPLICABLE SUPPLEMENTAL TERMS ARE IN LIEU OF ALL OBLIGATIONS OR LIABILITIES ON TRIMBLE’S PART ARISING OUT OF, OR IN CONNECTION WITH, THE OFFERINGS, AT ANY TIME EITHER DURING OR AFTER EXPIRATION OF THE APPLICABLE WARRANTY, AND STATE TRIMBLE’S ENTIRE LIABILITY AND CUSTOMER’S EXCLUSIVE REMEDIES RELATING TO THEM. EXCEPT FOR ANY LIMITED WARRANTY TERMS EXPRESSLY PROVIDED IN ANY APPLICABLE SUPPLEMENTAL TERMS, THE OFFERINGS ARE PROVIDED “AS-IS” AND WITHOUT EXPRESS OR IMPLIED WARRANTY OR CONDITION OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE, AND NONINFRINGEMENT. SUPPLEMENTAL TERMS MAY HAVE ADDITIONAL DISCLAIMERS. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON DURATION OR THE EXCLUSION OF AN IMPLIED WARRANTY, SO THE ABOVE LIMITATION(S) MAY NOT APPLY OR FULLY APPLY TO CUSTOMER.

7. Limitations of Liability.

7.1. Waiver;

Liability

Cap.

(a) EXCEPT FOR EXCLUDED CLAIMS, (i) NEITHER PARTY (OR ITS SUPPLIERS) SHALL BE LIABLE FOR DAMAGES FOR LOSS OF PROFIT OR REVENUE, DATA THAT IS LOST OR CORRUPTED, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, LOSS OF GOODWILL, OR ANY SPECIAL, INCIDENTAL, RELIANCE, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND; AND (ii) EACH PARTY’S (AND EACH OF ITS SUPPLIER’S) ENTIRE LIABILITY FOR ANY AND ALL DAMAGES ARISING OUT OF OR RELATED TO THE AGREEMENT WILL NOT EXCEED IN AGGREGATE THE AMOUNTS PAID OR PAYABLE BY CUSTOMER TO TRIMBLE DURING THE PRIOR 12 MONTHS UNDER THE AGREEMENT FOR THE APPLICABLE OFFERING(S) GIVING RISE TO THE LIABILITY.

(b) “EXCLUDED CLAIMS” MEANS (i) CUSTOMER’S PAYMENT OBLIGATIONS UNDER THE AGREEMENT, (ii) DAMAGES PAYABLE TO A THIRD PARTY (I.E., NOT AN INDEMNIFIED PARTY) EITHER AWARDED BY A COURT OF COMPETENT JURISDICTION OR INCLUDED IN A SETTLEMENT AGREED TO BY THE INDEMNIFYING PARTY, WHICH DAMAGES ARE SUBJECT TO A PARTY’S INDEMNIFICATION OBLIGATIONS IN SECTION 8 (INDEMNIFICATION), AND (iii) ANY ADDITIONAL “EXCLUDED CLAIMS” EXPRESSLY IDENTIFIED IN ANY APPLICABLE SUPPLEMENTAL TERMS.

(c) THE ABOVE LIMITATIONS OF LIABILITY WILL APPLY TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF SUCH DAMAGES COULD HAVE BEEN FORESEEN OR IF A PARTY HAS BEEN APPRAISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF WHETHER SUCH DAMAGES ARE ARISING IN BREACH OF ANY ONE OR MORE WARRANTIES, NON-CONFORMITY, IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, BREACH OF ANY STATUTORY DUTY, OR OTHERWISE.

(d) SOME JURISDICTIONS DO NOT ALLOW A LIMITATION OF LIABILITY FOR DEATH, PERSONAL INJURY, FRAUDULENT MISREPRESENTATIONS, CERTAIN INTENTIONAL OR NEGLIGENT ACTS, VIOLATION OF SPECIFIC STATUTES, OR THE LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES. IN SUCH AN EVENT, THE FOREGOING LIMITATION(S) WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

7.2. Nature of Claims and Failure of Essential Purpose. The waivers and limitations in this Section 7 (Limitations of Liability) are agreed-upon allocations of risk constituting in part the consideration for Trimble’s performance under the Agreement, and will survive and apply even if any limited remedy in the Agreement fails of its essential purpose.

8. Indemnification. Customer will defend, indemnify, and hold harmless Trimble from and against any and all third-party claims, costs, damages, losses, liabilities and expenses (including reasonable attorneys’ fees and costs) arising out of or in connection with (a) use or modification of any Offerings in breach of the Agreement, or in any manner not authorized by the Agreement or (b) Customer’s violation of Laws or the rights of a third party. Trimble will give Customer prompt written notice of any claim hereunder and will cooperate in relation to the claim at Customer’s expense. Customer will have the exclusive right to control and settle any claim, except that Customer may not settle a claim without Trimble’s prior written consent (not to be unreasonably withheld) if the settlement requires Trimble to admit any liability or take any action or refrain from taking any action (other than ceasing use of infringing materials). Trimble may participate in the defense of any claim at its expense.

9. Confidentiality.

9.1. Definition. “**Confidential Information**” means information disclosed to the receiving party under the Agreement that is designated by the disclosing party as proprietary or confidential or that should be reasonably understood to be proprietary or confidential due to its nature and the circumstances of its disclosure. Trimble’s Confidential Information includes, without limitation, the

terms and conditions of the Agreement, and any technical or performance information about the Offerings, including the Documentation.

- 9.2.Obligations.** As a receiving party, each party (a) will protect the confidentiality of the disclosing party's Confidential Information using the same degree of care it uses for its own information of like importance (but not less than reasonable care), (b) will not share the disclosing party's Confidential Information with third parties except as permitted in the Agreement or with the disclosing party's prior written or electronic consent, and (c) will only use Confidential Information to fulfill its obligations and exercise its rights in the Agreement. The receiving party may disclose Confidential Information to its employees, agents, Affiliates, contractors, and other representatives (collectively, "**Representatives**") having a legitimate need to know (including, for Trimble, its subcontractors), provided (i) the Representatives are subject to confidentiality obligations no less protective than those in this Section 9 (Confidentiality), and (ii) the receiving party is responsible for any breach of this Section 9 (Confidentiality) by the acts or omissions of its Representatives.
- 9.3.Exclusions.** These confidentiality obligations do not apply to information that the receiving party can document (a) is or becomes public knowledge through no fault of the receiving party or its Representatives, (b) it rightfully knew or possessed on a non-confidential basis prior to receipt under the Agreement, (c) it rightfully received from a third party without obligation of confidentiality, or (d) it independently developed without using the disclosing party's Confidential Information. Supplemental Terms may have additional exclusions.
- 9.4.Remedies.** Unauthorized use or disclosure of Confidential Information may cause substantial harm for which remedies at law (e.g., monetary damages) alone are an insufficient remedy. In the event of such actual or threatened breach by a party, the other party may seek injunctive relief, in addition to other available rights and remedies, for breach or threatened breach of this Section 9 (Confidentiality), without proof of actual damages or the requirement of posting a bond or other security.
- 9.5.Required Disclosures.** Nothing in the Agreement prohibits either party from making disclosures if required by Law or government or court order, provided (if permitted by Law) it notifies the other party in advance and reasonably cooperates in any effort by the other party to obtain confidential treatment.

10.Intellectual Property Rights.

- 10.1.Trimble IP.** As between the parties, except for any limited usage rights set forth in any Supplemental Terms, Trimble and its suppliers have and will retain all Intellectual Property Rights in and to Trimble IP and all copies, modifications, and derivative works thereof. No Intellectual Property Rights are granted by Trimble to Customer except as expressly provided under the Agreement.
- 10.2.Feedback.** Customer may from time to time provide suggestions, comments, or other feedback (collective, "**Feedback**") to Trimble with respect to the Offerings. Both parties agree that all Feedback is and will be given entirely voluntarily, and shall not be considered Confidential Information of Customer. Customer shall not provide any Feedback that is subject to license terms that seek to require any of Customer's products, technology, service, or documentation incorporating or derived from such Feedback, or any of Customer's intellectual property to be licensed or otherwise shared with any third party. Customer hereby grants to Trimble and its Affiliates a nonexclusive, worldwide, perpetual, irrevocable, transferable, sublicensable, royalty-free, fully paid up license to use and otherwise exploit the Feedback.

11.Personal Information; Data Protection.

- 11.1.** This Section 11 (Personal Information; Data Protection) applies if Customer is a legal person (i.e., a business or legal entity). All Laws relating to the protection of privacy and data protection are referred to as "**Data Protection Legislation**". "**Personal Information**" is defined as in the Applicable Data Protection Legislation, or if no definition is provided, any personally identifiable information which is either (a) provided by Customer or on its behalf, or (b) automatically collected through the Offering on Customer's behalf. "**Applicable**", in this context, means the Data Protection Legislation applicable to Customer at Customer's principal place of business or to Trimble at Trimble's principal place of business, and such Laws that the parties mutually agree apply.
- 11.2.** Each party will comply with all Applicable requirements of the Data Protection Legislation. This Section 11 (Personal Information; Data Protection) is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the applicable Data Protection Legislation.
- 11.3.** The parties acknowledge that: (a) when performing its obligations under the Agreement, Trimble processes Personal Information on Customer's behalf, except for user registration and software licensing and usage data, for which Trimble acts as responsible party, and (b) the Personal Information may be transferred or stored, and/or accessed from outside of the country where Customer's principal place of business is located in order to provide the Software and Trimble's other obligations under the Agreement.
- 11.4.** Customer will ensure that it has all necessary appropriate consents and notices in place to enable (a) lawful transfer of the Personal Information to Trimble for the duration and purposes of the Agreement and (b) Trimble to lawfully use, process and transfer the Personal Information in accordance with the Agreement, including on Customer's behalf.
- 11.5.** If the processing of Personal Information by Trimble is subject to the General Data Protection Regulation ((EU) 2016/679) or the Data Protection Act 2018 of the United Kingdom, then, in addition, at the written request of Customer, the parties will execute an applicable data processing addendum, available at <https://www.trimble.com/privacy/DPA-TI-EuroSubs> (or any successor url). Transfers of Personal Information from Trimble entities located in Europe, acting as data exporter, to Trimble entities in the USA, acting as data importer, are governed, for the benefit of Customer, by the Standard Contractual Clauses available at the same url or upon written request to Trimble.
- 11.6.** If the processing of Personal Information by Trimble is subject to US data protection laws, rules or regulations, then the US Data Processing Addendum for Customer Personal Information (available at https://dl.trimble.com/www/us_dpa_customer.pdf or any successor url) is herein incorporated by reference.

12. Miscellaneous.

- 12.1. Assignment.** Trimble may assign the Agreement upon notice to Customer. Customer may not assign or transfer the Agreement (by operation of law or otherwise) without the prior written consent of Trimble. Any non-permitted assignment is void. The Agreement will bind and inure to the benefit of each party's permitted successors and assigns.
- 12.2. Amendments.** Trimble may amend the Agreement from time to time with written notice to Customer. Such amendments shall take effect upon the next renewal, if any, of the Agreement, unless Trimble indicates an earlier effective date. If Trimble requires amendments with an earlier effective date and Customer objects in writing, then Trimble may permit such amendments to take effect upon the next renewal; provided, however, if Trimble declines to permit such later effective date, Customer's exclusive remedy is to terminate the Agreement with notice to Trimble, in which case Trimble will provide Customer a refund of any applicable pre-paid fees for the terminated portion of the current Term. To exercise this termination right, Customer must notify Trimble of its objections within thirty (30) days after Trimble's notice of the amended Agreement. Once the amended Agreement takes effect, Customer's continued use of the Offerings constitutes its acceptance of the modifications. Notwithstanding the foregoing, Trimble may modify Documentation upon written notice to Customer to reflect new features or changing practices, provided that the modifications will not materially decrease Trimble's overall obligations with respect to such Offering(s).
- 12.3. Waiver and Severability.** No waiver of any provision or breach of the Agreement (a) will be effective unless made in writing, or (b) will operate as or be construed to be a continuing waiver of such provision or breach. In the event any portion of the Agreement is held to be invalid or unenforceable, such portion will be construed as nearly as possible to reflect the original intent of the parties, or if such construction cannot be made, such provision or portion thereof will be severable from the Agreement, provided that the invalidity, illegality, or unenforceability in whole or in part of any provision does not affect the validity of other provisions.
- 12.4. Force Majeure.** Neither party will be liable for any default, delay, or non-performance of its obligations under the Agreement (except for payment obligations) due to causes beyond its reasonable control, including, without limitation, strikes, blockades, war, terrorism, riot, internet or utility failures, governmental orders or actions, national or regional emergency, pandemics, or natural disasters, provided that such party promptly notifies the other in writing of such occurrence and uses commercially reasonable efforts to resume performance of its affected obligations as soon as feasible. Delays or failures that are excused as provided in this Section 12.4 (Force Majeure) will result in automatic extensions of dates for performance for a period of time equal to the duration of the events excusing such delay or failure.
- 12.5. Notices.** Any notice or other communication given by either party to the other regarding the Agreement will be deemed given and served when personally delivered or delivered by reputable international courier requiring signature for receipt addressed to the party at its notice address. Notice will be deemed effective upon delivery or refused delivery attempt. Either party may change its notice address by written notice to the other. Customer's notice address will be the address appearing on the Order or SOW. Trimble's notice address will be the applicable address on Exhibit A (Trimble Entities; Governing Law; Exclusive Venue/Jurisdiction), or if the Trimble entity is not listed there, then on the Order. In addition, any valid notice to Trimble shall include a required copy to: Trimble Inc., Attn: General Counsel - Important Legal Notice, 510 De Guigne Drive, Sunnyvale, CA 94085, USA. Trimble may send operational notices to Customer by email or through the Offering, including, without limitation, modifications of the Agreement or Documentation, suspension, collection, and termination notices related to overdue fees.
- 12.6. Export Control.** Customer acknowledges that the Offerings are subject to export restrictions by the United States government and import restrictions by certain foreign governments. Customer will not, and will not allow any third party to, remove or export from the United States or allow the export or re-export of any part of the Offerings or any direct product thereof: (a) into (or to a national or resident of) any embargoed or terrorist-supporting country; (b) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals; (c) to any country to which such export or re-export is restricted or prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (d) otherwise in violation of any export or import restrictions, Laws of any United States or foreign agency or authority. Customer warrants that it is not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list. The Offerings are further restricted from being used for the design or development of nuclear, chemical, or biological weapons or missile technology, or for terrorist activity, without the prior permission of the United States government. Customer will defend, indemnify, and hold Trimble harmless against any liability (including attorneys' fees) arising out of Customer's failure to comply with the terms of this Section. Customer's obligations under this Section 12.6 (Export Control) will survive the termination of the Agreement for any reason whatsoever.
- 12.7. Anti-Corruption Compliance.** Each party, and any third party acting on its behalf, will comply with all applicable United States and international anti-corruption and anti-bribery laws and regulations, including, without limitation, the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act, and others (collectively, "**Anti-Corruption Laws**"). Each party, and any third party acting on its behalf, will not directly or indirectly offer, promise, or give any payment or anything of value to a government official, or any other individual or entity, where the intent is to improperly influence any act or decision of the government official, or other individual or entity, to obtain or retain business or some other benefit or commercial advantage for either party. Each party, and any third party acting on its behalf, also will not solicit or accept any sort of payment or anything of value from anyone, where the intent is to improperly influence any acts of a party or any third party acting on its behalf.
- 12.8. GSA.** Offerings purchased or licensed under Trimble's United States General Services Administration ("**GSA**") Schedules are subject to all of the pricing and other terms and conditions described in the applicable GSA Schedule.
- 12.9. Governing Law and Venue.** The sole and exclusive governing Law, jurisdiction, and venue for the Agreement and all Disputes shall be: (1) as set forth in the Order, if any, or (2) otherwise, as set forth on Exhibit A (Trimble Entities; Governing Law; Exclusive Venue/Jurisdiction), in each case to the exclusion of all others; provided that Trimble may elect to bring action in courts with jurisdiction for Customer's location. The United Nations Convention on Contracts for the International Sale of Goods and any conflicts of laws provisions giving rise to a different result do not apply. No Dispute may be brought by either party more than one (1) year after such Dispute accrued, except that an action for nonpayment may be brought within two (2) years after the due

date. Each party hereby waives, to the maximum extent permitted by law, any objection, including any objection based on *forum non conveniens*, to the bringing of any such proceeding in such jurisdiction.

- 12.10. WAIVER OF JURY TRIAL – UNITED STATES CLAIMS.** FOR ANY CLAIM BROUGHT IN A STATE, FEDERAL, OR OTHER COURT IN ANY JURISDICTION WITHIN THE UNITED STATES, EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY; *PROVIDED, HOWEVER*, THAT THIS PROVISION SHALL NOT BE ENFORCED OR ENFORCEABLE TO THE EXTENT A WAIVER OF THE RIGHT TO A TRIAL BY JURY IS PROHIBITED BY, OR CONTRARY TO, THE PUBLIC POLICY OF THE STATE IN WHICH SUCH LEGAL ACTION, PROCEEDING, CAUSE OF ACTION, OR COUNTERCLAIM IS FILED.
- 12.11. Region-Specific Terms.** Additional terms and conditions for specified regions are as set forth in Exhibit B (Region-Specific Terms).
- 12.12. Publicity.** Customer agrees that (a) Trimble may issue a press release in the form approved by the parties regarding the parties' entry into the Agreement, and (b) Trimble may identify Customer (including through use of its name and logo) as Trimble's customer, including on Trimble's website, and may include Customer in its customer list and marketing materials, but will cease this use upon Customer's written request.
- 12.13. Headings; Language.** The headings in the Agreement have been inserted for convenience only and shall have no substantive effect. The language of all parts of the Agreement shall in all cases be considered as a whole, according to its fair meaning, and not strictly for or against any of the parties. The parties hereby acknowledge and agree that the language of the Agreement shall be considered jointly drafted.
- 12.14. Subcontractors.** Trimble may use subcontractors in the performance of its obligations under the Agreement, and will be responsible for the acts and omissions of its subcontractors in their performance of Trimble's obligations in the Agreement.
- 12.15. No Third-Party Beneficiaries.** Except as may be expressly stated in any Supplemental Terms, there are no third-party beneficiaries under the Agreement.
- 12.16. Independent Contractors.** Each party is an independent contractor of, and is not an employee, agent, fiduciary, or authorized representative of, the other party.
- 12.17. Entire Agreement.** The Agreement sets forth the entire understanding between the parties in connection with its subject matter, and supersedes all prior or contemporaneous proposals, communications, agreements, negotiations, and representations, whether written or oral, regarding the subject matter thereof. Any additional, contrary, and/or pre-printed terms or conditions appearing on Customer's acceptance, orders, or associated purchase documentation are hereby rejected and will be of no effect.
- 12.18. Counterparts.** The Agreement, or portions thereof, may be executed in several counterparts and, if applicable, by each party on a separate counterpart, each of which, when so executed and delivered will be an original, but all of which together will constitute but one and the same instrument. A signature, digital signature, or electronic signature delivered through other means (e.g., email) shall have the same force and effect as an original ink signature.

Exhibit A

Trimble Entities; Governing Law; Exclusive Venue/Jurisdiction

Customer Location*	Trimble Entity and Notice Address**	Governing Law	Exclusive Venue/Jurisdiction
United States	Trimble Inc. 10368 Westmoor Drive Westminster, CO 80021 USA	State of Delaware	State and Federal Courts located in Wilmington, Delaware, USA
Belgium	Trimble Belgium BV, Geldenaaksebaan 329 3001 Leuven, Belgium	Belgium	Courts in Brussels, Belgium
Canada	Trimble Canada Corporation 600-1741 Lower Water Street Halifax, Nova Scotia B3J 0J2, Canada	Province of Ontario, and the federal laws of Canada applicable therein	Provincial and federal courts located in Toronto, Ontario
France	Trimble France S.A.S. 1 quai Gabriel Péri 94340 Joinville-le-Pont, France	France	Courts in Paris, France
Any other country or geography not specified above	Trimble Europe B.V. Industrieweg 187a, 5683 CC Best, The Netherlands	The Netherlands	Courts of Amsterdam, the Netherlands

** Customer location is Customer's billing address specified on the Order, or if none, then the address provided by Customer to Trimble when registering its online account.*

*** Addresses for Trimble entities not listed shall be as set forth on the Order or SOW. See additional required notice address for Trimble in Section 12.5 (Notices).*

Exhibit B
Region-Specific Terms

Table of Contents

- Australia
- France
- The Netherlands

Australia

For Customer who purchase Offerings in Australia, the following provisions apply:

- (a) For the purposes of this section, “**Australian Consumer Law**” means the Australian Consumer Law set out at Schedule 2 to the *Competition and Consumer Act 2010* (Cth), as amended from time to time, and “**Non-excludable Condition**” means the consumer guarantees, warranties, rights, or remedies under the Australian Consumer Law that cannot be limited, excluded, restricted, or modified, and to which Customer may be entitled.
- (b) To the extent permitted by Law, Trimble’s liability in relation to breach of any such Non-excludable Condition shall be limited, at its option, as follows: (i) in the case of the goods, to repairing or replacing the goods, supplying equivalent goods, or paying the costs of repairing or replacing the goods or acquiring equivalent goods; and (ii) in the case of the services, to re-supplying the services or paying the cost of re-supplying the services.
- (c) Nothing in the Agreement excludes, restricts or modifies any Non-excludable Condition.

Nothing in the Agreement is intended to derogate from Trimble’s obligations under the *Privacy Act 1988* (Cth) as amended from time to time.

- (e) Where Order(s) are a “Small Business Contract” within the meaning of the Australian Consumer Law:
 - (i) Trimble shall not accelerate Customer’s unbilled future fees under any Order(s);
 - (ii) Customer’s indemnification obligations under the Agreement are reduced to the extent Trimble’s acts or omissions contributed to or caused the claims, costs, damages, losses, liabilities, and expenses suffered by Customer;
 - (iii) Trimble’s liability in relation to breach of any Non-excludable Condition will be an Excluded Claim; and
 - (iv) No dispute or legal action arising under the Agreement may be brought by either party more than three years after such cause of action accrued.

France

Section 3.4 is hereby amended and restated to read as follows:

Section 3.4 Late payments will bear interest at the rate of 1.5% per month or the minimum rate allowed by Law (currently three (3) times the legal interest rate), whichever is higher, measured from the date on which the sums concerned became due until the date on which full payment is received. Collection fees of a minimum amount of 40 € will be added in accordance with Article L. 441-10.II of the Commercial Code. Customer will be liable for all other costs of collection of past due amounts (including court costs and attorney’s fees incurred by Trimble). If the Customer does not dispute an invoice amount in writing by the due date of the invoice, the Customer shall be deemed to have acknowledged the accuracy of such invoice and waived its right to dispute it. A dispute over part of an invoice or amount due shall entitle the Customer to withhold or delay payment of the disputed part only.

The following is hereby added as Section 7.1 (e):

(e) EACH PARTY HEREBY HAS AN OBLIGATION TO LIMIT THE DAMAGES IT MAY SUFFER IN THE EVENT OF A BREACH OF ITS OBLIGATIONS BY THE OTHER PARTY.

The Netherlands

The provisions of Section 4.2 (Termination) are the sole grounds for the termination of the Agreement, and to the extent permitted by Law, the right of Customer to rescind the Agreement and claim damages on the basis of statutory Law (including but not limited to sec. 6:265 Dutch Civil Code) is excluded.

THE LIMITATION OF LIABILITY IN SECTION 7 FOR A PERIOD OF 12 MONTHS EXPRESSLY INCLUDES ANY OBLIGATION TO PAY COMPENSATION UNDER A WARRANTY MENTIONED IN THESE TERMS OR RELATED CONTRACTS OR DOCUMENTS AND THE RESTITUTION OBLIGATIONS (*ONDEDAANMAKINGSVERPLICHTINGEN*) AND INDEMNIFY FOR DAMAGES. LIABILITY FOR DEATH OR PERSONAL INJURY SHALL NOT EXCEED EUR 1.250.000.

The applicability of section 6:227b subsection 1 and section 6:227c subsection 1 of the Dutch Civil Code are excluded in any Agreement between Trimble and any person who is not a consumer.

Addendum #2

Supplemental Terms for Software and Subscriptions

Version 1.1 (Last Updated: October 7, 2023)

1. Definitions. Capitalized terms not defined herein have the meanings given in the General Terms.

- 1.1. **"Active Project"** means any Project on which the Software may be used by Customer during any Annual Subscription Term.
- 1.2. **"Annual Subscription Term"** means each 12-month period of a Subscription Term.
- 1.3. **"Anonymized Data"** means any data collected in connection with the Offerings (including Customer Data) that has been aggregated and/or de-identified in such a manner that neither Customer nor any of its Authorized Users or any other individual can be identified from the data when it is shared outside of Trimble or its Affiliates.
- 1.4. **"Authorized User"** means any employee of Customer or third-party user authorized by Customer to access and use the Offerings on Customer's behalf in accordance with the Agreement, including, without limitation, Section 6.6 (Third-Party Access).
- 1.5. **"Correction Services"** means subscription-based services that provide GNSS position correction data.
- 1.6. **"Concurrent User"** means any type of User authorized by Customer to access and use the Offerings on Customer's behalf simultaneously at a given point in time.
- 1.7. **"Customer Data"** means any information, documents, materials, or other data of any type that is input by or on behalf of Customer into the Offerings or that is created or generated by Customer through Customer's use of the Offerings, including without limitation information or data that is submitted manually by Authorized Users or through a Third-Party Platform. For clarity, Customer Data expressly excludes Usage Data.
- 1.8. **"Customer Group"** means Customer's business units, Affiliates, or Joint Ventures, if any, listed in the Order that may authorize Authorized Users to use the Offerings on behalf of those business units, Affiliates, or Joint Ventures.
- 1.9. **"Gross Annual Revenue"** or **"GAR"** means Customer's (and Customer Group's, if applicable) income and revenue from all sources, before expenses or taxes, calculated on an annual basis according to generally accepted accounting principles and as reported in company financial statements. The various equivalent definitions may be used interchangeably.
- 1.10. **"Joint Venture"** means a business arrangement in which Customer and one or more other third parties agree to pool their resources to accomplish a Project or other commercial enterprise.
- 1.11. **"License Keys"** means electronic passwords, authorization codes, or other enabling mechanisms provided for use with the Offerings.
- 1.12. **"Named User"** means any type of Authorized User designated by Customer by name or other identifier to access and use the Offerings on Customer's behalf.
- 1.13. **"Prohibited Data"** means any (a) patient, medical, or other protected health information regulated by the Health Insurance Portability and Accountability Act (as amended and supplemented) ("HIPAA"); (b) credit, debit, or other payment card data subject to the Payment Card Industry Data Security Standards (PCI DSS); (c) information subject to regulation or protection under the Children's Online Privacy Protection Act or Gramm-Leach Bliley Act, or (d) any other information which is regulated under Laws and is not required for use of the Software for its intended purpose.
- 1.14. **"Project"** means the initiation, delivery, operations, and maintenance of a construction project.
- 1.15. **"Provision Date"** means the date on which Trimble first provides access to the Offerings. For an Offering bundle comprised of multiple Software, the Provision Date will be the date on which the entire Offering bundle becomes fully provisioned.
- 1.16. **"Subscription"** means access to any Software, Support, Correction Services, content, data, or other information, in each case made available for the applicable Subscription Term(s).
- 1.17. **"Support Terms"** means the then-current Supplemental Terms for Support and Maintenance available at <https://www.trimble.com/en/legal/customer-terms> or any successor url.
- 1.18. **"Third-Party Materials"** means any third-party data, content, or proprietary software. Third-Party Materials is not part of Software.
- 1.19. **"Project Budget"** means the total projected cost allocated to carry out, manage, and complete one or more Active Project(s) over the entire Subscription Term. The various defined terms are equivalent and may be used interchangeably, including in other defined terms.
- 1.20. **"Total Project Value"** or **"Project Value"** means Project Budget divided by the number of Annual Subscription Terms in the Subscription Term (and not any renewal). The various defined terms are equivalent and may be used interchangeably, including in other defined terms.
- 1.21. **"Usage Limitations"** means Customer's authorized scope of use for the Offerings as specified in the applicable Order, Supplemental Terms, or Documentation, which may include any user (e.g., Named User, Concurrent User, etc.), seat, copy, instance, data storage, CPU, computer, field of use, location, project, or other restrictions.
- 1.22. **"Usage Data"** means Trimble's technical logs, data, and learnings about Customer's use of the Offerings, excluding Customer Data.

2. Generally

2.1 Offerings.

(a) **Subscriptions (other than Licensed Software).** Customer may access and use the Subscriptions during the Subscription Term only for its internal business purposes in accordance with the Documentation, Usage Limitations, and the Agreement. Unless otherwise specified by Trimble, any Licensed Software provided with a Subscription is subject to the terms applicable to Licensed Software under the Agreement.

(b) **Licensed Software.** Trimble hereby grants Customer a non-transferable, non-sublicensable, non-exclusive license, during Term, to install, copy, and use the Licensed Software on systems or devices under Customer's control only for its internal business purposes in accordance with the Documentation, Usage Limitations, and the Agreement. Licensed Software is licensed, not sold. Any Licensed Software deployed through hosting services delivered by Trimble are subject to the terms and conditions applicable to Licensed Software.

2.2 Authorized Users. Only Authorized Users may access or use the Offerings. User IDs are granted to individual, named persons, and each Authorized User will keep login credentials confidential and not share them with anyone else. Customer is responsible for its Authorized Users' compliance with the Agreement and actions taken through their accounts. In the event an Authorized User is no longer authorized to use an Offering on Customer's behalf, Customer will promptly de-activate such Authorized User's access. Unless expressly permitted in the Order, Supplemental Terms, or Documentation, Customer may not transfer Authorized User status from one individual to another. Customer will promptly notify Trimble if it becomes aware that any of its Authorized User login credentials have been compromised.

2.3. Restrictions. Customer will not (and will not permit, encourage, or assist anyone else to) do any of the following: (a) provide access to, distribute, sell, or sublicense the Offerings to a third party; (b) use the Offerings on behalf of, or to provide any product or service to, third parties; (c) use the Offerings to develop a similar or competing product or service; (d) reverse engineer, decompile, disassemble, or seek to access the source code or non-public APIs to any element of the Offerings, except to the extent expressly permitted by Law (and then only after providing prior written notice to Trimble); (e) modify or create derivative works of the Offerings or copy any element of the Offerings (other than in connection with making copies of Licensed Software authorized under the Agreement); (f) remove or obscure any proprietary notices in the Offerings; (g) publish benchmarks or performance information about the Offerings, except to the extent expressly permitted by Law; (h) interfere with the Offerings' operation or its use by others, circumvent its access restrictions or, without the prior written permission of Trimble, conduct any security or vulnerability test of the Offerings; (i) transmit any viruses or other harmful materials to the Offerings; (j) submit to the Offerings any information that is inappropriate, defamatory, obscene, salacious, or unlawful, or use the Offerings to defame, harass, stalk, threaten, or otherwise violate the rights of others; (k) use the Offerings to advertise, offer to sell or buy goods, or otherwise for business promotional purposes; (l) for Licensed Software, unless expressly permitted in the Order, Supplemental Terms, or the Documentation, use or host any Licensed Software in a virtual server environment, or (m) for Corrections Services, re-broadcast the Corrections Services without the prior written consent of Trimble.

2.4 Free Versions; Trials and Betas. "**Free Versions**" means any Offerings made available to Customer for use without a fee. "**Trials and Betas**" means any Offerings or any features thereof made available on a evaluation or trial basis or as an alpha, beta, or early access offering, in any case free or otherwise. Unless otherwise set forth in the Documentation or the Agreement, Customer may only use Free Versions in a non-production environment and for non-commercial purposes, and Trials and Betas may only be used solely for Customer's internal evaluation to determine whether to purchase a license or subscription to the Offerings. The evaluation term for Trials and Betas shall be 30 days unless otherwise designated by Trimble in writing. Free Versions and Trials and Betas are optional, and Trimble may cease making available such Offerings at any time for any reason. Trials and Betas may be inoperable, incomplete, or include features that Trimble may never release, and their features and performance information are Trimble's Confidential Information. In the event Customer has purchased Services related to any Free Version or Trial and Beta, any unused Services upon any termination or expiration of the applicable term for the Free Version or Trial and Beta shall be forfeit. **Notwithstanding anything else in the Agreement: (a) Trimble has no obligation to retain Customer Data used with Free Versions and Trials and Betas; (b) Trimble provides the Free Versions and Trial and Betas "AS-IS" with no warranty, indemnity, service levels, or support; (c) Trimble's liability for Free Versions and Trials and Betas will not exceed US\$50, and (d) either party may terminate access to a Free Version or Trial and Beta, for any reason or no reason, immediately upon written notice to the other party.**

2.5 Educational Versions. For any version of the Offerings designated as "educational," or a similar term, Customer may use the Offerings solely for educational purposes - e.g., by an instructor or a student at an educational institution and while engaged in educational work. Such educational versions may not be used (a) by any other person; (b) by any educational institution for any non-educational purposes; or (c) for any for-profit purpose, including professional work or training offered for a fee, or by commercial entities.

2.6 Delivery. Offerings and License Keys, if any, will be delivered by electronic means unless otherwise specified on the applicable Order. Delivery is deemed to occur on the date on which the Offering and License Key, if any, are first made available to Customer.

2.7 Software Activation and Metering; Audits.

- (a) Offerings may gather and transmit to Trimble license usage, compliance, and activation data. Customer will not disable, modify, or interfere with the operation of any such functionality of the Offerings. Trimble may use the foregoing information to validate the authenticity of Authorized Users, to confirm Customer's compliance with the Agreement, to register the Offerings, to monitor and validate compliance with Usage Limitations, for license metering, and to protect Trimble against unlicensed or illegal use of the Offerings.
- (b) Upon Trimble's written request, Customer shall certify in writing that its use of the Offerings is in full compliance with the Agreement (including any Usage Limitations). In addition to the other license compliance monitoring rights in the Agreement, Trimble, or its authorized representative, may, upon prior reasonable notice of at least ten (10) days, inspect and audit Customer's records and use of the Offerings to confirm Customer's compliance with the Agreement. All such inspections and audits will be conducted during regular business hours and in a manner that does not unreasonably interfere with Customer's business activities. Customer is responsible for such audit costs only in the event the audit reveals that the use is not in accordance with the Usage Limitations or other licensed scope of use and for unpaid fees. Customer shall promptly pay all unpaid fees.

3. Data Usage and Ownership.

3.1 Ownership. Except for Trimble's limited rights set forth in the Agreement, as between the parties, Customer retains all Intellectual Property Rights in Customer Data. Trimble owns all Intellectual Property Rights in Anonymized Data and Usage Data.

3.2. Limited Usage Rights. Customer hereby grants to Trimble and its Affiliates the non-exclusive, worldwide, irrevocable, royalty-free right: (i) to use Customer Data during the Term to provide the Offerings, Support, and Services to Customer; (ii) to use and disclose Customer Data as otherwise permitted pursuant to the Agreement or any written consent or instructions of Customer; and, (iii) subject to Trimble's confidentiality obligations in Section 9 (Confidentiality) of the General Terms and all applicable Data Protection Legislation, to use Customer Data in perpetuity to develop, maintain, and improve the products, software, and services of Trimble or its Affiliates, including, without limitation, analytics, model training, and machine learning.

3.3 Access. Customer will not have access to Customer Data after termination or expiration of the Term, unless otherwise indicated in the Order, Supplemental Terms, or the Documentation, or the parties agree otherwise in writing.

3.4 Confidentiality. In the event of any conflict between the terms of Section 9 (Confidentiality) of the General Terms and this Section 3 (Data Usage and Ownership), the terms of this Section 3 (Data Usage and Ownership) will control.

4. Customer Obligations.

4.1 Dependencies and Compatibilities. If Customer enables Dependencies or Compatibilities with an Offering, Trimble may access and exchange Customer Data with the Dependencies or Compatibilities on Customer's behalf. Trimble will have no liability or obligations under the Agreement with respect to how any Dependencies or Compatibilities uses or processes Customer Data. If Trimble hosts any Dependency or Compatibilities at Customer's request, Customer represents and warrants to Trimble that Customer has all rights necessary. Trimble may charge additional fees for such hosting services.

4.2 No Prohibited Data. Customer will not use the Offerings with Prohibited Data. Customer acknowledges that the Offerings are not intended to meet any legal obligations for these uses, including HIPAA requirements, and that Trimble is not a Business Associate as defined under HIPAA.

4.3 Customer Data. Customer is responsible for its Customer Data, including its content, accuracy, and compliance with Laws. Customer represents and warrants that it has made all disclosures and has all rights, consents, and permissions necessary to use its Customer Data with the Offerings and grant Trimble the rights in Section 3 (Data Use and Ownership), all without violating or infringing Laws, third-party rights (including intellectual property, publicity, or privacy rights), or any terms or privacy policies that apply to its Customer Data. If Customer utilizes data fields available in the Offerings to store data not required for the normal use and operation of the Offerings for their intended purpose, Customer agrees that Trimble is not responsible for, and will not be liable in any manner for such data, and Customer assumes all risks associated with, and agrees to hold Trimble harmless from and against any and all claims, losses, damages, liabilities, and expenses (including reasonable attorneys' fees) related to or arising from, Customer's use of data fields to store such data.

4.4 Excluded Claims. In addition to the Excluded Claims stated Section 7 (Limitation of Liability) in the General Terms, the following shall also be Excluded Claims for purposes of the Agreement: Section 10 (Indemnification) of these Software Terms and any breaches of Sections 2.3 (Restrictions) or Section 4 (Customer Obligations) of these Software Terms.

4.5 License Compliance. Customer shall promptly notify Trimble if Customer become aware of (i) any breach of confidentiality obligations regarding the Offerings, or (ii) any infringement (whether actual or alleged) of Trimble's intellectual property rights in the Offerings, or (iii) any unauthorized use of the Offerings by any person, and provide reasonable assistance to Trimble in connection with any suit or proceeding relating to such events.

4.6 Usage Limitations. Customer will comply with all Usage Limitations. If Customer exceeds the Usage Limitations during the Term, Trimble may invoice Customer for the use that exceeded the applicable Usage Limitations at Trimble's then-current list price, and Customer shall pay in accordance with the Agreement. The parties may also agree on a Usage Limitation adjustment, in which case Customer must sign a new Order and pay the applicable fees.

4.7 Fee Criteria. If the Order states Software is made available based on GAR, Project Budget, Total Project Value, population, specific-department usage, Affiliate-limitations, or similar criteria (any such criteria, the "**Fee Criteria**"), the fees for that Software are calculated based on that Fee Criteria as of the date of Order issuance by Trimble. Unless otherwise provided the Order, if the Fee Criteria increases by more than 10% during the Subscription Term, (i) Customer shall promptly notify Trimble in writing, (ii) Trimble has the right to adjust such fees based on changes in the Fee Criteria and its then-current list price for that Software (including on a prorated basis for the current term), and (iii) Customer shall pay any applicable additional fees upon receipt of the invoice in accordance with the Agreement. At the request of Trimble, Customer will promptly provide documentation satisfactory to Trimble evidencing Customer's then-applicable Fee Criteria.

5. **Suspension of Access**. Trimble may suspend Customer's access to an Offering, without liability, and in whole or in part, if (a) Customer breaches any Usage Limitations, Sections 2.2 (Authorized Users), 2.3 (Restrictions), 4 (Customer Obligations) or 6.2 (Offering Content); (b) Customer's account is five (5) business days or more overdue; or (c) immediately if Customer or any of its Authorized Users' acts or omissions threaten the integrity, availability, or security of the Offerings or Trimble's systems, products, or infrastructure (provided Trimble will use commercially reasonable efforts to provide Customer with advance notice of such suspension where Trimble determines exigent circumstances do not exist). Trimble will lift such suspension once the related issue or failure is cured to Trimble's reasonable satisfaction. Fees will continue to apply during the suspension period. Customer may be prohibited from entering new Customer Data or processing or accessing existing Customer Data and data reports during the suspension period. If Customer attempts to access or manipulate Customer Data utilizing third-party software during suspension, Trimble disclaims and Customer holds Trimble harmless from any responsibility or liability relating to lost or altered Customer Data or related damages.

6. **Certain Features**. The following provisions apply to the extent applicable to the Offerings.

6.1 Third-Party Materials. The Offerings may provide Customer with access to Third-Party Materials. Third-Party Materials are not part of the Offerings. To the extent specified by Trimble (including in any Supplemental Terms or Documentation), use of the Third-Party Materials may be subject to additional terms or restrictions ("**Third-Party Terms**"). Customer is solely responsible for its compliance with any Third-Party Terms, and failure to comply with such terms may result in termination of Customer's right to access any features of the Offerings that utilize such Third-Party Materials. If no Third-Party Terms are specified, Customer may use Third-Party Materials solely in support of Customer's authorized use of the Offerings in accordance with the Agreement.

6.2 Offering Content. "**Offering Content**" shall be any Trimble IP or Third-Party Materials made available as data or information through the Offering, whether included as part of the Offering or as a separate subscription. Any Offering Content that is Trimble IP will be deemed part of the Offering. Any Offering Content that is Third-Party Materials shall be subject to any applicable Third-Party Terms. If no Third-Party Terms apply, then unless otherwise authorized by Trimble in writing or the applicable Documentation, such Third-Party Materials, and any derivative thereof, may only be used or accessed by an Authorized User. Third-Party Materials will be used solely for Customer's internal purposes during the Term and must be accessed pursuant to a manual Authorized User request. Customer will not: (i) access, extract, or download any Third-Party Materials, or portions thereof, in batch or en masse by any means; (ii) use any device, software, or routine to bypass any hardware or software that prohibits volume requests for information; (iii) sell, offer to sell, rent, sublicense, or transfer any copies of the Third-Party Materials, or portions thereof, to a third party or allow a third party to use the Third-Party Materials; (iv) use the Third-Party Materials to develop services or products for sale or include any portion of the Third-Party Materials in any product or service; (v) use any portion of the Third-Party Materials to create a competitive service, product, or technology; (vi) recreate the Third-Party Materials or create otherwise a separate database or other repository of Third-Party Materials; (vii) use Third-Party Materials to train, augment, or correct another database or information repository; (viii) unless other specified in the Documentation, permit any individual other than an Authorized User to access or use the Offering Content and any derivative thereof, or (ix) make any portion of the Third-Party Materials available to the public in any manner. Upon notice from Trimble and/or any termination or expiration of the Term, Customer will immediately cease using and delete/destroy all electronic and physical copies of Third-Party Materials.

6.3 Open Source. The Offerings may incorporate third-party open source software ("**Open Source**"), as listed in the Documentation or otherwise made available by Trimble. To the extent the terms of the Open Source license prohibit the terms of the Agreement from applying to the Open Source, the terms of the Open Source license will apply to the Open Source on a stand-alone basis instead of the Agreement.

6.4 Third-Party Application Stores.

(a) Purchase from Application Store. If Customer obtains the Offering (or portions thereof) through a third-party application store, marketplace, or other site or service (each, an “**Application Store**”), such Application Store is considered a reseller. All fees are non-refundable once paid. Customer’s download of the Offering may be subject to other terms as specified by the operator of the Application Store from which Customer downloaded the Offering.

(b) Apple-Specific Terms. If Customer downloaded the Offering from Apple Inc.’s (“**Apple**”) Application Store, the following terms are part of the Agreement. The Agreement is between Customer and Trimble, and not with Apple. However, as required by Apple, Apple and its subsidiaries will be third-party beneficiaries of the Agreement and will have the right (and will be deemed to have accepted the right) to enforce the Agreement against Customer as a third-party beneficiary. To the maximum extent permitted by Law, Apple will have no warranty obligation with respect to the Offering, and, as between Apple and Trimble, any other claims, losses, liabilities, damages, costs, or expenses attributable to a failure to conform to a warranty will be Trimble’s responsibility. Apple has no obligation whatsoever to furnish any maintenance or support services with respect to the Offering. As between Trimble and Apple, Trimble is solely responsible for the Offering and for addressing any claims Customer or any third parties have about the Offering or Customer’s possession or use of the Offering, including without limitation (i) product liability claims; (ii) any claim that the Offering fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation. In the event of any third-party claim that the Offering or Customer’s possession or use of the Offering infringes that third party’s intellectual property rights, Apple will not be responsible for the investigation, defense, settlement, or discharge of such claim.

6.5 Security for SaaS or Hosting Services for Licensed Software. This Section 6.5 (Security for SaaS or Hosting Services for Licensed Software) applies to Offerings that are SaaS or hosting services for Licensed Software. During the Term, Trimble or its third party hosting provider(s) will use commercially reasonable efforts to establish and maintain reasonable administrative, physical, and technical safeguards designed to protect (a) the security, confidentiality, and integrity of Customer Data; (b) against anticipated threats or hazards to the security, confidentiality, and integrity of Customer Data; (c) against unauthorized access to or use of Customer Data; and (d) against unlawful processing, accidental destruction, or loss of Customer Data. In the event Trimble is not in breach of the foregoing obligations and an unauthorized third party nonetheless gains access to the Customer Data, such disclosure of Customer Data in such circumstances shall not be a breach of Section 9 (Confidentiality) of the General Terms. In the event of any conflict between the terms of Section 9 (Confidentiality) of the General Terms and this Section 6.5 (Security for SaaS or Hosting Services for Licensed Software), the terms of this Section 6.5 (Security for SaaS or Hosting Services for Licensed Software) will control.

6.6 Third-Party Access.

(a) Contractors and Affiliates. Unless prohibited by Trimble in the Order, Documentation, any Supplemental Terms, or otherwise by Trimble in writing, Authorized Users may include individuals who are contractors or consultants of Customer or employees, contractors, or consultants of its Affiliates; provided, however, any such access and usage may require additional fees as described in Section 4.7 (Fee Criteria), if applicable.

(b) Other Third-Parties. If expressly authorized by Trimble in the Order, Documentation, any Supplemental Terms, or otherwise by Trimble in writing, the Offerings may allow Customer to invite other third parties to become Authorized Users and/or access Customer Data.

(c) Generally. Customer authorizes Trimble to share Customer Data with any third-party Authorized Users or as otherwise instructed by Customer. Customer is solely responsible for such third-parties’ compliance with the Agreement and for any and all acts or omissions of any such third parties. Such third parties are not intended third-party beneficiaries under the Agreement. Trimble shall have no liability for any act or omission of any such third party, including by way of access or use of Customer Data. Such third-party access or use of the Offerings must be solely and exclusively for the benefit of Customer, and any other purpose is prohibited. For clarity, as between Customer and any such third parties, any data or other information uploaded by such third party to the Offerings on Customer’s behalf will be deemed Customer Data of Customer.

(d) Customer as a Third-Party. In the event that Customer is invited to access an Offering as a third party, any data or other information uploaded by Customer on behalf of such third party shall be deemed “Customer Data” of such third party.

7. Support. If Customer is eligible for Support and pays any applicable fees, Trimble will make such Support available in accordance with the Support Terms or as Trimble may otherwise expressly provide in writing. Unless otherwise set forth in writing by Trimble, Support is not available for Free Versions or Trials and Betas.

8. Term and Termination.

8.1 Perpetual License. If Customer purchases a perpetual license to Licensed Software, Customer’s license to the Licensed Software will continue in perpetuity subject to the terms and conditions of the Agreement. Support for Licensed Software is purchased separately unless otherwise indicated by Trimble in writing or on an Order.

8.2 Subscriptions.

(a) Subscription Term. If Customer purchases access to a SaaS or a license to Licensed Software for a limited period of time, the duration of the initial term and any renewals are as set forth in the Order (collectively, the “**Subscription Term(s)**”). Notwithstanding anything to the contrary in the Order, the start date for each Subscription Term for each Offering will begin on the Provision Date for that Offering. For clarity, each Offering may have a different Provision Date.

(b) Additional Subscriptions. If Customer previously purchased one or more Subscriptions for a particular Offering (“**Existing Subscription(s)**”) and subsequently purchases one or more additional Subscriptions (for any Offering) while the Existing Subscription(s) is in effect (the “**Additional Subscription(s)**”), the duration of the Subscription Term for the Additional Subscription will be as set forth in the Order. Unless otherwise set forth by Trimble in writing, all Customer’s Subscriptions shall have the same end date and Trimble may invoice all fees for all such Subscriptions on a single invoice.

8.3 Effect of Termination. Upon expiration or termination of the Agreement or the Order, Customer’s right to use the Offerings will cease and Customer will immediately cease any and all use of and access to the Offerings and will delete (or, upon request, return) all copies of any Offerings. At the disclosing party’s request upon expiration or termination of the Agreement, the receiving party will delete all of the disclosing party’s Confidential Information (excluding Customer Data, which is addressed in Section 3 (Date Usage and Ownership)). Customer Data and other Confidential Information may be retained in the receiving party’s standard backups after deletion but will remain subject to the Agreement’s confidentiality restrictions.

8.4 Survival. In reference to Section 4.3 of the General Terms (Survival), the following Sections of these Software Terms survive any expiration or termination of the Agreement: 1 (Definitions), 2.3 (Restrictions), 3.1 (Data Usage and Ownership), 4 (Customer Obligations), 8.3 (Effect of

Termination), 8.4 (Survival), 9.3 (Additional Disclaimers), and 10 (Indemnification). Except where an exclusive remedy is provided, exercising a remedy under the Agreement, including termination, does not limit other remedies a party may have.

9. Warranties and Additional Disclaimers.

9.1 Limited Warranty. Subject to the Agreement and any mandatory Laws to the contrary, Trimble warrants to Customer that during the Warranty Period, the Offerings will perform materially as described in the Documentation. The “**Warranty Period**” is (a) 90 days for Licensed Software licensed on a perpetual basis, and (b) for the duration of the applicable Subscription Term, for any Subscriptions. Notwithstanding the foregoing, Trimble makes no warranties with respect to Correction Services, which are provided as-is and as-available.

9.2 Warranty Remedy.

- (a) If the Offering fails to conform to Section 9.1 (Limited Warranty) during the Warranty Period, Customer may make a reasonably detailed warranty claim within 30 days of discovering the issue. For any such claims reported by Customer within such period that Trimble determines are valid, Trimble will correct such non-conformity by issuing corrected instructions, a restriction, or a bypass, or by replacing the Offerings, at Trimble’s option. Subject to any mandatory Laws to the contrary, these procedures are Customer’s exclusive remedy, and Trimble’s entire liability, for the failure of the Offerings to conform to the warranty in Section 9.1 (Limited Warranty).
- (b) The foregoing limited warranty only applies if and to the extent that (i) any Offering associated with the warranty is properly and correctly installed, configured, interfaced, maintained, stored, and operated in accordance with the Documentation, and (ii) any Offerings associated with the warranty is not modified or misused. The foregoing limited warranty does not apply to (1) issues caused by unauthorized use or modifications; (2) unsupported or unauthorized versions of any Offerings; (3) operating the Offerings under any specification other than, or in addition to, the Documentation; (4) issues in or resulting from Dependencies, Compatibilities, or third-party systems, products, or services; or (5) Free Versions, Trials and Betas or other similar versions.

9.3 Additional Disclaimers. Trimble makes the following disclaimers in addition to Section 6 (Warranty Disclaimer) in the General Terms.

(a) **General.** TRIMBLE MAKES NO EXPRESS WARRANTY THAT CUSTOMER’S USE OF THE OFFERINGS WILL BE UNINTERRUPTED, ERROR-FREE, OR FREE OF VIRUSES OR OTHER MALWARE OR PROGRAM LIMITATIONS; THAT TRIMBLE WILL REVIEW CUSTOMER DATA FOR ACCURACY; OR THAT TRIMBLE WILL MAINTAIN CUSTOMER DATA OR OTHER DATA WITHOUT LOSS. TRIMBLE IS NOT LIABLE FOR DELAYS, FAILURES, OR PROBLEMS INHERENT IN USE OF THE INTERNET, SATELLITES, ELECTRONIC COMMUNICATIONS, OR OTHER SYSTEMS OUTSIDE TRIMBLE’S CONTROL. TRIMBLE WILL NOT BE LIABLE IN ANY MANNER FOR THE OUTPUT OBTAINED THROUGH USE OF THE OFFERINGS OR CUSTOMER’S RELIANCE ON SUCH OUTPUT. CUSTOMER IS RESPONSIBLE FOR THE SUPERVISION, MANAGEMENT, AND CONTROL OF CUSTOMER’S USE OF THE OFFERINGS. THIS RESPONSIBILITY INCLUDES THE DETERMINATION OF APPROPRIATE USES FOR THE OFFERINGS AND THE SELECTION OF THE OFFERINGS TO ACHIEVE INTENDED RESULTS. ANY FORMS, POLICIES, OR OTHER MATERIALS PROVIDED BY TRIMBLE THROUGH THE OFFERINGS OR DOCUMENTATION ARE NOT INTENDED AND SHOULD NOT BE RELIED UPON AS LEGAL ADVICE OR LEGAL OPINION. CUSTOMER SHOULD CONSULT ITS OWN LEGAL COUNSEL REGARDING THE USE OF ANY SUCH MATERIALS. CUSTOMER IS ALSO RESPONSIBLE FOR ESTABLISHING THE ADEQUACY OF INDEPENDENT PROCEDURES FOR TESTING THE RELIABILITY AND ACCURACY OF ANY OUTPUT OF THE OFFERINGS. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS, BUT ANY STATUTORILY REQUIRED WARRANTIES WILL BE LIMITED TO THE SHORTEST LEGALLY PERMITTED PERIOD.

(b) **Correction Services Disclaimers.** Customer acknowledges that the Correction Services and related network access are subject to transmission limitations caused by a variety of factors such as atmospheric conditions, topographical obstructions, limitations or lack of coverage of the underlying carrier service and other natural or manmade conditions. Additionally, motor and ignition noise, metal shielding, and interference by users of the same or adjacent radio channels may limit or interfere with Correction Services. Trimble is not responsible for the operation or failure of operation of GNSS satellites or the availability of GNSS satellite signals.

(c) **Third-Party Materials.** Third-Party Materials are provided “AS IS” and Customer assumes all risk and liability regarding any use of (or results obtained through) Third-Party Materials. Trimble and its suppliers make no warranty or guarantee with respect to any Third-Party Materials, including regarding their accuracy or continued availability or compatibility.

(d) **Dependencies and Compatibilities.** Trimble makes no warranty or guarantee with respect to any Dependencies, Compatibilities, or other factors outside of Trimble’s control, including their continued availability or compatibility.

(e) **Prohibited Data.** Trimble and its suppliers specifically disclaim any responsibility for, and will not be liable in any manner arising from, any use of the Offerings in connection with Prohibited Data.

10. Indemnification. Customer will defend, indemnify, and hold harmless Trimble from and against any and all third-party claims, costs, damages, losses, liabilities, and expenses (including reasonable attorneys’ fees and costs) arising out of or in connection with (a) any Customer Data, Dependencies, or Compatibilities, or (b) Customer’s breach of Sections 2.3 (Restrictions), 4 (Customer Obligations), 6.1 (Third-Party Materials), 6.2 (Offering Content), or 6.4 (Third-Party Application Stores) (each, a “**Claim**”). Trimble will give Customer prompt written notice of any Claim and will cooperate in relation to the Claim at Customer’s expense. Customer will have the exclusive right to control and settle any Claim, except that Customer may not settle a Claim without Trimble’s prior written consent (not to be unreasonably withheld) if the settlement requires Trimble to admit any liability, pay any amounts or take any action or refrain from taking any action (other than ceasing use of infringing materials). Trimble may participate in the defense of any Claim at its expense.

11. Government End-Users. Elements of the Offerings are commercial computer software. If the user or licensee of the Offerings is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Offerings or any related documentation of any kind, including technical data and manuals, is restricted by the terms of the Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The Offerings were developed fully at private expense. All other use is prohibited.

12. Region-Specific Terms - France. Solely for purposes of Customers who’s billing address is in France, the following shall apply: Prohibited Data included any patient, medical or other protected health information regulated by the French Public Health Code and the GDPR; and Customer’s grant of rights in Section 3.1 (Generally) shall be for so long as the Customer Data is protected by intellectual property law.

Addendum #3

Supplemental Terms for Support and Maintenance *Version 1.0 (Last Updated: April 3, 2023)*

Capitalized terms not defined herein have the meanings given in the General Terms and the Software Terms.

1. Scope. Provided that Customer has paid the applicable fees, Trimble shall provide the Support described in these Support Terms during the Maintenance Term (as defined below). The “**Maintenance Term**” shall be: (a) for Support for SaaS or Licensed Software licensed for a limited term, the applicable Subscription Term, and (b) for Support for Licensed Software licensed on a perpetual basis, the term specified in the Order, or if not specified, for a period of one (1) year.

2. Support.

2.1 During the applicable Maintenance Term, Trimble shall use reasonable efforts to correct or provide a workaround for any reproducible programming error in the Software attributable to Trimble with a level of effort commensurate with the severity of the error, as reasonably determined by Trimble. Upon identification of any programming error, Customer shall promptly notify Trimble of such error and shall provide Trimble with enough information to reproduce the error, including a listing of output and any other data that Trimble may reasonably request in order to reproduce the error and operating conditions under which the error occurred or was discovered. Trimble shall not be responsible for correcting any errors not attributable to Trimble.

2.2 For certain Software, Trimble may provide additional or different support services or procedures as set forth in the applicable Documentation, support handbook, or other written documentation provided by Trimble, if any (collectively, the “**Additional Support Documentation**”). If there is any conflict between these Support Terms and such Additional Support Documentation with respect to the description of support services, requirements or procedures, the provisions of such Additional Support Documentation will prevail. Customer agrees and acknowledges that Trimble may use third parties to provide Support on its behalf. Customer expressly consents to Trimble permitting such third parties to access Customer’s information and data to perform the Support for Customer.

3. Licensed Software Updates and Upgrades. During the applicable Maintenance Term, Customer shall be entitled to receive all upgrades and updates to the Software that are publicly released by Trimble. The contents and timing of all upgrades and updates will be decided by Trimble in its sole discretion. Any such updates and upgrades will be deemed to be “Software” and licensed under the terms and conditions of the Agreement, including any applicable software end user terms or license agreement. Updates and upgrades exclude (a) new versions of the Software (e.g., a change to the left of the decimal in the version number [e.g., 1.x to 2.x] or otherwise designated by Trimble), and (b) any separate modules and other functionality for which Trimble charges a separate fee.

4. Limitations and Exceptions. The following matters are not covered (and Trimble will not have any obligations with respect to such matters) pursuant to these Support Terms:

- 4.1. Any Software for which applicable fees have not been paid;
- 4.2. Any problem resulting from the misuse, improper use, alteration, or damage of the Software;
- 4.2. Any problem resulting from improper or inadequate installation, maintenance, or storage of the Software;
- 4.3. Any problem caused by modifications of the Software not made or authorized by Trimble;
- 4.4. Any problem resulting from any hardware or software in either case not developed or supported by Trimble, including, without limitation: any computers, tablets, disk drives, operating systems, network hardware or software, database, or any other hardware or third-party software;
- 4.5. Any problem resulting from the combination of the Software with other programming or equipment to the extent that such combination has not been approved by Trimble; and
- 4.6. Errors in any version of the Software other than the most recent release, provided that Trimble will continue to provide Support for superseded releases for a reasonable period (not to exceed ninety (90) days).

Support excludes on-site visits, installation and training, file conversion, optional products and services, directories, consulting services, shipping charges, or any recommended hardware.

5. Termination or Expiration. Support will automatically terminate with respect to any Software that is no longer licensed for use as a result of expiration or termination of the Agreement, or replacement of the applicable Software with new releases.

Additional Support Documentation

1. Generally.

- 1.1. Trimble shall use the applicable level of effort to correct or provide a workaround for any reproducible error in the Offering attributable to Trimble commensurate with the severity of the error, as reasonably determined by Trimble in accordance with Section 3 (Severity Priority Levels) below.
- 1.2. For certain Offerings as set forth in Section 2 below, Trimble may provide a customer support portal (the “**Support Portal**”), which may allow Customer to submit support requests, report issues, view case histories, search the general knowledge database, and other features, as applicable. In the event of any conflicts between the terms set forth herein and any set forth in the applicable Support Portal, the terms herein shall govern.
- 1.3. For certain Offerings as set forth in Section 2 below, Trimble will provide support to Customer only by communication with the contacts designated by Customer in the Support Portal or otherwise as instructed by Trimble (each, a “**Authorized Support Contact**”). Customer may update Authorized Support Contact(s) from time to time as instructed by Trimble. Trimble may require the Authorized Support Contact(s) to have the relevant technical knowledge regarding the Offerings necessary to assist Trimble as needed.
- 1.4. Upon identification of any error that cannot be resolved by Customer as first line of support (e.g., via the Support Portal, its internal staff, etc.), then Customer (through its Authorized Support Contact(s)) shall promptly notify Trimble of such error and shall provide Trimble with enough information, assistance, and cooperation to reproduce the error, including a listing of output and any other data that Trimble may reasonably request in order to reproduce the error and operating conditions under which the error occurred or was discovered. Trimble shall not be responsible for correcting any errors not attributable to Trimble.

2. Support Portals. Support portals with information about reporting and general availability are described below.

Offering	Support Portal*	Authorized Support Contacts Only?**
AgileAssets	https://agileassets.com/techsupport	Yes
Cityworks	https://mycityworks.force.com	Yes
e-Builder (non-Fed Ramp)	https://www.e-builder.net/customer-center	No
e-Builder (Fed Ramp)	Support information available upon request.	Yes
Trimble Water	https://mytrimblewater.force.com/s/login	No

* Additional phone numbers and hours of availability for contacting Trimble with support requests may be listed in the Support Portal.

- ### 3. Severity Priority Levels. As soon as reasonably practicable after Customer submits the relevant case information, Trimble will collect additional information and categorize the issue into one of four classifications as set forth below in good faith. Upon Customer submission of the case information, Trimble will use commercially reasonable efforts to issue a Response (as defined below) by the indicated target response goal set forth below. Once the priority level is determined, Trimble will use the level of effort for resolution described below.

Priority Level*	Priority Criteria	Target Response Goal**	Level of Effort for Resolution
P1	most urgent and impactful	½ hour	Trimble and Customer will prioritize any reasonably available resources to resolve the situation or identify a work around.

P2	urgent and impactful, but usually has an acceptable temporary workaround	½ hour	Trimble and Customer will prioritize any reasonably available resources during standard business hours to resolve the situation or identify a work around.
P3	important, but not urgent and impactful	4 hrs	Trimble and Customer will use generally available resources during standard business hours to resolve the situation or identify a work around.
P4	a low priority, informational, or an enhancement request	24 hrs	Trimble and Customer are willing to use generally available resources during standard business hours to provide information or assistance.

** See Priority Matrix and definitions below. The main factors in determining priority level are urgency and impact. Trimble will also consider in good faith any additional relevant facts and circumstances in consultation with Customer that may result in a mutually agreed upon change in priority level.*

*** The use of the term “hour(s)” refers to business hours based on Trimble’s regular business schedule, and excludes nights, weekends and locally-observed holidays (e.g., 24 hrs equals 3 business days at 8 hrs a day). “Response” means acknowledgment of the issue via the creation of a case number. Determination of priority level will occur as soon as practicable thereafter.*

Priority matrix					
		Impact			
		Widespread	Large	Localized	Individualized
Urgency	Critical	P1	P1	P2	P2
	High	P1	P2	P2	P3
	Medium	P2	P3	P3	P3
	Low	P4	P4	P4	P4

Definitions		
Impact	Impact is a measure of the number of users,	Widespread. More than three quarters of users or devices are affected.

Definitions		
	sites, or devices affected.	Large. (1) Multiple sites are affected or (2) between one-half and three-quarters of users or devices are affected.
		Localized. (1) A single site is affected or (2) less than one half of users or devices are affected.
		Individualized. A single or a small number of users or devices are affected.
Urgency	Urgency is a measure of the severity of the issue on the Customer's operations.	Critical. Use of Offering as a whole or core functionality is stopped with no work around and with severe immediate impact to the Customer's operations (e.g., outage).
		High. Use of Offering as a whole or core functionality is severely degraded or a work around is available, and with immediate impact to the Customer's operations.
		Medium. Use of Offering or any functionality is not working as expected, and can be addressed through education, training, work around, work order, or a future enhancement.
		Low. All other requests that are not the above.

4. Additional Limitations and Conditions.

- (a) Unless otherwise expressly provided by Trimble in writing, Trimble does not support: (i) use of the Offering in a manner other than as authorized in the Agreement; (ii) conversions of Customer's databases to accommodate new hardware or software, (iii) Customer Data debugging or manipulation, (iv) recurring support issues where Customer failed to initiate corrective actions previously recommended by Trimble or to provide information requested by Trimble, (v) implementation, report creation, onsite support, customizations (e.g., scripting or integration), or assistance with server migrations are not included as part of Support, but such services but may be purchased separately, (vi) any Offering where Customer has failed to meet its obligations with respect to the Agreement, including, without limitation, as set forth below.
- (b) Customer must (i) require its personnel to obtain adequate training to operate the Offering, (ii) if required by Trimble for the particular Offering, designate Authorized Support Contacts who will submit all support cases to Trimble, (iii) provide internet and/or network access for Trimble when requesting support; and (iv) provide all information and assistance reasonably requested by Trimble related to the support request.
- (c) For Licensed Software not hosted by Trimble, Customer is responsible for (i) securing the server environment, local network, and system security and protocols, including having staff qualified to assume responsibility for management administration and support for Customer's hardware, database, and any Third-Party Materials, Dependencies, or Compatibilities, (ii) maintaining regular and frequent data backups, and recovering such data if necessary from backups maintained by Customer, (iii) establishing a secure method of access to Customer's network as well as maintaining security protocols for Customer's network; and (iv) incorporating Releases and any associated data migration.
- (d) If any Customer support request is subject to any of the foregoing, then Trimble reserves the right to impose support fees at its then standard commercial time and materials rates for all such services, including pre-approved travel and per diem expenses to be reimbursed consistent with Customer's policies. Trimble will notify Customer in advance of incurring any such fees.

Addendum #4

Supplemental Terms for Services

(Training, e-learning content, implementation, configuration, and other services)

Version 1.0 (Last Updated: April 3, 2023)

Capitalized terms not defined herein have the meanings given in the General Terms.

- 1. Generally.** Trimble or its authorized service providers will use commercially reasonable efforts to provide Services to Customer as described in an Order or SOW. Any changes in scope must be made in writing and approved by authorized representatives of Customer and Trimble.
- 2. Training and E-Learning.** For any Services consisting of delivery of training or e-learning (e.g., videos, manuals, etc.), any content made available by Trimble shall not be deemed a Deliverable (as defined below), notwithstanding anything in an Order or SOW to the contrary, and no Intellectual Property Rights therein are assigned or transferred to the Customer. Unless an Order or Documentation states otherwise, prepaid training and e-learning content will expire if not completed within six months from the effective date of the Order or SOW. Trimble reserves the right to reschedule training if it determines in good faith that attendance is not sufficient or the originally scheduled time or location are no longer feasible. If the Order states a date that Services must be completed by, such date is presented for illustrative purposes. The actual completion date for such Services will be provided on the invoice.
- 3. Customer Materials.** Customer shall provide Trimble with reasonable access to Customer's technical data, computer programs, files, documentation, and/or other materials (collectively, "**Customer Materials**") and to Customer's resources, personnel, equipment, and facilities to the extent necessary for the performance of Services. Client will be responsible for, and assumes the risk of any problems resulting from the content, accuracy, completeness, competence, or consistency of Customer Materials or its personnel. To the extent that Customer does not timely provide the foregoing access required for Trimble to perform the Services, Trimble shall be excused from performance until such items or access are provided. Customer hereby grants Trimble a limited and revocable right to use the Customer Materials for the purpose of performing the Services. Customer owns and will retain ownership (including all intellectual property rights) in the Customer Materials.
- 4. Customer Premises.** Customer shall provide Trimble with safe access to Customer's premises as reasonably required for Trimble to perform the Services, if onsite performance of Services is needed and agreed to by Customer. Trimble personnel shall comply with the reasonable written rules and regulations of Customer related to use of its premises, provided that such written rules and regulations are provided to Trimble prior to commencement of the Services.
- 5. Customer Dependencies.** Customer is responsible for taking all actions identified or described in the Agreement which are a condition for Trimble to provide Services. Should Customer's failure to take such actions result in a delay of Trimble against a delivery schedule, or result in additional provable costs incurred by Trimble, Trimble shall not be considered to be delayed in its obligations, and Trimble shall be entitled to payment of such additional costs.
- 6. Deliverables.** "**Deliverable(s)**" shall mean any Trimble deliverables as expressly set forth on a SOW or Order. Trimble hereby grants Customer a worldwide, royalty-free, non-exclusive license to use the Deliverables for its internal business purposes in connection with the Offerings associated with such Deliverables and only for the period of time that Customer has ownership or authorized use of such Offerings. Unless expressly stated otherwise in the applicable Order or SOW, Trimble owns and will retain ownership (including all intellectual property rights) in and to the Deliverables (excluding any Customer Materials) and any modifications, improvements, and derivative works thereof (including to the extent incorporating any Feedback). If the parties have agreed that Trimble will assign ownership of Deliverables to Customer, the relevant SOW must set forth the terms and conditions regarding such assignment.
- 7. Limited Warranty.** Trimble will perform Services in a professional and workmanlike manner. If notified of a non-conformity within ten (10) days of delivery of the applicable Services, and if Customer provides a sufficiently detailed justification to Trimble to allow Trimble to identify the non-conforming Services, Trimble will, as its sole liability and obligation for failure to provide Services meeting this warranty, either (a) re-perform the non-conforming Services at no additional cost to Customer, or (b) issue a credit for any Services which Trimble identifies as non-conforming.
- 8. Travel Expenses.** Trimble will invoice Customer for reasonable and pre-approved out-of-pocket travel expenses incurred in connection with performing Services. Expenses may be invoiced separately from fees and may include, but are not limited to, airfare and other transportation, lodging, and incidentals. Expenses may also include meals reimbursable per a flat per diem rate, available upon request.

- 9. Other Offerings.** These Services Terms only apply to Services, and not to any other Offerings, even if such other Offerings are referenced in an Order or SOW. For clarity, all such other Offerings shall not be considered a Deliverable hereunder, and the provision thereof shall be governed by one or more separate agreements between Trimble and Customer.
- 10. Non-Solicitation.** During the Term and for a period of 12 months thereafter, Customer, shall not, directly or indirectly, solicit, hire, engage, or attempt to do any of the foregoing, any person who was an employee or independent contractor of Trimble who provided Services to Customer, without Trimble's express prior written consent.

Addendum #5

Supplemental Terms for Hardware

Version 1.0 (Last Updated: April 3, 2023)

Capitalized terms not defined herein have the meanings given in the General Terms.

1. **Delivery.** Delivery times for Hardware are established when an Order is received and accepted by Trimble. Trimble will use commercially reasonable efforts to meet Customer's requested delivery dates, unless Customer is in default under the Agreement or Trimble's performance is otherwise excused (e.g., force majeure, etc.). Late delivery is not a basis for Customer's cancellation of any Order.

Title and risk of loss or damage to the Hardware will pass to Customer upon delivery to Trimble's shipping carrier.. Trimble will deliver any shipment FCA (Incoterms 2020) from its warehouse. Customer will pay or reimburse Trimble for all costs of carriage, freight, insurance (if applicable), taxes, duty and other related shipping charges. Trimble may fulfill its delivery obligations for Hardware through an Affiliate and/or authorized reseller. Trimble reserves the right to make partial deliveries.

2. **Acceptance, Inspection, Notice of Nonconformance.** All Hardware will be deemed accepted by Customer upon delivery to Trimble's shipping carrier, subject to Customer's right to inspect and reject damaged Hardware or Hardware that do not conform to the Order within 10 days of delivery. It is Customer's responsibility to give Trimble prompt written notice of identified damage or non-conformance to the Order. If Customer retains the Hardware without giving notice within the designated period, it will be deemed to waive its right of rejection. The foregoing will not, however, prejudice Customer's warranty remedies as described in the applicable Hardware Terms.
3. **Limited Warranty.** Unless the Hardware comes with a limited warranty that provides otherwise, Trimble warrants to Customer, and only to Customer, that the Hardware is designed and manufactured to conform in all material respects to Trimble's specifications and all parts are and will be free from defects in material and workmanship for a period of twelve (12) months from date of shipment. During the warranty period, Trimble's obligations in Section 7 (Sole Remedy; Warranty Procedure) are Customer's only and exclusive remedy for Hardware that Trimble reasonably determines does not meet the limited warranty, and is made subject to these Hardware Terms.
4. **Firmware.** Trimble hereby grants Customer a personal, non-exclusive, revocable, non-assignable right to access and use firmware solely as necessary to use the Hardware in accordance with the Documentation. During the limited warranty period, Customer will be entitled to receive such Fixes (as defined below) to the firmware that Trimble releases and makes commercially available and for which it does not charge separately, subject to the procedures for delivery to purchasers of Trimble products generally. Minor Updates (as defined below), Major Upgrades (as defined below), new products, or substantially new software releases, as identified by Trimble, are expressly excluded from this fix process and limited warranty. Receipt of software fixes will not serve to extend the limited warranty period. "**Fix(es)**" means an error correction or other update created to fix a previous software version that does not substantially conform to its Trimble specifications; "**Minor Update**" occurs when enhancements are made to current features in software; and "**Major Upgrade**" occurs when significant new features are added to software, or when a new product containing new features replaces the further development of a current product line. Trimble reserves the right to determine, in its sole discretion, what constitutes a Fix, Minor Update, Major Upgrade, new products, or substantially new software releases.
5. **Non-Trimble Manufactured Products.** Trimble will extend to Customer the manufacturer's warranty, if any, for all equipment and/or software products manufactured by another manufacturer and furnished by Trimble to Customer under such other manufacturer's brands. Customer acknowledges and agrees that Trimble shall not be responsible for separately warranting or supporting the equipment or software products of such other manufacturers.
6. **Warranty Exclusions.** The foregoing Hardware limited warranty will only apply in the event and to the extent that (a) the Hardware is properly and correctly installed, configured, interfaced, maintained, stored, and operated in accordance with the Documentation, and (b) the Hardware is not modified or misused. This limited warranty does not apply to, and Trimble shall not be responsible for defects or performance problems resulting from (i) the combination or use of the Hardware with hardware or software products, information, data, systems, interfaces or devices not made, supplied or specified by Trimble; (ii) the operation of the Hardware under any specification other than, or in addition to, the Documentation; (iii) the unauthorized installation, modification, repair or use of the Hardware; (iv) damage caused by accident, lightning or other electrical discharge, fresh or salt water immersion or spray (outside Hardware specifications), or exposure to environmental

conditions for which the Hardware is not intended; (v) normal wear and tear on consumable parts (e.g., batteries) or (vi) cosmetic damage. Trimble does not warrant or guarantee the results obtained through the use of the Hardware. **TRIMBLE MAKES NO WARRANTIES WHATSOEVER WITH RESPECT TO SERVICES, WHICH IF PROVIDED HEREUNDER ARE PROVIDED "AS-IS."**

7. **Sole Remedy; Warranty Procedure.** If the Hardware fails during the warranty period for reasons covered by this limited warranty and Customer notifies Trimble of such failure during the warranty period, Trimble will at its option repair or replace the nonconforming Hardware with new, equivalent to new, or reconditioned parts or Hardware or, if either of the foregoing is commercially impractical in Trimble's determination, refund the Hardware purchase price paid by Customer (excluding separate costs of installation, if any) upon Customer's return of the Hardware in accordance with Trimble's product return procedures then in effect. Any repaired or replaced Hardware will be warranted for a period of thirty (30) days or the remainder of the original warranty period, whichever is longer. Warranty service will be provided at a designated Trimble service center or by an authorized Trimble service provider. Except as otherwise agreed by the parties, Customer shall be responsible for all shipping charges to the designated Trimble service center or authorized Trimble service provider.
8. **Determination of Warranty Applicability:** Trimble reserves the right to refuse warranty services if the Hardware date of purchase cannot be proven, if a claim is made outside the warranty period or if a claim is excluded from the warranty pursuant to the Terms. Following Trimble's examination of Customer's claim, Trimble will notify Customer of warranty status and the repair cost of any out-of-warranty Hardware. At such time Customer must issue a valid purchase order to cover the cost of the non-warranted Hardware repair and return freight, or authorize return shipment of the Hardware at Customer's expense as-is.
9. **Non-responsibility for Lost Data.** Trimble shall not be responsible for any modification or damage to, or loss of any programs, data, or other information stored on any media or any part of any Hardware serviced by it or an authorized Trimble service provider, or for the consequence of such damage or loss, e.g., business loss in the event of system, program or data failure. It is Customer's responsibility, prior to servicing, to backup data and remove all features, parts, alterations, and attachments not covered by warranty prior to releasing the Hardware to Trimble. The Hardware will be returned to Customer configured as originally purchased.
10. **Return of Hardware:** All Hardware returns are subject to Trimble's prior written consent and must comply with its product return (RMA) procedures then in effect. Before returning or exchanging Hardware, Customer must contact Trimble directly to obtain an authorization number to include with the return. Customer must return Hardware to Trimble in their original or equivalent packaging, and Customer is responsible for risk of loss, as well as shipping fees back to Trimble. Hardware received but not eligible for return will be sent back to Customer freight collect. For approved returns, Customer will receive credit equal to the lesser of the Hardware invoice price or its current replacement value, less any applicable charges or fees.

Addendum #6

Supplemental Terms for U.S. Public Entities

Version 1.0 (Last Updated: October 7, 2023)

Capitalized terms not defined herein have the meanings given in the General Terms and the Software Terms.

1. **Scope.** To the extent Customer is a public or governmental entity, these Supplemental Terms provisions apply to the extent Customer is a public or governmental entity in the United States.
2. **Intellectual Property Indemnification by Trimble.** Trimble shall defend Customer from and against any claim of infringement of a U.S. patent, U.S. copyright, or U.S. trademark asserted against Customer by a third party based upon Customer's use of the Offerings in accordance with the terms of this Agreement, and pay any resulting settlement or final judgment. If Customer's use of any of the Offerings are, or in Trimble's opinion are likely to be, enjoined due to the type of infringement specified above, or if required by settlement, Trimble may, in its sole discretion: (a) substitute for the Offerings substantially functionally similar programs and documentation; (b) procure for Customer the right to continue using the Offerings; or if (a) and (b) are commercially impracticable, (c) terminate the Agreement and refund to Customer the fee paid by Customer as reduced to reflect a five year straight-line depreciation from the applicable purchase date. The foregoing indemnification obligation of Trimble will not apply: (1) if the Offerings are modified by any party other than Trimble; (2) if the Offerings are combined with other non-Trimble products, but solely to the extent that the alleged infringement is caused by such combination; (3) to any unauthorized use of the Offerings; (4) to any unsupported release of the Offerings; or (5) to any third-party code, content, and/or data contained in and/or delivered with the Offerings.
3. **Tax Exemption.** If Customer is a tax-exempt entity and provides evidence of a tax-exempt certificate prior to executing this Agreement, then Section 3.1 of the General Terms regarding Customer's responsibility to pay taxes shall be inapplicable.
4. **No Indemnification by Customer.** Section 8 (Indemnification) and the second to last sentence of Section 12.6 (Export Control) of the General Terms shall be inapplicable.
5. **Public Records Law.** Customer's confidentiality obligations in Section 9 (Confidentiality) of the General Terms may be subject to applicable public records law.
6. **Limited Publicity.** Provision (b) in Section 12.11 (Publicity) of the General Terms shall be inapplicable.
7. **Termination for Convenience.** Customer may terminate this Agreement for convenience on not less than sixty (60) days' written notice to Trimble. If Customer terminates this Agreement under this paragraph, all fees for the Term shall immediately become due and payable. All previously paid fees (both used and unused) shall be non-refundable and forfeited. Furthermore, all earned, but unpaid, fees for professional services, if any, must be paid in full before the termination becomes effective.
8. **Non-Appropriation of Funds.** The Customer's funds for future and ongoing purchases are contingent on the availability of future appropriations of funds. If funds are not appropriated for any payments due under this Agreement, the Customer will promptly notify Trimble in writing and the applicable Order will terminate as of the date of the notice in accordance with Section 7 (Termination for Convenience) above and the Customer will have no further obligation to make any payments with respect to the affected Order, provided however that the Customer shall pay for any goods or services ordered prior to the date of the Customer's notice.
9. **Piggyback.** Trimble does business with many government entities whose applicable laws permit them to join an existing contract between another governmental agency and vendor to acquire goods and services thereunder. In such circumstances and if allowable by applicable law and contract, Customer expressly agrees to allow the other governmental agencies to acquire goods and services using this Agreement ("**Piggyback**"), subject to applicable pricing of the Trimble offerings at the time of the piggyback purchase.
10. **Governing Law.** Notwithstanding Section 12.9 (Governing Law and Venue) of the General Terms, the Laws of the jurisdiction required by applicable law shall exclusively govern this Agreement.

Addendum #7
Service Level Agreement; Data Security and Restoration
Version 1.0

1. Availability Service Level Agreement

For any Offering that is either (i) Software-as-a-Service or (ii) Licensed Software hosted by Trimble, the following will apply.

- 1.1. **Target Availability.** Trimble will use commercially reasonable efforts to make the Offering available with an uptime availability (time periods during which Customer has general connectivity to the Offering) (the “**Target Availability**”) as follows:

Offering	Target Availability*
Cityworks	99.9%*
AgileAssets / Pavement Express	99%
e-Builder	99.95%
Trimble Water - Trimble Unity Work Management/ Trimble Unity Remote Monitoring	99.5%

**Target Availability is generally for a calendar month; provided that Cityworks target availability will be calculated on a quarterly basis.*

- 1.2. **Exclusions.** The calculation of uptime will not include unavailability to the extent due to: (a) Customer’s use of the Offering in a manner not authorized in the Agreement or Documentation, (b) general Internet problems, force majeure events or other factors outside of Trimble’s reasonable control, including without limitation interruption or failure of telecommunications or digital transmission links, hostile network attacks, network congestion, denial of service attack, (c) Customer’s equipment, software, network connections or other infrastructure, (d) any acts or omissions of Customer or any third-party that is not a service provider of Trimble, (e) failure by Customer to pay any applicable fees under the Agreement, or (f) Scheduled Maintenance or emergency maintenance.
- 1.3. **Scheduled Maintenance.** “**Scheduled Maintenance**” means Trimble’s scheduled, routine, or other maintenance which (1) occurs at such times as may be listed on Trimble’s websites or Support Portal, or (2) Trimble notifies Customer with at least two (2) days advance notice, which can be via the Support Portal, e-mail, or in the Offering. Trimble reserves the right to schedule other maintenance periods on an as needed basis and will notify Customer in advance. Trimble will use commercially reasonable efforts to perform Scheduled Maintenance during low usage times.
- 1.4. **Service Credits.** If there is a verified failure of the Offering to meet Target Availability in a particular month and Customer makes a request for service credit within thirty (30) days after the end of such month, Customer will be entitled to a credit based on the monthly fees due for the affected Offering in such month (“**Service Credit**”). The Service Credit will be calculated as follows:

*Service Credit = Pro Rata Fee * percentage of time that the Offering did not meet the Target Availability*

The “**Pro Rata Fee**” means (1) for Target Availability measured monthly, one-twelfth of the total annual fee for the Offering (excluding taxes, etc.), and (2) for Target Availability measured quarterly, one-fourth

of the total annual fee for the Offering (excluding taxes, etc). The Service Credit will be calculated to the nearest 30-minute interval. The total Service Credits in a month may not exceed 20% of the Monthly Fee.

Trimble will apply each Service Credit to Customer's next invoice, provided that Customer's account is fully paid up, without any outstanding payment issues or disputes. Customer will not receive any refunds for any unused Service Credits.

- 1.5. Sole Remedy. Service Credits constitute liquidated damages and are not a penalty. The Service Credits set forth in this Section are Customer's sole and exclusive remedy for any failure to meet the Target Availability.

2. Data Security and Restoration

2.1. Software-as-a-Service and Hosted License Software.

- a) Trimble or its third-party hosting provider(s) shall use commercially reasonable efforts to establish and maintain reasonable administrative, physical, and technical safeguards designed to (a) protect the security, confidentiality, and integrity of Customer Data, (b) protect against anticipated threats or hazards to the security, confidentiality, and integrity of Customer Data; (c) protect against unauthorized access to or use of Customer Data; and (d) protect against unlawful processing, accidental destruction, or loss of Customer Data.
- b) Trimble will use reasonable efforts to restore lost or damaged Customer Data for Offerings deployed through Trimble hosting services or as Software-as-a-Service, as described in this paragraph, if the loss or damage was caused by Trimble. Trimble will consult with Customer and provide information to Customer regarding the availability of backups and the potential limitations of data restoration. Customer understands that some data loss may result upon restoration based on the frequency and availability of backups. If Customer Data loss or damage is not caused by Trimble, Trimble will provide support and technical assistance for data restoration subject to Trimble's availability and payment of applicable fees at Trimble's then-current hourly rates.

- 2.2. On Premises Licensed Software. Trimble does not provide regular support or technical assistance for the repair or restoration of lost or damaged Customer Data as part of support for Licensed Software not hosted by Trimble, regardless of the cause. Assistance for restoration may be available subject to Trimble's availability and payment of applicable fees at Trimble's then-current hourly rates.

Addendum #8

THIRD-PARTY CONSULTANT/CONTRACTOR ACKNOWLEDGMENT

If Customer engages any third party or contractor (Third Party) and desires to grant access to use the Products, the access may be granted subject to the following terms conditions and provisions:

1. Access and use of the Licensed Products by Third Party is solely for Customer's benefit;
2. Third Party (or, if applicable, its employee) shall be considered the Authorized User, and all use shall be in accordance with the terms and conditions of the Trimble Agreement with Customer;
3. Before accessing the Products, Third Party agrees that (i) the Products shall be used solely in accordance with the terms of this Agreement, and (ii) Third Party shall be liable to Trimble for any breach by it of this Agreement;
4. Customer hereby agrees and acknowledges that Customer will be responsible for all use by Third Party with respect to the use of the Products;
5. Upon expiration or termination of this Agreement, the rights of usage of Third Party shall immediately terminated;
6. Use of the Products by Third Party will be governed by the terms of Customer's Agreement with Trimble, and will require that Customer purchase the appropriate license or access for each user utilized by Third Party; and
7. Customer will ensure that Third-Party agrees to comply with and does comply with the terms of Customer's Trimble Agreement on the same basis as the terms apply to Customer.

The rights granted under Third-Party Contractor Addendum, do not modify Customer's Agreement with Trimble or increase the access or licenses granted under this Agreement. Third Party, by their signature below, acknowledges that it has a copy of Customer's Agreement with Trimble and agrees to the terms herein. Customer shall provide a signed copy of this Agreement to Trimble at contracts@cityworks.com.

Customer: Bentonville, AR

Third Party (Print): _____

By: _____

Third Party/Contractor Authorized Signature

Title: _____

Date: _____

Third Party Information:

Address	
City, State, Zip	
Contact Name	
Phone Number	
Email	

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO AN AGREEMENT WITH AZTECA SYSTEMS LLC. FOR THE PURPOSE OF CITIWORKS SOFTWARE SOLUTION SUBSCRIPTION; AMENDING THE 2024 BUDGET IN THE AMOUNT OF SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00); AND FOR OTHER PURPOSES.

WHEREAS, the City of Bentonville Information Technology Department requests to enter into agreement with Azteca Systems LLC for the purpose of Citiworks Software Solutions;

WHEREAS, this software is to improve work order and asset management, including operations, service levels and reporting through multiple city departments; and

WHEREAS, this is a term contract and will be budgeted annually for maintenance costs subject to the availability of funds; and

WHEREAS, a budget adjustment will be needed from various accounts as shown on ‘**EXHIBIT A**’.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BENTONVILLE, ARKANSAS THAT:

Section 1: The Mayor and City Clerk are authorized to enter into an agreement with Azteca Systems LLC, for the purpose of Citiworks Software Solution;

Section 2: The 2024 Budget is amended as shown on ‘**EXHIBIT A**’:

Section 3 - Severability Provision: If any part of this Resolution is held invalid, the remainder of this Resolution shall continue in effect as if such invalid portion never existed; and

Section 4 - Repeal of Conflicting Provisions: All Ordinances, Resolutions, or Orders of the City Council, or parts of the same, in conflict with this Resolution are repealed to the extent of such conflict.

PASSED this _____ day of _____, 2024.

APPROVED:

STEPHANIE ORMAN, Mayor

ATTEST:

MALORIE MARRS, City Clerk

‘EXHIBIT A’

Budget Adjustment (to be completed by Finance when applicable)			
101050-43310	Technical / Data Processing	\$ 1,500.00	\$
Account Number (ORG-OBJECT)	Account Description	Expense	Revenue
503530-43310	Technical / Data Processing	\$ 7,500.00	\$
Account Number (ORG-OBJECT)	Account Description	Expense	Revenue
503030-43310	Technical / Data Processing	\$ 6,000.00	\$
Account Number (ORG-OBJECT)	Account Description	Expense	Revenue
503040-43310	Technical / Data Processing	\$ 10,500.00	\$
Account Number (ORG-OBJECT)	Account Description	Expense	Revenue

Budget Adjustment (to be completed by Finance when applicable)			
503020-43310	Technical / Data Processing	\$ 24,000.00	\$
Account Number (ORG-OBJECT)	Account Description	Expense	Revenue
203810-43310	Technical / Data Processing	\$ 19,500.00	\$
Account Number (ORG-OBJECT)	Account Description	Expense	Revenue
105020-43310	Technical / Data Processing	\$ 6,000.00	\$
Account Number (ORG-OBJECT)	Account Description	Expense	Revenue
			\$
Account Number (ORG-OBJECT)	Account Description	Expense	Revenue



City of Bentonville, Arkansas Agenda Item Form

Item Details

Council Meeting Date:		Submitted By:	
Phone:		For Department(s):	
Email:			

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:	
Action Recommendation & Justification:	
Additional Comments for Consideration (Optional):	

Amount for Approval:	\$
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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
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, Arkansas

City Hall

305 SW A Street Bentonville, AR 72712

RESOLUTION NO. _____

**A RESOLUTION EXPRESSING THE WILLINGNESS OF THE CITY OF BENTONVILLE
TO UTILIZE FEDERAL-AID FUNDS FOR THE FOLLOWING PROJECT:**

NE J Street Interchange

WHEREAS, the Northwest Arkansas Planning Commission has approved Federal-aid Surface Transportation Block Grant Program Attributable funds for the project at the following Federal and Local participating ratios, up to the maximum Federal-aid available:

Type Work	Work Phase	Federal %	Local %
Projects that reach construction	Preliminary Engineering	80	20
	Right-of-Way	80	20
	Utilities	80	20
	Construction	80	20
	Construction Engineering	80	20
Projects that never progress to construction	All Phases	-0-	100

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF BENTONVILLE, ARKANSAS, THAT:

Section 1: The City of Bentonville will participate in accordance with its designated responsibilities in this project.

Section 2: The Mayor of the City of Bentonville or their designated representative is hereby authorized and directed to execute all appropriate agreements and contracts necessary to expedite the construction of this project.

Section 3: The City of Bentonville pledges its full support and hereby authorizes the Arkansas Department of Transportation to initiate action to implement this project.

Section 4: Severability Provision: If any part of this Resolution is held invalid, the remainder of this Resolution shall continue in effect as if such invalid portion never existed; and

Section 5: Repeal of Conflicting Provisions: All Ordinances, Resolutions, or Orders of the City Council, or parts of the same, in conflict with this Resolution are repealed to the extent of such conflict.

PASSED this _____ day of _____, 2024.

APPROVED:

STEPHANIE ORMAN, Mayor

ATTEST:

MALORIE MARRS, City Clerk



City of Bentonville, Arkansas Agenda Item Form

Item Details

Council Meeting Date:		Submitted By:	
Phone:		For Department(s):	
Email:			

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:	
Action Recommendation & Justification:	
Additional Comments for Consideration (Optional):	

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
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, Arkansas

City Hall

305 SW A Street Bentonville, AR 72712

Memo



To: City Council, Mayor Orman
Thru: David Wright, Parks and Recreation Director
From: Scott Mendenhall, Parks Maintenance Manager
Date: March 13, 2024
Re: Bid Award, in the amount of \$53,217.00 to Martel's Landscaping for Mowing Services for Parks and Recreation.

Parks and Recreation Staff is requesting City Council's approval to award Bid IFB-24-04 to Martel's Landscaping for mowing services at the Bentonville Community Center/Citizens Park and the associated Southwest Bentonville Trail and City owned lot, as needed throughout the year at a weekly mow rate of \$1773.90, for an estimated annual total of \$53,217.00. This contract is for a one-year term, renewable annually until 2026.

As Bentonville Parks and Recreation continues to grow and park use has skyrocketed, we have used contract labor to supplement the mowing of our parks and green spaces to offset and balance adding new full-time staff.

The contract for the Bentonville Community Center/Citizens Park expired in 2023 and we returned to the marketplace in 2024 to source bids for continuing this critical mowing service. The service facilitates weekly park mowing consistent with our overall park, trail and green space mowing schedule and subsequently allows us to refocus and dedicate staff labor hours to our high maintenance athletic fields and higher profile parks.

If you have any questions regarding this item, please let me know. Please call me at 271-3190, or email: smendenhall@bentonvillear.com.

Attachments:

Bid Tabulation

**CITY OF BENTONVILLE, ARKANSAS PURCHASING DEPARTMENT****FORMAL SEALED BID TABULATION**

Date of Bid Opening:	2/21/24	Time of Bid Opening:	3:00 PM	Solicitation ID Number:	IFB-24-04
Solicitation Title: Mowing Services for Citizens Park and Bentonville Community Center					
Bidders:		DMC & Landscaping LLC	Empire Group Property Management	Martels Landscaping	Treemendous Landscape Maintenance Contractors LLC
Line Item	Description	Price Per Weekly Mow/Cycle (Unit Price)	Price Per Weekly Mow/Cycle (Unit Price)	Price Per Weekly Mow/Cycle (Unit Price)	Price Per Weekly Mow/Cycle (Unit Price)
1	Bentonville Community Center/Citizens Park Turf Islands on 41st Street are included. Excludes soccer fields.	\$2,150.00	\$1,708.20	\$1,642.50	\$2,676.62
2	Southwest Bentonville Trail Citizens Park to SW Edinburgh Ave	\$70.00	\$0.00	\$65.70	\$98.78
3	City Owned Lot 1305 SW Edinburgh Ave (Trail is currently under construction)	\$50.00	\$0.00	\$65.70	\$96.47
Total Bid Price		\$2,270.00	\$1,708.20	\$1,773.90	\$2,871.87
<i>The City does not intend to award IFB-24-04 to the lowest Bidder due to past performance/experience. The City intends to award the Contract to the second lowest Bidder (Martels Landscaping).</i>					
purchasing@bentonvillear.com - (479) 271-3115					

RESOLUTION NO. _____

A RESOLUTION AWARDDING BID IFB-24-04; AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A CONTRACT WITH MARTEL’S LANDSCAPING, FOR MOWING SERVICES FOR PARKS AND RECREATION; AND FOR OTHER PURPOSES.

WHEREAS, Martel’s Landscaping is the lowest qualified bidder for bid IFB-24-04;

WHEREAS, this contract covers mowing services at Bentonville Community Center/Citizens Park, Southwest Bentonville Trail and the city owned lot at 1305 SW Edinburgh Ave.;

WHEREAS, the estimated cost for this contract is fifty-three thousand two hundred seventeen dollars (\$53,217.00); and

WHEREAS, this is a budgeted item.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BENTONVILLE, ARKANSAS THAT:

Section 1: The Mayor and City Clerk are authorized to enter into a contract with Martel’s Landscaping, for mowing services for Parks and Recreation, as per the unit prices contained in IFB-24-04, up to the budgeted amount for these services;

Section 2 - Severability Provision: If any part of this Resolution is held invalid, the remainder of this Resolution shall continue in effect as if such invalid portion never existed; and

Section 3 - Repeal of Conflicting Resolutions: All Ordinances, Resolutions, or Orders of the City Council, or parts of the same, in conflict with this Resolution are repealed to the extent of such conflict.

PASSED and APPROVED this _____ day of _____, 2024.

APPROVED:

Stephanie Orman, MAYOR

ATTEST:

Malorie Marrs, CITY CLERK



City of Bentonville, Arkansas Agenda Item Form

Item Details

Council Meeting Date:		Submitted By:	
Phone:		For Department(s):	
Email:			

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:	
Action Recommendation & Justification:	
Additional Comments for Consideration (Optional):	

Amount for Approval:	\$
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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
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, Arkansas

City Hall

305 SW A Street Bentonville, AR 72712

Memo



To: City Council, Mayor Orman
Thru: David Wright, Parks and Recreation Director
From: Jackie Bubenik
Date: March 13, 2024
Re: City Council Resolution authorization the Mayor and City Clerk to enter into a Professional Services Agreement with Toole Design for the design of multiple sidewalk projects.

Parks and Recreation Staff is requesting Council's approval of a resolution authorizing the Mayor to enter into an agreement for the City to hire Toole Design to provide engineering services for preparing construction plans and specifications, and an opinion of probable construction cost, for the Indefinite Delivery, Indefinite Quantity (IDIQ) Sidewalks project(s) outlined in the project overview below. This project design is intended to be complete for construction to occur within 2024. See below for project areas:

- ☐ NE 3rd Street NE J Street to NE M Street (Both Sides)
- ☐ NE 2nd Street NE J Street to NE M Street (North Side)
- ☐ NE M Street NE 2nd Street to NE 3rd Street and Connection to NE Wildcat Way (Both Sides)
- ☐ Spriggs Court NE J Street to Cul-de-sac (Both Sides)
- ☐ Brookhaven Court... Central Avenue to Cul-de-sac (Both Sides)

Please refer to the attachments below with additional information.

If you have questions concerning this item, please email me at jbubenik@bentonvillear.com or call 479.217.5974.

Attachments:
Toole Proposal

SCOPE OF WORK

The City of Bentonville will retain the services of Toole Design to provide engineering services for preparing construction plans and specifications, and an opinion of probable construction cost, as detailed below, for the Indefinite Delivery, Indefinite Quantity (IDIQ) Sidewalks project outlined in the project overview below. This project design is intended to be complete for construction to occur within 2024.

Project Overview

Budget has been set aside to provide for the design and construction of new sidewalks with the goal of making walkable pedestrian connections, with an initial focus on filling sidewalk gaps near Bentonville schools.

Any changes to the extents of the sidewalk gaps described below and/or the addition of any new project area will impact the schedules for design and construction and will require amendments to this scope of work. The following is an overview of the scope of work for the sidewalk improvements:

Design Document Set #1:

- NE 3rd Street NE J Street to NE M Street (Both Sides)
- NE 2nd Street.....NE J Street to NE M Street (North Side)
- NE M Street NE 2nd Street to NE 3rd Street and Connection to NE Wildcat Way (Both Sides)
- Spriggs Court.....NE J Street to Cul-de-sac (Both Sides)
- Brookhaven Court..... Central Avenue to Cul-de-sac (Both Sides)

Toole Design will subcontract with Bates & Associates to perform topographic surveys of each confirmed sidewalk alignment. Toole Design will design the sidewalks along each alignment considering grading, drainage, utilities, and other factors for the most cost-effective installation.

Toole Design will prepare one set of standalone Plans, Specifications, and Estimates (PS&E) construction documents to City of Bentonville design standards, as applicable, to allow for use of the IDIQ Contract for construction. The design will follow the City's PIIP process for design through the bid plan set.

During construction, Toole Design will provide construction observation services at critical events to ensure adherence to the design.

1 PROJECT MANAGEMENT

1.1 Progress Meetings, Quality Control, and Scheduling

Toole Design will coordinate with the City of Bentonville to develop the project design for this sidewalk gap project. This will include ongoing communication via email and up to ten (10) virtual monthly progress meetings for the duration of the project. Submittal review meetings, when needed, will take the place of the monthly progress meetings. A Project Management Plan (PMP) will be developed for the project, complete with a quality control approach and associated procedures. Toole Design will also conduct ongoing coordination with City staff and other agencies as appropriate.

The PMP will outline the interrelationship between the scope of services and the schedule. Project milestones will be documented along with critical path items to be achieved. The PMP will include our Quality Assurance/Quality Control approach, which will occur at each submittal milestone, and associated procedures. As appropriate, procedures, standards, and guidelines will be provided to project staff to ensure quality control.

1.2 Progress Reports and Invoices

The Toole Design Team will prepare monthly invoices and progress reports for review by the project manager for the City. These reports will include a summary of:

- Activities ongoing or completed during the reporting period;
- Activities planned for the following month; and
- Problems encountered and actions to remedy them;
- Status including, percent complete by task, applicable notes on study progress, and supporting documentation.

Task 1 Deliverables:

- Monthly progress calls with City staff
- Meeting agendas and notes

2 DATA COLLECTION

2.1 Draft Survey

Topographic survey along the proposed sidewalk alignments will be collected and processed data in accordance with the City of Bentonville's survey guidelines and requirements. The limits of any survey along sidewalk improvements shall extend 50-ft before and after the project limits and extend from the street centerline to 10-ft beyond the apparent public right-of-way line, where access allows.

The city shall provide available roadway plans, land records, property deeds, and tax map files on file for properties within the project limits. The purpose will be to document the property lines and owners within the project limits for subsequent right-of-way determination use. This right-of-way and property information will be compiled and presented on the plans.

The topographic survey and base map processing shall include sufficient information to design, permit, acquire right-of-way, and construct the project. This is likely to include all overhead and underground utilities, land monuments, physical surface and traffic features, and existing surface cross sections. Existing utility information will be collected based on locates conducted by GPRS, a subcontractor, at Quality Level C (compiled from record information and correlated with observable surface features) and depicted on the survey base mapping as indicated on existing historic records provided by the Client and/or by the respective utility companies, and as

marked in the field. The survey will confirm existing lane configurations and widths and provide Toole Design with base files for design in the appropriate format.

The survey base mapping will also include:

- Existing right-of-way information including property owner information and parcel ID.
- Ground elevations with contours at one-foot intervals and spot elevations, expressed to the nearest hundredth of a foot (0.01'), on hard and soft surfaces, where appropriate.
- Benchmarks will be shown on the plan and will include the description, datum and elevation (to the nearest hundredth of a foot) along with the location as referenced to an adjacent boundary line or physical feature.
- All overhead and underground utility information, including, but not limited to storm, sewer, water, electrical, fiber, and communications.
- Names of utility operating authorities for each utility as available from the utility owner or Client-provided records.
- All observable surface features including, but not limited to traffic components, signage, and pavement markings.
- Survey Mapping along the project alignment will be produced at a 1" = 20' scale.

2.2 Final Survey

If additional survey information is needed during the design process, Bates & Associates, as a subconsultant to Toole Design, will perform additional survey services and provide the data to Toole Design for preparation of construction drawings. Final survey will include any supplemental information that is needed to complete the PS&E package that was not captured during the initial survey.

Task 2 Deliverables:

- Draft Survey in AutoCAD format
- Final Survey in AutoCAD format

3 CONCEPTUAL DESIGN

The design team will review the topographic survey and City input, coupled with first-hand observations from one (1) site visit by two (2) staff, to prepare conceptual plans (1st Submittal - 15% Complete) and an opinion of probable cost (OPC) with payment line items and a +/- 20% level of cost contingency.

The design plans will consist of approximately 30 sheets as shown below to illustrate the information necessary to define the project. Any sheets not shown are not included in this scope of work. Plans will be submitted as full-size, electronic plans in both PDF and DWG formats. The sheets will cumulatively show the existing features and right-of-way from the survey, proposed sidewalk layout, construction limits, and anticipated utility impacts and right-of-way or easement needs, whether temporary or permanent. The conceptual plans will be submitted to private utilities for review at this submittal. Public utilities review will occur through the City's PIIP submittal process.

- Cover Sheet
- General Notes
- Legend and Abbreviations
- Typical Sections
- Control Sheets

- Key Map Sheets
- Sidewalk Construction & Removal Plan overlaid on Aerial

Toole Design will conduct a pre-application collaborative meeting with key City staff to discuss key project considerations, including but not limited to safety, user comfort, overall design principles, utility and rights-of-way impacts, quality control protocols, schedule, and deliverables that will be paramount to developing preliminary and bid plan set construction documents. This meeting will vet sidewalk alignments before preliminary design is initiated.

Task 3 Deliverables:

- 1st Submittal: Conceptual Plan full-size set in PDF and AUTOCAD format
- Conceptual Opinion of Probable Cost
- Basis of Design Report

4 PRELIMINARY DESIGN

4.1 Preliminary Design

The design team will advance the concept design to preliminary design (2nd Submittal - 60% Complete) by incorporating comments from the city review meeting and adding additional information to the project plans. One (1) site visit will be performed by two (2) staff to review conceptual comments in relation to the existing conditions. A preliminary opinion of probable cost with bid line items will be provided at this submittal with a +/- 15% level of cost contingency. The preliminary plans will be submitted again to private utilities for review at this submittal. Public utilities review will occur through the City's PIIP submittal process.

The Preliminary Design will consist of approximately 52 sheets, as shown below, to illustrate the information necessary to define the project. Any sheets not shown are not included in this scope of work. Plans will be submitted as full-size, electronic plans in both PDF and DWG formats. The sheets will cumulatively show the existing features and right-of-way from the survey, proposed sidewalk layout, construction limits, and utility impacts.

- Cover Sheet
- General Notes
- Legend and Abbreviations
- Quantity Table Sheets
- Typical Sections
- Control Sheets
- Detail Sheets
- Key Map Sheets
- Sidewalk Construction & Removal Plan with Proposed Right-of-way
- Geometry & Grading Plans with Erosion Control

As part of this submittal, Toole Design will determine locations easements (temporary and permanent) and fee simple acquisitions will be required to construct the project. These locations will be shown on the construction drawings. If right-of-way will be required to complete the project, the development of tract exhibits or maps and legal descriptions, will be negotiated and added to this scope of work as an amendment. The proposed right-of-way file in dwg format can be provided to the City for acquisition purposes.

Task 4 Deliverables:

- 2nd Submittal: Preliminary Plan full-size set in PDF and AUTOCAD format
- Preliminary Opinion of Probable Cost

5 FINAL DESIGN

5.1 Final Design (95%)

Toole Design will submit a Final Design package (3rd Submittal – 95% Complete) with final plans, specifications, and an updated opinion of probable cost for review and concurrence by the City of Bentonville. These plans will incorporate all comments and conditions received from City departments. The contract documents will include all information necessary to put the project out to bid. The specifications will only dictate items to be constructed that are not included in the City's Standard Specifications for Construction or those items differing from the IDIQ line-item bid list. Final utility relocations designed by the City will be shown. Toole Design will certify through the signature of an engineer registered in the State of Arkansas to practice "civil" engineering that these plans and subsequent 100% plans meet all applicable standards, codes, and requirements for design and public safety.

5.2 Contract (IDIQ) Documents

Toole Design will submit Contract (4th Submittal - 100% Complete) Plans along with an updated list of items, quantities, and an associated cost estimate.

Design Plan Assumptions

1. All plans will be submitted electronically in both PDF and DWG on 22" x 34" size plan sheets and will be developed using AutoCAD 2023 and/or AutoCAD Civil 3D 2023. Where geospatial coordinates are provided, they will be provided in Arkansas State Plane, North, in US Survey Feet, using the NAD 83 adjustment.
2. Any right-of-way acquisition will be handled by the City outside of this scope of work. It is anticipated a majority of the work will be within the existing right-of-way with an allowance for construction easements in some cases.
3. Proposed signs and locations will be shown on the plans and existing signs to be removed or replaced will be identified. All existing signs are not anticipated to be shown on the plans. The plans will note that the contractor is responsible for coordinating with utility companies to determine utility conflicts at new sign locations.
4. The City will provide unit costs from existing on-call bid item contracts or recent construction bids in the City for use in the cost estimate.
5. Public involvement tasks are not included in this scope.
6. No significant modifications to any roadway are expected, other than that within the immediate vicinity of proposed curb ramps.
7. All project base mapping will be developed using detailed survey data.
8. Toole Design will not provide hard copies of plans or deliverables.
9. No Right-of-way Services, including environmental clearance services, will be provided other than providing Proposed ROW design on the construction and removal plans.
10. No SWPPP Permitting Services will be provided.
11. No Temporary Traffic Control or Pavement Marking and Signage services will be provided.
12. No Environmental Services, including permitting or modeling will be provided.
13. No ARDOT coordination or permitting will be provided.
14. No Geotechnical or Material Testing Services will be provided.
15. No Archeological Services will be provided.

16. No Structural Design Services will be provided.
17. No Design of green infrastructure or other water quality devices will be provided.
18. No Retaining Wall Design or layouts will be provided.
19. No Utility Coordination outside of utility locates or City Department Reviews or Utility Design Services will be provided.
20. No Bidding Services will be provided.
21. No Storm drainage analysis, studies, or design services will be provided. Any storm pipe extensions or replacements will match existing sizes or at a size directed by the City.

Task 5 Deliverables:

- 3rd Submittal: Final Design Package (95%)
- 4th Submittal: Contract (IDIQ) Plans

6 CONSTRUCTION

6.1 Construction Observation

Toole Design will provide limited assistance during the construction phase, primarily to answer any design questions that come up or visit the site for critical situations. The consultant will also review any required shop drawing submittals. Up to ten (10) site visits, at 6 hours per visit, to the project site during construction are included in this scope of work. Any additional trips will be negotiated and review with City staff.

The consultant will also participate in the pre-construction conference, to be moderated by the City of Bentonville's designated project manager.

Task 6 Deliverables:

- Construction Site Visit Logs

TASK SCHEDULE

A preliminary project schedule is shown below. Any substantive changes to the project plan may impact the project schedule. This schedule assumes the project will not require right-of-way acquisition, utility relocation, or drainage design, and, if deemed necessary, will require extending the schedule.

Tasks	Weeks																													
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
	4/5	4/12	4/19	4/26	5/3	5/10	5/17	5/24	5/31	6/7	6/14	6/21	6/28	7/5	7/12	7/19	7/26	8/2	8/9	8/16	8/23	8/30	9/6	9/13	9/20	9/27	10/4	10/11	10/18	10/25
1 - Project Management																														
Ongoing Project Management																														
2 - Data Collection																														
Draft Survey																														
Final Survey																														
3 - Concept Design																														
Concept Design Development (15%)																														
Concept Design Review																														
4 - Preliminary Design																														
Preliminary Design Development (60%)																														
Preliminary Design Review																														
5 - Final Design																														
Final Design Development (95%)																														
IDIQ Package Development (100%)																														
6 - Construction																														
Construction Assistance																														

* The start date of each subsequent task is contingent on notice to proceed, on-schedule receipt of City comments, and approval of submittals within a timely manner.

** Substantive changes to the project plan, including but not limited to ROW acquisition, utility relocations, and drainage improvements, may impact the project schedule duration

*** Construction is anticipated to occur within November and December 2024 and into 2025.

TASK LUMP SUM FEE

The total lump sum fee shown below includes labor, overhead, profit, and expenses.

Task	Lump Sum Fee
1. Project Management	\$24,700.00
2. Data Collection (Topographic Survey)	\$3,000.00
3. Concept Design	\$29,500.00
4. Preliminary Design	\$49,500.00
5. Final Design	\$42,700.00
6. Construction	\$13,000.00
7. Expenses	\$41,300.00
TOTAL	\$203,700.00

RESOLUTION NO. _____

A RESOLUTION ALLOWING THE MAYOR AND CITY CLERK TO ENTER INTO AN AGREEMENT WITH TOOLE DESIGN, FOR PROFESSIONAL SERVICES, IN THE AMOUNT OF TWO HUNDRED THREE THOUSAND SEVEN HUNDRED DOLLARS (\$203,700.00); AND FOR OTHER PURPOSES.

WHEREAS, Parks and Recreation is requesting to enter into an agreement with Toole Design for various sidewalk projects;

WHEREAS, Toole Design was selected in accordance with Arkansas Law and the City's Purchasing Policy for the procurement of professional services;

WHEREAS, this agreement is for the design and construction oversight of multiple sidewalk projects; and

WHEREAS, this is a budgeted item.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BENTONVILLE, ARKANSAS THAT:

Section 1: The Mayor and City Clerk are authorized to enter into an agreement with Toole Design to provide professional services in the amount of two hundred three thousand seven hundred dollars (\$203,700.00);

Section 2 - Severability Provision: If any part of this Resolution is held invalid, the remainder of this Resolution shall continue in effect as if such invalid portion never existed; and

Section 3: Repeal of Conflicting Provisions: All Ordinances, Resolutions, or Orders of the City Council, or parts of the same, in conflict with this Resolution are repealed to the extent of such conflict.

PASSED this _____ day of _____, 2024.

APPROVED:

STEPHANIE ORMAN, Mayor

ATTEST:

MALORIE MARRS, City Clerk



City of Bentonville, Arkansas Agenda Item Form

Item Details

Council Meeting Date:		Submitted By:	
Phone:		For Department(s):	
Email:			

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:	
Action Recommendation & Justification:	
Additional Comments for Consideration (Optional):	

Amount for Approval:	\$
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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
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, Arkansas

City Hall

305 SW A Street Bentonville, AR 72712



PROFESSIONAL SERVICES AGREEMENT

PROJECT NAME: Professional Civil Engineering Services for the 48-inch Supply Transmission Main Extension Project for City of Bentonville Water Utility Department (BWU) ("PROJECT")

THIS AGREEMENT ("AGREEMENT") is made in Benton County, Arkansas, by and between the City of Bentonville, Arkansas, hereinafter referred to as "CITY", and Freese and Nichols, Inc., hereinafter referred to as "PROFESSIONAL CONSULTANT" (collectively, the "PARTIES").

The PARTIES have caused this AGREEMENT to be effective this ____ day of _____, 20____ ("EFFECTIVE DATE").

RECITALS:

- A. WHEREAS, the CITY has a need for professional civil engineering services for the construction of 48-inch Supply Transmission Main Extension Project; and
- B. WHEREAS, The CITY has selected the PROFESSIONAL CONSULTANT and negotiated this AGREEMENT in accordance with the City's Purchasing Policy; and
- C. WHEREAS, the CITY wishes to contract for Professional Services; and
- D. WHEREAS, The PROFESSIONAL CONSULTANT has the skill, experience, ability, background, certifications and knowledge to provide these services; and
- E. WHEREAS, The PROFESSIONAL CONSULTANT wishes to perform such professional services under this AGREEMENT with the CITY.

NOW, THEREFORE, in consideration of the terms in this AGREEMENT, the CITY and PROFESSIONAL CONSULTANT agree to the following:

ARTICLE I - PROJECT DESCRIPTION

The PROJECT shall be as described in APPENDIX A, "Proposal and Scope of Work", attached hereto and incorporated herein by reference.

ARTICLE II - SCOPE OF SERVICE

Upon issuance of a written Notice to Proceed by the CITY, PROFESSIONAL CONSULTANT agrees to provide the CITY the necessary professional services related to the PROJECT, as set forth in APPENDIX A, "Proposal and Scope of Work", attached hereto and incorporated herein by reference.

ARTICLE III - STANDARD OF CARE

PROFESSIONAL CONSULTANT shall at all times material hereto adhere to the generally accepted standard of care typically exhibited by similarly situated professionals performing similar scope(s) of service on projects of like size, scope, nature, cost, schedule, and complexity, at the same time and in the same general regional locale ("Standard of Care").

ARTICLE IV - ADDITIONAL SERVICES

- A. Any service outside of the work described herein or included by reference hereto must be pre-approved by the CITY and executed as an AMENDMENT to this AGREEMENT by the Parties prior to any such work being completed; any such AMENDMENT shall be in accordance with the CITY'S purchasing laws and guidelines and may require approval from the Bentonville City Council.
- B. PROFESSIONAL CONSULTANT shall make no claims for additional services or changes in the services until an AMENDMENT has been fully executed by the Parties.

ARTICLE V - SCHEDULE OF FEES, SERVICES AND PAYMENT

- A. The term of this AGREEMENT shall commence on the EFFECTIVE DATE and shall proceed in accordance with APPENDIX A, "Proposal and Scope of Work", attached hereto and incorporated herein by reference.
- B. The cost of this AGREEMENT shall be in accordance with APPENDIX A, more specifically according to the "Fee Schedule Summary" Table.
- C. The cost of this AGREEMENT shall not exceed \$1,145,670 without approval by the Bentonville Utility Board and Bentonville City Council.
- D. CITY agrees to pay PROFESSIONAL CONSULTANT for all services authorized by inclusion in this AGREEMENT which have been properly performed by PROFESSIONAL CONSULTANT in accordance with this AGREEMENT and approved by CITY.
- E. All fees paid to PROFESSIONAL CONSULTANT shall be based on invoices submitted by PROFESSIONAL CONSULTANT for work performed under this AGREEMENT, less any previous payments. PROFESSIONAL CONSULTANT shall submit invoices for services related to this AGREEMENT on a monthly basis.

- F. CITY reserves the right to delay, without penalty, any partial payment when, in the opinion of the CITY, PROFESSIONAL CONSULTANT has not made satisfactory progress on the Project based on the SCOPE. If CITY objects to any portion of an invoice, the CITY shall notify PROFESSIONAL CONSULTANT and shall pay all other portions of the invoice which are not in dispute. In the event of dispute, CITY and PROFESSIONAL CONSULTANT shall immediately make every effort to settle the disputed portion of the invoice.
- G. In the event that the CITY becomes credibly informed that any representations of PROFESSIONAL CONSULTANT provided in its invoicing are wholly or partially inaccurate, CITY may withhold payment of sums then, or in the future, otherwise due to PROFESSIONAL CONSULTANT until the inaccuracy and the cause thereof is corrected to the CITY's reasonable satisfaction.
- H. If the CITY fails to make any payment, not in dispute, due to PROFESSIONAL CONSULTANT within thirty (30) days after receipt of an invoice, then the amount due to the PROFESSIONAL CONSULTANT will increase at the lesser of one percent (1 %) per month or the maximum amount allowed by law after the 30th day. In addition, PROFESSIONAL CONSULTANT may, after giving seven (7) days' written notice to CITY, suspend its services and any deliverables until PROFESSIONAL CONSULTANT has been paid in full for all amounts outstanding more than thirty (30) days.

ARTICLE VI - INSURANCE

- A. PROFESSIONAL CONSULTANT shall during the term hereof maintain in full force and effect the following insurance:
 - 1. A comprehensive general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the PROFESSIONAL CONSULTANT's performance of services pursuant to this AGREEMENT with a combined single limit of not less than \$1,000,000.00 per occurrence and \$2,000,000 in the aggregate for injury to persons (including death), and for property damage;
 - 2. A policy of automobile liability insurance covering any vehicles owned and/or operated by PROFESSIONAL CONSULTANT, its officers, agents, and employees, and used in the performance of this AGREEMENT with policy limits of not less than \$1,000,000.00 combined single limit and aggregate for bodily injury and property damage;
 - 3. Statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of PROFESSIONAL CONSULTANT's employees involved in the provision of services under this AGREEMENT with policy limit of not less than \$1,000,000.00; and
 - 4. Professional Liability/Errors and Omissions coverage covering negligent acts, errors and omissions in the performance of professional services with policy limit of not less than \$1,000,000.00.
- B. All insurance and certificate(s) of insurance shall contain the following provisions:
 - 1. Include CITY as additional insured as to all applicable coverage with the exception of Workers Compensation Insurance and Professional Liability/Errors and Omissions coverage; and
 - 2. Provide for at least thirty (30) days prior written notice to CITY for cancellation or non-renewal of the insurance;
 - 3. Provide for a waiver of subrogation against CITY for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance, except for Professional Liability/Errors and Omissions coverage.

- C. PROFESSIONAL CONSULTANT shall provide 30 day written notice to CITY of any material change of or to the insurance required herein.
- D. All insurance companies providing the required insurance shall be authorized to transact business in Arkansas and rated at least "A" by AM Best or other equivalent rating service. A certificate of insurance evidencing the required insurance and all endorsements required by this Agreement shall be submitted prior to commencement of services.
- E. In the event that additional or greater insurance requirements are warranted, these requirements shall be included as an Appendix, which will be attached hereto and incorporated by reference.

ARTICLE VII - RIGHT OF ACCESS

- A. CITY will obtain and/or furnish right-of-access for PROFESSIONAL CONSULTANT to perform any required studies, surveys, tests or other necessary investigations in relation to the PROJECT.
- B. PROFESSIONAL CONSULTANT will take reasonable precautions to minimize damage to the personal or real property in the performance of such surveys, tests, studies and investigations.
- C. CITY recognizes that PROFESSIONAL CONSULTANT's operations and use of equipment may unavoidably alter existing conditions or affect the environment at the PROJECT site. The cost of repairing such damage shall be the responsibility of PROFESSIONAL CONSULTANT, at no additional cost to the CITY. In the event that PROFESSIONAL CONSULTANT fails to correct such damages, CITY is entitled to utilize CITY forces or other labor to repair the damage; any costs incurred by CITY for such work shall be deducted from the monies due to PROFESSIONAL CONSULTANT.

ARTICLE VIII - RECORDS AND RETENTION

- A. All surveys, studies, proposals, applications, drawings, plans, specifications and other documents, including those in electronic form, prepared by PROFESSIONAL CONSULTANT and its PROFESSIONAL CONSULTANTS, subcontractors, agents, representatives, and/or employees in connection with this AGREEMENT ("PROJECT DOCUMENTS") are intended for the use and benefit of CITY. PROFESSIONAL CONSULTANT and its PROFESSIONAL CONSULTANTS, subcontractors, agents, representatives, and/or employees shall be deemed the authors of their respective part of the PROJECT DOCUMENTS. Notwithstanding anything to the contrary, CITY shall own, have, and retain all rights, title and interest in and to all PROJECT DOCUMENTS, whether in draft form or final form, which are produced at CITY's request or otherwise produced from PROFESSIONAL CONSULTANT's performance of the work described herein for CITY. The CITY's ownership of PROJECT DOCUMENTS shall not apply to PROFESSIONAL CONSULTANT's proprietary standard details that were developed by the PROFESSIONAL CONSULTANT prior to the commencement of this PROJECT.
- B. CITY shall have full authority to reuse, reproduce, publish, disclose and distribute PROJECT DOCUMENTS, as needed, according to Arkansas State Law.
- C. PROFESSIONAL CONSULTANT shall, upon completion of the services and full payment for the PROFESSIONAL CONSULTANT'S services by the CITY, or earlier termination and appropriate compensation as provided by this AGREEMENT, provide the CITY with all PROJECT DOCUMENTS prepared by PROFESSIONAL CONSULTANT pursuant to this AGREEMENT in formats requested by the CITY.

- D. All instruments of service (including plans, specifications, drawings, reports, designs, computations, computer programs, estimates, surveys, other data or work items, etc.) prepared under this AGREEMENT shall be submitted for approval to the CITY. All instruments of service shall be professionally sealed in accordance to applicable laws or at CITY's request.
- E. Acceptance and approval of the PROJECT DOCUMENTS by the CITY shall not constitute nor be deemed a release of the responsibility and liability of PROFESSIONAL CONSULTANT, its employees, associates, agents and PROFESSIONAL CONSULTANT's for the accuracy or competency of their designs, working drawings and specifications, or other documents and work; nor shall such approval be deemed to be an assumption of such responsibility by the CITY for any defect in the designs, working drawings and specifications, or other documents prepared by PROFESSIONAL CONSULTANT, its employees, contractor, agents and PROFESSIONAL CONSULTANT's.
- F. PROFESSIONAL CONSULTANT will retain the PROJECT DOCUMENTS for a period of three years following project completion. During this three year period, any requests for document recovery and reproduction will be assessed a fee in accordance with PROFESSIONAL CONSULTANT's FEES.

ARTICLE IX - SAFETY

- A. CITY agrees to inform PROFESSIONAL CONSULTANT of any applicable site safety procedures and regulations known to CITY as well as any special safety concerns or dangerous conditions at the site of which the CITY is aware, which PROFESSIONAL CONSULTANT shall communicate to its employees. PROFESSIONAL CONSULTANT and its employees shall adhere to such procedures and regulations once notice has been given by the CITY.
- B. Unless specifically provided in the SCOPE, PROFESSIONAL CONSULTANT shall not have any responsibility for overall job safety at the site. If in the PROFESSIONAL CONSULTANT's opinion, its field personnel are unable to access required locations or perform required services in conformance with applicable safety standards, PROFESSIONAL CONSULTANT may immediately suspend performance until such safety standards can be attained.
- C. PROFESSIONAL CONSULTANT agrees to indemnify and hold harmless the CITY for any safety conditions that may arise out of PROFESSIONAL CONSULTANT's performance of this AGREEMENT.

ARTICLE X - TERMINATION

- A. CITY may suspend or terminate this AGREEMENT for cause or without cause at any time by giving written notice to PROFESSIONAL CONSULTANT. In the event suspension or termination is without cause, payment to PROFESSIONAL CONSULTANT, in accordance with the terms of this AGREEMENT, will be made on the basis of services reasonably determined by the CITY to be satisfactorily performed to the date of suspension or termination. Such payment will be due upon delivery of all instruments of service to CITY.
- B. Should the CITY require a modification of this AGREEMENT with the PROFESSIONAL CONSULTANT, and in the event the CITY and PROFESSIONAL CONSULTANT fail to agree upon a modification to this AGREEMENT, the CITY shall have the option of terminating this AGREEMENT and the PROFESSIONAL CONSULTANT's services hereunder at no additional cost other than the payment to PROFESSIONAL CONSULTANT, in accordance with the terms of this AGREEMENT, for the services reasonably determined by the CITY to be properly performed by PROFESSIONAL CONSULTANT prior to such termination date.

- C. If, for whatever reason adequate funding is not made available by CITY to support or justify continuation of the level of services to be provided by PROFESSIONAL CONSULTANT under this AGREEMENT, CITY may terminate or reduce the amount of services to be provided by PROFESSIONAL CONSULTANT under this AGREEMENT. In such event, CITY will notify PROFESSIONAL CONSULTANT in writing at least thirty (30) days in advance of such termination or reduction of services for lack of funds.
- D. In no event shall the CITY pay to PROFESSIONAL CONSULTANT fees for termination outside of payment for services reasonably determined by the City to be properly performed prior to termination.

ARTICLE XI - INDEMNIFICATION

- A. For purposes of this AGREEMENT, PROFESSIONAL CONSULTANT agrees to indemnify, hold harmless the CITY, its officers and employees from any loss, damage, liability or expense, of any nature whatsoever to the extent caused by the negligence, willful misconduct, or other actionable fault of PROFESSIONAL CONSULTANT, its affiliates, subsidiaries, employees, agents, assignees, and subcontractors and their respective employees and agents. PROFESSIONAL CONSULTANT is not required hereunder to defend the CITY, its officers, appointees, employees, or agents from assertions that they were negligent, nor to indemnify and hold them harmless from liability based on the CITY's negligence
- B. Nothing contained herein shall waive any governmental immunity CITY may be entitled to by law.
- C. This provision shall survive the termination of this AGREEMENT.

ARTICLE XII - CONTINGENCY CLAUSE

- A. NOT USED

ARTICLE XIII - RELATIONSHIP OF THE PARTIES

It is understood and agreed by and between the parties that the PROFESSIONAL CONSULTANT, in satisfying the conditions of this AGREEMENT, is acting independently, and that the CITY assumes no responsibility or liabilities to any third party in connection with PROFESSIONAL CONSULTANT's actions. All services to be performed by the PROFESSIONAL CONSULTANT pursuant to this AGREEMENT shall be in the capacity of an Independent Contractor, and not as an agent or employee of CITY. The PROFESSIONAL CONSULTANT shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this AGREEMENT. There is no intended third party beneficiary to the AGREEMENT and nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

ARTICLE XIV - DISPUTE RESOLUTION

- A. CITY and PROFESSIONAL CONSULTANT agree that disputes relative to the services will first be addressed by negotiations between the Parties. If direct negotiations fail to resolve the dispute, the Party initiating the claim that is the basis for dispute may take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute, PROFESSIONAL CONSULTANT will proceed with the services as per this AGREEMENT as if no dispute existed, and CITY will continue to make payment for PROFESSIONAL CONSULTANT's completed services; and provided further that no dispute will be submitted to arbitration without both Parties' express written consent.

ARTICLE XV - OPINIONS OF PROBABLE COST

- A. Since the PROFESSIONAL CONSULTANT has no control over the cost of labor, materials, equipment or services furnished by others, or over methods of determining prices, or over competitive bidding or market conditions, the PROFESSIONAL CONSULTANT's estimates of PROJECT costs and construction costs provided for herein are to be made on the basis of the PROFESSIONAL CONSULTANT's experience and qualifications and represent the PROFESSIONAL CONSULTANT's judgement in accordance with the "Standard of Care". The PROFESSIONAL CONSULTANT cannot and does not guarantee that proposals, bids or actual PROJECT or construction costs will not vary from estimates prepared by the PROFESSIONAL CONSULTANT.
- B. The CITY understands that the construction cost estimates developed by the PROFESSIONAL CONSULTANT do not establish a limit for construction contract amount. If the actual amount of the low construction bid exceeds the construction budget established by the CITY, the PROFESSIONAL CONSULTANT will not be required to re-design the PROJECT or any part thereof without additional compensation.

ARTICLE XVI - APPLICABLE LAWS

PROFESSIONAL CONSULTANT shall comply with all Federal, State, Local laws, ordinances, resolutions, specifications, regulations and all other laws or regulations relating or applicable to service to be performed under this AGREEMENT. Interpretation of this AGREEMENT and disputes arising out of or related to this AGREEMENT will be subject to and governed by the laws of the State of Arkansas. Jurisdiction and venue for any suit arising out of or related to this AGREEMENT will be in the District Court of Benton County, Arkansas.

ARTICLE XVII - PRECEDENCE

This AGREEMENT shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice to proceed, or any other like document regarding the PROJECT or PROFESSIONAL CONSULTANT's services.

ARTICLE XVIII - SEVERABILITY

- A. In the event that one or more provisions contained herein shall, for any reason, be deemed invalid, illegal, void or unenforceable, in whole or in part, the remaining provisions hereof shall remain in full force and effect.
- B. In the event that any provision hereof is in conflict with any statutory provision of the State of Arkansas, said provision, which may be in conflict therewith, shall be deemed inoperative, null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provisions; provided, however, that the remaining provisions of this AGREEMENT will be unaffected and will continue to be valid and enforceable.

ARTICLE XIX - SURVIVAL OF OBLIGATIONS

The obligations of the Parties contained in this AGREEMENT, which by their nature survive after the term of the AGREEMENT, shall survive the termination or expiration of this AGREEMENT and continue indefinitely or as otherwise provided by this AGREEMENT.

PROFESSIONAL SERVICE AGREEMENT, CITY OF BENTONVILLE, ARKANSAS

ARTICLE XX – ENTIRE AGREEMENT

This AGREEMENT, including all documents and Appendices included by reference herein, constitutes the entire agreement between the PARTIES and supersedes all prior agreements, whether oral or written, covering the same subject matter. This AGREEMENT may not be modified or amended except in writing, mutually agreed upon and accepted by both PARTIES to this AGREEMENT.

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The cost of this AGREEMENT including all reimbursable expenses as described in the FEES AND SCHEDULE, **shall not exceed** one million one hundred forty-five thousand six hundred seventy dollars (\$1,145,670), unless otherwise approved by the CITY through an official AMENDMENT agreed and executed by CITY and PROFESSIONAL CONSULTANT.

IN WITNESS THEREOF, the CITY and PROFESSIONAL CONSULTANT have executed this AGREEMENT, the EFFECTIVE DATE of which is indicated on page 1 of this AGREEMENT.

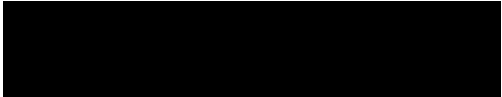
CITY OF BENTONVILLE
CITY

BY

MAYOR
TITLE

DATE SIGNED

FREESE AND NICHOLS, INC.
PROFESSIONAL CONSULTANT



BY

PRINCIPAL/VICE-PRESIDENT
TITLE

February 27, 2024
DATE SIGNED

APPENDIX A

PROPOSAL AND SCOPE OF WORK

APPENDIX A SCOPE OF SERVICES AND RESPONSIBILITIES OF OWNER

PROJECT DESCRIPTION

The City of Bentonville Water Utilities (BWU) (Owner) is proceeding with design and construction of Project 1: 48-inch Supply Transmission Main Extension (The Project) identified in the 2024 Capital Improvement Program (prepared by Garver Engineering). A DRAFT copy of this Capital Improvements Program was issued to BWU on 11/29/2023. The Project will include the planning and design for the installation of a new 48-inch water transmission main to be constructed from near the intersection of Southwest 28th Street and Southwest I and the intersection of Southwest 8th Street and Southwest I, where it will connect to the existing system near the I Street Tank site. The Project will include the following elements:

1. Approximately 9,500 linear feet (generally following the I Street corridor) of 48-inch diameter pipeline from along the selected route alternative, including air valves, blowoff valves, road and drainage crossings, connections at the I Street Tank site plus pre-determined connection points within the transmission system, and cathodic protection.
 - a. Connection to the current Bentonville Water Utilities transmission pipeline, near 28th and I Street SW.
 - b. Connection to the I Street Tank/Pump Station.
 - c. 36-inch crossing under Walton (to the E) just S of the I Street Tank/Pump Station with connection to existing lines on the E side.
 - d. Design of two west facing stub-outs, one just south of the I Street Tank/Pump Station and one just south of nearby Murphy USA gas station (note: only one of these stub-outs will be constructed, for a future connection).
2. An altitude valve is expected to be installed within a concrete vault outside the Tiger Tower located at 1601 NW 12th Street.
3. The pipeline will cross Highway 102 and will require ARDOT Permitting
4. If feasible, the pipeline will be designed to meet the terms and conditions of Nationwide Permit (NWP) 58, *Utility Line Activities for Water and other Substance*, without requiring the preparation and submittal of pre-construction notification (PCN) to the U.S. Army Corps of Engineers (USACE).

The Project will include the conventional design-bid-build delivery method as a single construction contract. Construction Phase and Resident Project Representation Services are not included in the contract and may be added by a future amendment.

ARTICLE I

BASIC SERVICES: FNI shall render the following professional services:

A. PROJECT MANAGEMENT: Upon execution of this Agreement, FNI shall:

1. Conduct kickoff meeting to review scope, schedule, and budget; determine any special conditions that may affect design and/or construction; discuss administrative requirements of Owner; and to develop design criteria.
2. Prepare meeting agendas and minutes and attend the following meetings:
 - a. Attend up to twelve (12) monthly project coordination meetings with Owner throughout the alignment and design phase scope of the project.
 - b. Attend Two (2) meetings with third parties, including other consultants providing services to Owner.
 - c. Attend Four (4) meetings with utility providers needed for the project.

- d. Attend Four (4) workshops for review of milestone design submittals.
 - e. Attend One (1) public meeting for the Project and prepare engineering display documents needed for the public meetings.
 - f. Attend Two (2) meetings with other City of Bentonville departments as needed for the project.
3. Prepare a Microsoft Project schedule and provide monthly updates including necessary revisions to bring the Project back on schedule if needed. The project schedule will not be resource loaded.
 4. To keep the public informed, FNI will prepare a project summary document, to be hosted by City of Bentonville and accessed within the existing City of Bentonville/Bentonville Water Utilities website.
 - a. FNI will print 3.5x2in cards with the Bentonville logo, the project title, a QR code and the text "Scan Me for Project Information".
 - b. The cards will be carried by Engineer staff working on the project, in the field, and can be given to members of the public that may inquire about the work. The QR code will link to the project website that would include:
 - 1) Basic project description (history and need)
 - 2) Basic project map
 - 3) Typical cross section of proposed pipe
 - 4) Proposed schedule
 - 5) Basic description of planned construction
 - 6) How to contact BWU for additional information
 5. Prepare monthly reporting including status report, recent activities, upcoming activities, action items log, decisions made log, budget updates, schedule updates, and scope changes.
 6. Prepare monthly invoices.
 7. Deliverables include the following:
 - a. Agendas and minutes for all meetings
 - b. Project schedule updated monthly
 - c. Monthly Report
 - d. Monthly invoices

All deliverables will be electronic.

B. ALIGNMENT STUDY PHASE: FNI shall provide professional services in this phase as follows:

1. Advise Owner as to the necessity of Owner's providing or obtaining data or services from others and assist Owner in connection with any such services. Collect and review existing data, reports, mapping, and records from Owner. Review documents associated with the project. Provide analyses of Owner's requirements for the Project, including planning, surveys, site evaluations and comparative studies of prospective routes and solutions.
2. Prepare a desktop route study for the pipeline. Obtain GIS mapping of the route, where available. Study shall include, delivery point locations, construction costs, conflicts with existing infrastructure, land costs, environmental considerations, accessibility, and permitting requirements. The alignment study will include site visits to points of public access. Furnish 11" x 17" map books at 1" = 400 feet scale.
3. Prepare a memo containing recommended pipeline route, schematic layouts, and conceptual design criteria with appropriate exhibits to indicate the considerations involved and alternative solutions (where indicated) and setting forth FNI's findings and recommendations with an Opinions of Probable Construction Cost (OPCC) for the Project.

4. Provide electronic copies of documents. Owner will facilitate review within BlueBeam (or other service) and FNI will participate in such review virtual or in person, as needed, with Owner. Receive and address Owner's comments and issue final report.
5. Deliverables for the ALIGNMENT STUDY PHASE include:
 - a. Alignment Study Memo including Map Book

All deliverables will be electronic.

C. PRELIMINARY DESIGN PHASE. After Owner has accepted the Alignment Study Memo and has issued written authorization to proceed with the Preliminary Design Phase, FNI shall:

1. Conduct a workshop with Owner's staff to discuss equipment selection, construction and pipe materials, operation and maintenance criteria, Owner's preferences, and alternatives to be studied. FNI will bring lead designers from the major project elements to the workshop, in person or via Teams.
2. Prepare preliminary layouts and sections for altitude valve and vault to include conceptual design and layout of structural, electrical, and HVAC. Design to include radio transmission to remote monitor and control the altitude valve and vault monitoring. It will include a single point-to-point radio path analysis (no repeater sites included).
3. Based upon the Alignment Memo, FNI will proceed with.
 - a. Provide GIS alignment to surveyor to prepare property boundary information in GIS format.
 - b. FNI will review alignment in the field and make modifications to minimize conflicts and determine final pipeline alignment. Final alignment will be based upon property considerations, constructability, hydraulics, delivery point locations, construction costs, conflicts with existing infrastructure, land costs, environmental considerations, accessibility, and permitting requirements.
 - c. FNI will meet with third party road authorities (ARDOT), utility owners, development review and approval departments, and other agencies having jurisdiction over alignment approval. Meetings will be to coordinate the third-party requirements and seek approval of the final alignment. FNI will gather mapping of existing utilities to assist in route selection and pipeline design.
 - d. FNI will update GIS mapping based upon the field alignment selection and provide copies to Owner. FNI will receive comments from Owner and finalize the pipeline alignment, update GIS Mapping and upload electronic copies of final alignment map books via Bluebeam or Owner's Etrackit system.
4. Prepare Preliminary Design Report (PDR) consisting of final design criteria, codes and standards, permitting requirements, evaluation of alternatives, material selection, project phasing and bid packages, updated project schedule, Opinion of Probable Construction Cost (OPCC), preliminary drawings and outline specifications.
5. Provide electronic copies of the PDR to the Owner and present PDR to Owner. Receive Owner comments, make modifications to the PDR.
6. Deliverables for the PRELIMINARY DESIGN PHASE include:
 - a. Draft Copy of PDR
 - b. Final Copy of PDR

- c. Draft Copy of Pipeline Alignment Map Books, along with digital GIS shapefiles.
- d. Final Copy of Pipeline Alignment Map Books, along with digital GIS shapefiles.

All deliverables will be electronic.

D. FINAL DESIGN PHASE: After approval of the PDR and final pipeline alignment, FNI shall provide professional services in this phase as follows:

1. Assist City of Bentonville Procurement office in preparation of front end documents per Owner standards, including bid documents, general conditions, and special conditions for the construction and equipment packages. Meet with Owner to resolve review comments, and revise documents accordingly.
2. Advise Owner of need for and recommend scope of additional Special Services, not already included in Article II of this Scope of Work. The cost of such additional Special Services shall be paid by Owner and are not included in the services performed by FNI.
3. Furnish such information necessary to utility companies whose facilities may be affected, or services may be required for the Project. Easements may be needed because of impacts from the project, for Bentonville electric, streets and drainage. Easements for utilities companies will be provided as a Special Service.
4. Prepare revised OPCC at the 60% and 95% submittals.
5. 60 % Review: Prepare drawings, specifications, construction contract documents, designs, and layouts of improvements to be constructed. Prepare bidder's proposal forms (project quantities) of the improvements to be constructed. Forward electronic copies of drawings, specifications, and bid proposals marked "Preliminary" to Owner via a BlueBeam session. FNI will meet with the Owner to present the plans and specifications and receive comments. Review documents will include dimensional layout drawings, plans, sections and elevations for all the trades, typical details, and most special details. The draft specifications will include major equipment items. Pipeline plans will include plan and profile sheets, pipeline appurtenances, and typical details. FNI will receive comments from Owner and address comments in the 95% Review. Following notes relative to the 60% and all following sets prepared for review.
 - a. Plan Sheets will be prepared at the standard size of 24"x36", when considered "Full-Size".
 - b. Set will include design of connections outlined above.
 - c. Set will include design of the altitude valve to be installed at the Tiger Tank. The following characteristics are assumed relative to that valve:
 1. Power is nearby and available.
 2. Control, SCADA and Monitoring is nearby and available.
 - d. Set will include sketches of the vault housing the Tiger Tank altitude valve. The following characteristics are assumed relative to the vault:
 1. The vault can be built on land already owned by the BWU.
 2. The vault will not need to be larger than 10-ft x 10-ft x 10ft and the top of the vault can be constructed more-or-less at grade.
 3. Local groundwater will not impact vault design or construction.
6. 95 % Review: Forward electronic copies of drawings, specifications, and bid proposals marked "Preliminary" to Owner via a Bluebeam session. FNI will meet with the Owner to present the plans and specifications and receive comments. Review documents will include all plans and specifications with minor corrections and notes remaining. FNI will receive comments from

Owner and address comments in the Final Draft. Upon final approval by Owner, FNI will provide Owner electronic copies of “Final” plans and specifications.

7. Upload electronic copies of the 60% and 95% Deliverables to Bluebeam or Owner’s Etrackit system for concurrent review by other city departments. Receive Owner comments, make modifications to the 60% and 95% Deliverables.
8. Prepare applications for routine permits such as road crossing permits, building code design reviews (if any), and ADH Approval. Environmental and United States Army Corp of Engineers (USACE) permitting are included as Special Service in Article II. Preparation of applications and supporting documents for government grants or for planning advances is an Additional Service. The Owner will pay for the costs associated with any road crossing permits and/or ADH construction permitting.
9. Deliverables for the FINAL DESIGN PHASE include:
 - a. Routine Permit Applications (Floodplain, Bentonville Road Crossing, Building Permits, ARDOT, ADH Approval)
 - b. OPCC at 60% and 95% submittals
 - c. 60% submittal of Plans and Specifications
 - d. 95% submittal of Plans and Specifications
 - e. Final Plans and Specifications

All deliverables will be electronic.

E. BID PHASE: Upon completion of the design services and approval of “Final” drawings and specifications by Owner, FNI will proceed services in this phase as follows:

1. City of Bentonville Purchasing Department will review and approve all documents prior to bidding. Issue a Notice to Bidders to prospective contractors and vendors listed in FNI’s database of prospective bidders, and to selected plan rooms. Owner will utilize their internal bidding website for advertising and notifying construction news publications and publishing appropriate legal notice. The cost for publications, if any, shall be paid by Owner.
2. Prepare responses to questions from potential Bidders. Prepare needed Addenda and provide to Owner for posting to their bidding website.
3. Assist the Owner in conducting a pre-bid conference for the construction projects and coordinate responses with Owner. Response to the pre-bid conference will be in the form of addenda issued after the conference.
4. Assist Owner in the opening, tabulating, and analyzing the bids received. Review the qualification information provided by the apparent low bidder to determine if, based on the information available, they appear to be qualified to construct the project. Recommend award of contracts or other actions as appropriate to be taken by Client. It is anticipated that Pre-qualification of all prospective bidders and issuing a list of eligible bidders prior to the bid opening is included as part of the project scope.
5. Assist Owner in the preparation of Contract Documents for construction contracts, which will include information from the selected bidders’ documents, legal documents, and addenda bound for execution by the Owner and Contractor. Distribute copies to the Contractor with a Notice of Award that includes directions for the execution of these documents by the Contractor. Paper sets of the documents can be provided as an additional service.

6. Furnish Contractor drawings and specifications for construction pursuant to Contract.
7. Deliverables for the BID PHASE include:
 - a. Notice to Bidders
 - b. Responses to Bidders questions and Addenda
 - c. Electronic copies of plans, specifications, bidding documents, and addenda
 - d. Recommendation of Award with tabulation of bids
 - e. Notice of award to selected bidder
 - f. Conformed contract documents for execution
 - g. Notice of Award
 - h. Executed Contract

All deliverables will be electronic.

ARTICLE II

SPECIAL SERVICES: FNI shall render the following professional services, which are not included in the Basic Services described above, in connection with the development of the Project:

A. ENVIRONMENTAL SERVICES:

1. FNI Environmental Scientists will coordinate with the design team during the alignment study and conduct an environmental desktop review to identify potential Nationwide Permit (NWP) Pre-Construction Notification (PCN) triggers in accordance with Section 404 of the Clean Water Act. FNI will also prepare a section of the alignment study report on preliminary environmental permitting findings and recommendations.
2. Once the alignment has been selected and the limits of construction (LOC) have been defined, FNI will:
 - a. Develop field maps using aerial photos, USGS topographic maps, U.S. Fish and Wildlife Service (USFWS) National Wetland Inventory maps, and U.S. Geological Survey (USGS) National Hydrography Dataset (NHD) information, and upload this information to a GPS unit for use during the pedestrian survey.
 - b. Conduct a pedestrian survey within the proposed LOC. The survey will include the documentation and delineation of "waters of the U.S.", such as streams, wetlands, or open water bodies, regulated by U.S. Army Corps Engineers (USACE) within the LOC. The boundaries of these features will be delineated with a GPS capable of sub-meter accuracy and wetlands will be delineated per the USCAE 1987 Wetlands Delineation Manual. The survey will also include the identification of potential habitat for any federally listed threatened or endangered species.
3. At 60% design, FNI Environmental Scientists will prepare an environmental permitting memorandum documenting the results of the pedestrian survey and an opinion if the project meets the terms and conditions of Nationwide Permit (NWP) 58, Utility Line Activities for Water and Other Substances, without the preparation and submittal of a Pre-construction Notification (PCN) to the USACE. If a PCN is required, FNI can provide this as an additional service.
4. Per Title 13.6.304 of the Arkansas Code, all state agencies, including municipalities, shall cooperate fully with the Arkansas Archeological Survey (AAS) in the preservation, protection, excavation, and evaluation of artifacts and sites on properties owned or controlled by the state, county, or municipality. Additionally, in accordance with NWP General Condition 20, *Historic Properties*, applicants must consider the effects of activities requiring the issuance of a permit that may have the potential to effect properties listed in or eligible for the National Register of Historic Places (NRHP), including archeological sites. If the project would include ground disturbance on properties owned by a state entity or would require authorization under Section 404 of the Clean Water Act, coordination with the AAS would be required. If coordination is required, once the LOC has been defined FNI's archeologist will prepare a letter describing the project and requesting review by the AAS to determine if a cultural resources survey will be required for the project. This task does not include a cultural resources survey; if required, it can be provided as an additional service.
5. FNI Environmental Scientists will coordinate with the Owner and design team on the findings of the environmental permitting evaluation and provide environmental input during design to avoid potential PCN triggers or other environmental concerns.
6. Deliverables include:

a. Environmental Permitting Memorandum

B. GEOTECHNICAL ENGINEERING: FNI will render the following geotechnical engineering professional services in connection with the project for purposes of providing geotechnical data and information on the anticipated subsurface conditions at select locations along the pipeline alignment. The services will include:

1. Field Exploration

- a. Drill up to 9 exploratory borings along the planned alignment for evaluation and identification of subgrade soils. The borings will be drilled to termination depths of 30 feet below existing grade.
- b. Conduct one (1) site visit to mark proposed boring locations and determine and coordinate access. The Engineer will coordinate with the BWU and will notify local utility location services of the planned borings prior to commencement of the field exploration activities in order to locate existing underground utilities within the area.
- c. Subcontract with a drilling contractor to drill the borings and collect samples of the subsurface materials. Track mounted rig will be used as necessary.
 - 1) The borings will be advanced using standard rotary drilling equipment with continuous-flight augers (solid or hollow stem) or rotary wash methods. Subsurface samples will be collected using 3-inch diameter Shelby tubes for cohesive soils and a 2-inch diameter split-spoon sampler in conjunction with the Standard Penetration Test (SPT) for intermediate and non-cohesive soils. Rock and rock-like materials will be cored and/or tested in situ, as appropriate for the material.
 - 2) Groundwater observations within the borings will be recorded at the time of drilling and at the completion of drilling and sampling.
 - 3) The borings will be backfilled with auger cuttings upon completion of drilling and sampling.
- d. An Engineer or Geologist experienced in logging borings will direct the drilling, log the borings, and handle and transport the samples. Visual classification of the subsurface stratigraphy shall be provided according to ASTM D2488 and the Unified Soil Classification System (USCS) during drilling and sampling.

2. Laboratory Testing

- a. Testing shall be performed by a geotechnical testing subcontractor on samples obtained from the borings to determine soil classification and pertinent engineering properties of the subsurface materials.
- b. The Engineer will select samples for laboratory testing, assign tests, and review the test results.
- c. Laboratory tests will be appropriately assigned for the specific subsurface materials encountered during exploration, but are expected to include:
 - 1) Classification tests (liquid and plastic limits and percent passing the no. 200 sieve or gradation)
 - 2) Moisture content
 - 3) Unit dry weight
 - 4) Unconfined compressive strength

3. Reporting

- a. Prepare a Geotechnical Data Report for inclusion as technical data within the construction documents. The report will include the following:
 - 1.) Appendix with the boring locations, boring logs, laboratory test results, and a key to the symbols used.
 - 2.) General discussion of subsurface soil exploration and laboratory test results.
- b. Submittals will include an electronic PDF copy of the Geotechnical Data Report.

- C. **TOPOGRAPHIC SURVEYING:** FNI shall retain (as a subconsultant) and monitor the services of a surveying firm (CEI) to perform surveying services for the project. The following survey shall be provided:
1. CEI shall perform a Topographical Survey of provided route at a 100-foot swath, consisting of 1' contours derived from a digital terrain model and shown in accordance with the National Mapping Standards. The topographic survey will include trees of 6" breast height diameter or greater and will be identified as Coniferous or Deciduous.
 2. CEI field crews will locate pertinent monuments to determine the property lines and rights-of-ways according to provided deeds and surveys. Easements will be shown per plats and title work ordered on parcels being crossed outside of the right-of-way. No missing monuments will be set, and survey will not meet "Arkansas Minimum Standards for Property Surveys and Plats". Scope assumes 9,500-linear feet of survey down I Street. If route or length changes, an amendment may be required.
 3. CEI will update base map and design survey per title work items as needed.
- D. **EASEMENT DOCUMENTS:** FNI shall retain (as a subconsultant) and monitor the services of a surveying firm to perform easement document services (Standard City of Bentonville easement form shall be used) for the project. The following shall be provided:
1. Prepare up to 20 parcel exhibits with legal descriptions for permanent and temporary easements.
 2. Proposed easement lines will be provided to the surveyor and up to three revisions will be performed. All work will be supervised under a licensed Arkansas Surveyor. Application fees will be billed as a reimbursable expense. If additional parcels need to be platted, an amendment may be required.
- E. **LAND ACQUISITION SUPPORT:** FNI will render the following land acquisition services (through a subconsultant) in connection with the project for purposes of acquiring project right of entry, rights-of-way, easements, and fee simple acquisitions, necessary for the construction and operation of this project as detailed below:
1. Rights of Entry – Obtain permission, verbal or written, from property owners for field work activities including, but not limited to, appraisal, geo-technical, and survey.
 2. Title Research – Research using County records to identify property owners affected by project. Engage a title company to complete title reports confirming property ownership prior to negotiation efforts.
 3. Appraisal – Prepare waiver valuations for payment estimates or sub-contract appraisal services through one or more licensed appraisal firms.
 4. Negotiations – Make initial offers to affected landowners based upon project plans, right-of-way and easement descriptions, exhibits, and appraisals. Address property owner concerns regarding project and negotiate settlements.
 5. Document Preparation and Closings – Prepare necessary Rights-of-Way or Easements based upon the City's standard forms for execution by property owners. Prepare deeds where necessary and coordinate closings through a title company where necessary for fee simple acquisitions.
 6. Condemnation Support – Provide support to client's attorney as needed for eminent domain proceedings if settlement cannot be reached on any parcels.
 7. Quote based on Land Acquisition needs on 20 parcels. If additional parcels are needed, an amendment may be required.
- F. **SUBSURFACE UTILITY ENGINEERING SERVICES:** FNI shall retain (as a subconsultant) and

monitor subsurface utility engineering (SUE) services. SUE work required for this project in general accordance with the recommended practices and procedures described in ASCE Publication CI/ASCE 38-02 (Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data):

1. SUE Level 'C' Survey - Utility survey will include all above-ground physicals and underground utilities. Location of underground utilities will be based on evidence found during the survey, markings by One Call service, and utility plans provided by Client. If route or length changes, an amendment may be required.
 2. SUE Level 'A' Locates - CEI will meet on-site to record potholing data and will coordinate sub-contract for excavation and backfilling services. Quote to cover 30 potholes in natural ground. Price based on industry standard. If sub-contracting fees for potholing services fluctuate greater than anticipated, an amendment may be required. If hard surface potholing or traffic control are required, an amendment may be required.
- G. CORROSION ENGINEERING SERVICES: FNI will provide a corrosion study and design for the 48-inch water pipeline. The first task will include a corrosion assessment of the pipeline route to review soil conditions and complete a preliminary cathodic protection design to support easement procurement. Soil resistivity measurements will be taken, using the Wenner four pin method, at intervals along the pipeline route as required for cathodic protection design alternatives.

A corrosivity review of the pipeline location will also be performed to identify possible corrosive conditions that may affect material selection and corrosion mitigation requirements for the pipelines and other buried structures. The fieldwork will consist of a visual assessment of the proposed pipeline route, with the following tasks being performed:

1. Field Evaluation, access to all properties for corrosion investigation is the responsibility of the Owner:
 - a. Research – Foreign pipeline crossings, parallel systems and CP systems
 - b. Electrical High Voltage (EHV) transmission lines
 - c. Field Survey – Stray DC current interference sources
 - d. Research – Changes in soil types, conditions, etc.
 - e. Topography
 - f. Review - Proposed pipeline design & materials
 - g. Conduct in-situ soil resistivity testing (every 1,000 feet)
 - h. Conduct stray current (DC) investigation in prescribed easement. The purpose of performing an investigation during the site visit (along the alignment) is to identify potential sources of stray current and nearby metallic pipelines that may be affected by the proposed cathodic protection.
 - i. If soil geotechnical report shows that soils resistivities in proposed easements are less than 1,000 ohm-cm, Corrosion Engineer will direct Geotechnical Engineer to have soil samples from the proposed pipeline depth to be tested for:
 1. pH
 2. Chloride ion concentration
 3. Sulfide ion concentration
 4. Redox potential
 5. As-found and saturated soil resistivity
 - j. Conduct analysis of collected data and technical prepare technical memo. The technical memorandum will include the collected field data and provide conclusions on the corrosivity of the soil with respect to buried metallic and reinforced concrete structures. Recommendations will be provided for corrosion mitigation of buried metallic and concrete structures, if required, based on soil corrosivity and other factors which may impact corrosion exposure of the pipeline.

2. The cathodic protection design and corrosion monitoring design for both ductile iron and coated steel pipe would be included in the design contract. The cathodic protection will be designed to minimize interference on adjacent utilities and could increase the quantity of cathodic protection stations required depending on foreign pipeline location and orientation. Specifically, the following tasks will be performed:
 - a. Provide 60%, 95% and Issued for Bid cathodic protection design (DIP/Steel) details and specifications.
- H. GEOMORPHOLOGY EVALUATION: Task includes high-level pedestrian geomorphic assessment of approximately 1,000 LF of Little Osage Creek which will provide information for development of the stream crossing of the alignment. The geomorphic assessment will include the following:
1. Field Assessment:
 - a. Geomorphic cross sections (up to two) as deemed necessary to understand the site in greater detail. Cross sections shall be surveyed at a sufficient width to allow for calculations of entrenchment ratio.
 - b. A longitudinal profile – visual assessment of the reach longitudinal profile along the thalweg will be collected. The longitudinal profile survey will include at a minimum the following points:
 1. Reach thalweg features
 2. Bankfull discharge indicators (bankfull width and depth, if present; indicators in impaired channel reaches may be absent)
 3. Knickpoints/headcuts, areas of bank mass wasting, and instabilities
 - c. Photo documentation – FNI will provide continuous visual documentation of the project reach. Photos will be taken as needed and at the beginning and end of the reach.
 - d. Potential erodibility of banks along the stream will be evaluated and mapped using the rapid assessment tool, the Bank Erosion Hazard Index (BEHI). A GIS file may then be created to indicate general erosion risk along the stream banks within the project area. Specific erosion threats to infrastructure will also be identified.
 - e. If feasible, photos and/or videos will be taken using an unmanned aerial vehicle to document the visual condition of the stream.
 2. Data Analysis: FNI will perform a desktop analysis including the following:
 - a. Documentation of existing geomorphic characteristics of Osage Creek within the study area.
 - b. Analysis of potential future geomorphic changes within the study area. This will be supported by the availability of data from the desktop analysis and data collected during the field investigation.
 3. Technical Report: A technical report will include a discussion of existing site conditions, stream geomorphological condition, potential conceptual-level alternative to protect against erosion, and opinion of probable construction cost (OPCC) for the aforementioned conceptual-level alternative, and environmental permitting possibilities.
- I. TRAFFIC CONTROL: FNI will prepare a traffic control plan for the proposed 48-inch pipeline along I Street.
1. Phased traffic control will be designed to facilitate construction to allow two-way traffic through the duration of construction. It is assumed that temporary signalization will not be needed as part of the traffic control plan with intersection construction being handled through stop control but can be added through amendment.

- J. HYDRAULIC MODELING: FNI will review the existing hydraulic water model in order to verify the proposed connection points meet the intended purpose of the project.
1. FNI will spend up to eight (8) hours reviewing and coordinating with BWU on infrastructure and assumed operations in Bentonville's existing water model runs (developed by others) as this model will be used for design of the 48-inch pipeline. It is assumed that the physical data in the model (pipeline location and connectivity, pipeline diameters, storage tank geometry, pump curves, etc.) is at an appropriate level of accuracy to conduct this hydraulic capacity evaluation and will not require updating as part of this evaluation. FNI will notify BWU Staff promptly if the level of accuracy does not appear to be appropriate for this study.
 2. FNI will incorporate the proposed pipeline alignment and connections into the existing hydraulic model and utilize the hydraulic model to provide a capacity review and document hydraulic information, including hydraulic grade line, pressure, and flow, for the selected alignment based on existing model runs.
 3. FNI will conduct an evaluation of the existing hydraulic surge analysis report for the proposed 48-inch pipeline to ensure the effectiveness of surge mitigation measures, or determine if further analysis is needed. Summarize the evaluation of the existing analysis in a concise 1-page report, highlighting key findings and recommendations. This approach ensures a thorough examination of the surge protection components, covering data integrity, methodological soundness, industry benchmarks, potential areas for further investigation, and a succinct summary of the overall analysis.

ARTICLE III

ADDITIONAL SERVICES: Any services performed by FNI that are not included in the Basic Services or Special Services described above are Additional Services.

- A. Field layouts or the furnishing of construction line and grade surveys.
- B. Providing services to investigate existing conditions or facilities, or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by Owner.
- C. Providing renderings, model, and mock-ups requested by the Owner.
- D. Making revisions to drawings, specifications or other documents when such revisions are 1) not consistent with approvals or instructions previously given by Owner or 2) due to other causes not solely within the control of FNI.
- E. Providing consultation concerning the replacement of any Work damaged by fire or other cause during the construction and providing services as may be required in connection with the replacement of such Work. Performing investigations, studies, and analysis of work proposed by construction contractors to correct defective work. Any services required as a result of default of the contractor(s) or the failure, for any reason, of the contractor(s) to complete the work within the contract time. Providing services after the completion of the construction phase not specifically listed in Article II. Visits to the site in excess of the number of trips included in Article II for periodic site visits, coordination meetings, or contract completion activities. Providing services made necessary because of unforeseen, concealed, or differing site conditions or due to the presence of hazardous substances in any form. Providing services to review or evaluate construction contractor(s) claim(s), provided said claims are supported by causes not within the control of FNI. Providing value engineering studies or reviews of cost savings proposed by construction contractors after bids have been submitted. Provide follow-up professional services during Contractor's warranty period.
- F. Investigations involving consideration of operation, maintenance and overhead expenses, and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals, evaluations, assessment schedules, and material audits or inventories required for certification of force account construction performed by Owner.
- G. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- H. Providing shop, mill, field or laboratory inspection of materials and equipment. Observe factory tests of equipment at any site remote to the project or observing tests required as a result of equipment failing the initial test.
- I. Preparing Operation and Maintenance Manuals or conducting operator training.
- J. Preparing data and reports for assistance to Owner in preparation for hearings before regulatory agencies, courts, arbitration panels or any mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
- K. Assisting Owner in preparing for, or appearing at litigation, mediation, arbitration, dispute review boards, or other legal and/or administrative proceedings in the defense or prosecution of claims disputes with Contractor(s).

- L. Performing investigations, studies and analyses of substitutions of equipment and/or materials or deviations from the drawings and specifications.
- M. Assisting Owner in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this Agreement. Such services, if any, shall be furnished by FNI on a fee basis negotiated by the respective parties outside of and in addition to this Agreement.
- N. Design, contract modifications, studies or analysis required to comply with local, State, Federal or other regulatory agencies that become effective after the date of this agreement.
- O. Services required to resolve bid protests or to rebid the projects for any reason.
- P. Providing basic or additional services on an accelerated time schedule. The scope of this service include cost for overtime wages of employees and consultants, inefficiencies in work sequence and plotting or reproduction costs directly attributable to an accelerated time schedule directed by the Owner.
- Q. Environmental Science Additional Services:
 - 1. Preparation of a pre-construction notification (PCN) for Section 404 nationwide permit (NWP) authorization.
 - 2. Preparation of a standard individual Section 404 permit (IP) application.
 - 3. Preparation of an Approved Jurisdictional Determination (AJD) or No Permit Required Letter Request.
 - 4. Conditional Assessment, mitigation bank coordination, and/or the preparation of a mitigation plan to compensate for impacts to waters of the U.S. (WOTUS).
 - 5. Preparation of National Environmental Policy Act (NEPA) Categorical Exclusion (CE), Environmental Assessment (EA), Environmental Information Document (EID), or an Environmental Impact Statement (EIS).
 - 6. Application to the Arkansas Department of Energy and Environment for individual 401 Water Quality Certification.
 - 7. Consultation with the U. S. Fish and Wildlife Service (USFWS) under Section 7 of the Endangered Species Act.
 - 8. Tree survey and preparing permit application for compliance with City tree ordinance requirements.
 - 9. Preparation of a Hazardous Waste Regulatory Records Review, a Hazardous Materials Initial Site Assessment (ISA), Phase I, or Phase II Environmental Site Assessment (ESA).
 - 10. Preparation of a National Pollution Discharge Elimination System (NPDES) Storm Water Pollution Prevention Plan (SWPPP).
 - 11. Cultural resources survey by a professional archeologist.
 - 12. Meetings or consultation with the USACE or other resource agencies, except as specifically noted in the scope of services.

ARTICLE IV

TIME OF COMPLETION: FNI is authorized to commence work on the Project upon execution of this Agreement and agrees to complete the services in accordance with the following Basic Services schedule with Special Services to be concurrent with Basic Services:

- Alignment Study Phase – 6 weeks from NTP
- Preliminary Design Phase – 12 weeks from completion of Alignment Study Phase
- Final Design Phase
 - 60% Deliverable: 18 weeks from completion of Preliminary Design Phase
 - 95% Deliverable: 12 weeks from receipt of 60% Deliverable comments

- 100% Deliverable: 4 weeks from receipt of 95% Deliverable comments
- Bid Phase – 2 months from receipt of final approval and permits
- Construction Phase - 12 months anticipated from receipt of Construction Contracts Approval

If FNI's services are delayed through no fault of FNI, FNI shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in Owner or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc. These delays may result in an adjustment to compensation as outlined on the face of this Agreement and in Attachment CO.

ARTICLE V

RESPONSIBILITIES OF CLIENT: Client shall perform the following in a timely manner so as not to delay the services of FNI:

- A. Change Orders may be required. Unless noted otherwise, the Owner shall budget a minimum of 5% for new construction and a minimum of 10% for construction that includes refurbishing existing structures.

Change Orders may be required to be issued as the result in whole or part of imprecision, incompleteness, errors, omission, ambiguities, or inconsistencies in the Drawings, Specifications, and other design documentation furnished by Engineer or in the other professional services performed or furnished by Engineer under this Agreement ("Covered Change Orders"). Accordingly, Owner agrees to pay for Change Orders and otherwise to make no claim directly or indirectly against Engineer on the basis of professional negligence, breach of contract, or otherwise with respect to the costs of approved Covered Change Orders unless the aggregate costs of all such approved Covered Change Orders exceed 2% for new construction and 4% for reconstruction. Any responsibility of Engineer for the costs of Covered Change Orders in excess of such percentage will be determined on the basis of applicable contractual obligations and professional liability standards. For purposes of this paragraph, the cost of Covered Change Orders will not include:

- any costs that Owner would have incurred if the Covered Change Order work had been included originally in the Contract Documents and without any other error or omission of Engineer related thereto
- Any costs that are due to unforeseen site conditions, or
- Any costs that are due to changes made by the Owner
- Any costs that are due to the Contractor

Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, Engineer is liable for the cost of Covered Change Orders in excess of the percent of Construction Cost stated above or for any other Change Order. Wherever used in this document, the term Engineer includes Engineer's officers, directors, partners, employees, agents, and Engineers Consultants.

- B. Designate in writing a person to act as Owner's representative with respect to the services to be rendered under this Agreement. Such person shall have contract authority to transmit instructions, receive information, interpret and define Owner's policies and decisions with respect to FNI's services for the Project.
- C. Provide all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the drawings and specifications.
- D. Assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- E. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by FNI, 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 FNI.

- F. 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. Pay all fees for permit applications.
- G. 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 FNI may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as Owner may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as Owner may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.
- H. If Owner designates a person to serve in the capacity of Resident Project Representative who is not FNI or FNI's agent or employee, the duties, responsibilities and limitations of authority of such Resident Project Representative(s) will be set forth in an Attachment attached to and made a part of this Agreement before the Construction Phase of the Project begins. Said attachment shall also set forth appropriate modifications of the Construction Phase services as defined in Attachment SC, Article I, together with such adjustment of compensation as appropriate.
- I. Attend the pre-bid conference, bid opening, preconstruction conferences, construction progress and other job related meetings and substantial completion inspections and final payment inspections.
- J. Give prompt written notice to FNI whenever Owner observes or otherwise becomes aware of any development that affects the scope or timing of FNI's services, or any defect or nonconformance of the work of any Contractor.
- K. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article III of this Agreement or other services as required.
- L. Bear all costs incident to compliance with the requirements of this Article V.

ARTICLE VI

DESIGNATED REPRESENTATIVES: FNI and Owner designate the following representatives:

Owner's Designated Representative:	Beau Thompson, AICP 3200 SW Municipal Drive Bentonville, AR 72712 P: 479.271.3140 BThompson@BentonvilleAR.com
Owner's Accounting Representative:	Patrick Johndrow 1000 SW 14 th Street Bentonville, AR 72712 P: 479.271.6781 PJohndrow@BentonvilleAR.com
FNI's Designated Representative:	Brent Hauser 903 N 47th Street, Suite 250 Rogers, AR 72756 P: 479-394-1577 E: Brent.Hauser@freese.com
FNI's Accounting Representative:	Stephanie Kirchstein 12770 Merit Dr., Suite 900 Dallas, TX 75251 P: 214-217-2212 E: Stephanie.Kirchstein@freese.com

COMPENSATION

ATTACHMENT CO

Compensation to FNI for Basic Services in Attachment SC shall be computed on the basis of the following Schedule of Charges, but shall not exceed Seven Hundred Ninety Three Thousand Eight Hundred Forty Dollars (\$793,840).

Compensation to FNI for Special Services in Attachment SC shall be computed on the basis of the following Schedule of Charges, but shall not exceed Three Hundred Fifty One Thousand Eight Hundred Thirty Dollars (\$351,830).

If FNI sees the Scope of Services changing so that Additional Services are needed, including but not limited to those services described as Additional Services in Attachment SC, FNI will notify OWNER for OWNER's approval before proceeding. Additional Services shall be computed based on the following Schedule of Charges.

<u>Position</u>	<u>Hourly Rate</u>	
	<u>Min</u>	<u>Max</u>
Professional 1	89	175
Professional 2	119	193
Professional 3	136	293
Professional 4	157	334
Professional 5	232	350
Professional 6	235	432
Construction Manager 1	116	161
Construction Manager 2	119	200
Construction Manager 3	150	200
Construction Manager 4	174	261
Construction Manager 5	208	304
Construction Manager 6	276	361
Construction Representative 1	79	90
Construction Representative 2	92	118
Construction Representative 3	126	190
Construction Representative 4	126	190
CAD Technician/Designer 1	85	122
CAD Technician/Designer 2	102	200
CAD Technician/Designer 3	133	254
Corporate Project Support 1	72	158
Corporate Project Support 2	82	233
Corporate Project Support 3	102	340
Intern / Coop	55	93

Rates for In-House Services and Equipment

<u>Mileage</u>	<u>Bulk Printing and Reproduction</u>		<u>Equipment</u>	
Standard IRS Rates		<u>B&W</u>	<u>Color</u>	
	Small Format (per copy)	\$0.10	\$0.25	Valve Crew Vehicle (hour) \$75
	Large Format (per sq. ft.)			Pressure Data Logger (each) \$200
<u>Technology Charge</u>	Bond	\$0.25	\$0.75	Water Quality Meter (per day) \$100
\$8.50 per hour	Glossy / Mylar	\$0.75	\$1.25	Microscope (each) \$150
	Vinyl / Adhesive	\$1.50	\$2.00	Pressure Recorder (per day) \$100
				Ultrasonic Thickness Gauge (per day) \$275
	Mounting (per sq. ft.)	\$2.00		Coating Inspection Kit (per day) \$275
	Binding (per binding)	\$0.25		Flushing / Cfactor (each) \$500
				Backpack Electrofisher (each) \$1,000
				<u>Survey Grade</u> <u>Standard</u>
				Drone (per day) \$200 \$100
				GPS (per day) \$150 \$50

OTHER DIRECT EXPENSES:

Other direct expenses are reimbursed at actual cost times a multiplier of 1.10. They include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from the FNI office. For other miscellaneous expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members, these services will be billed at a cost times a multiplier of 1.10. For Resident Representative services performed by non-FNI employees and CAD services performed in-house by non-FNI employees where FNI provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to FNI if an FNI employee was performing the same or similar services.

These ranges and/or rates will be adjusted annually in February. Last updated 2024.

340022024

RESOLUTION NO. _____

A RESOLUTION ALLOWING THE MAYOR AND CITY CLERK TO ENTER INTO AN AGREEMENT WITH FREESE AND NICHOLS, INC., FOR PROFESSIONAL ENGINEERING SERVICES, IN THE AMOUNT OF ONE MILLION ONE HUNDRED FORTY-FIVE THOUSAND SIX HUNDRED SEVENTY DOLLARS (\$1,145,670.00); AND FOR OTHER PURPOSES.

WHEREAS, professional engineering services are required for the design of a 48" water transmission line;

WHEREAS, Freese and Nichols, Inc. was selected in accordance with Arkansas law and the City of Bentonville purchasing policy for the procurement of professional services;

WHEREAS, this agreement is for the design of a water transmission line from SW 28th Street to the I Street Pump Station; and

WHEREAS, this is a budgeted item.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BENTONVILLE, ARKANSAS THAT:

Section 1: The Mayor and City Clerk are authorized to enter into an agreement with Freese and Nichols, Inc. to provide professional engineering services in the amount of one million one hundred forty-five thousand six hundred seventy dollars (\$1,145,670.00);

Section 2 - Severability Provision: If any part of this Resolution is held invalid, the remainder of this Resolution shall continue in effect as if such invalid portion never existed; and

Section 3: Repeal of Conflicting Provisions: All Ordinances, Resolutions, or Orders of the City Council, or parts of the same, in conflict with this Resolution are repealed to the extent of such conflict.

PASSED this _____ day of _____, 2024.

APPROVED:

STEPHANIE ORMAN, Mayor

ATTEST:

MALORIE MARRS, City Clerk