Finance Committee
Meeting Agenda
January 28, 2025
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 the public would like to attend virtually, please log on at the following link: https://us02web.zoom.us/j/89139307844?pwd=ZWMxNVhRby9RVElhd1pyZzluVmdHZz09**

Call to Order/Roll Call

City Council Items To Be Considered

1. **Section I Item 2 from the City Council Agenda: Resolution Recognizing Receipt of Grant Funds for Bentonville District Court Mediation Program** — **Resolution**

   Budget adjustment recognizing receipt of a grant from the Arkansas Alternative Dispute Resolution Committee and allocating funds for expenses related to the Bentonville District Court Mediation program. A budget adjustment is needed.

2. **Section I Item 4 from the City Council Agenda: Resolution Authorizing a Budget Adjustment for Workers Compensation Insurance** — **Resolution**

   Approval of a resolution authorizing a budget adjustment in the amount of $159,345.03, for the City's Workers Compensation carrier for additional funds owed for 2024 & 2025. A budget adjustment is needed.

3. **Section I Item 6 from the City Council Agenda: Resolution Approving the Boys and Girls Club CDBG Sub-Recipient Award 2024** — **Resolution**

   A Resolution approving a CDBG sub-recipient contract in the amount of $10,000.00 with the Boys and Girls Club for scholarships. No budget adjustment is needed.

4. **Section I Item 7 from the City Council Agenda: Resolution Approving the** — **Resolution**

Continuum of Care CDBG Sub-Recipient Award 2024

A Resolution approving a CDBG sub-recipient contract in the amount of $10,000.00 with the NWA Continuum of Care for homelessness services and outreach. No budget adjustment is needed.

5. **Section I Item 8 from the City Council Agenda: Resolution Approving the Helen Walton Children's Center CDBG Sub-Recipient Award 2024** **Resolution**

   A Resolution approving a CDBG sub-recipient contract in the amount of $15,000.00 to the Helen Walton Children's Enrichment Center for scholarship funds. No budget adjustment is needed.

6. **Section I Item 10 from the City Council Agenda: Resolution to Enter Into an Agreement with Musco Sports Lighting, LLC** **Resolution**

   A Resolution authorizing an agreement with Musco Sports Lighting, LLC in the amount of $174,800.00 for sports lighting replacement at Memorial Park necessary due to the May 26, 2024, storm. A budget adjustment is needed.

7. **Section I Item 11 from the City Council Agenda: Ordinance to Enter into an Agreement with Upstart Athletics for Soccer Services** **Ordinance***

   An Ordinance authorizing an agreement, and waiving competitive bidding, with Upstart Athletics for soccer services and youth soccer programs for Bentonville Parks and Recreation for 2025. No budget adjustment is needed.

8. **Section I Item 12 from the City Council Agenda: Ordinance for Waiver of Bid for Secured Medication Management System for Paramedic Ambulance** **Ordinance***

   The Fire Department requests the purchase of a Pyxis medication management system for the Paramedic ambulance service from CareFusion Solutions, LLC, the sole-source manufacturer. No budget adjustment is needed.

9. **Section I Item 13 from the City Council Agenda: Ordinance Approving a Waiver of Bid to Purchase Stryker Lifepak 35 Cardiac Monitors for Ambulances** **Ordinance***

   The Fire Department requests the purchase of Stryker Lifepak 35 cardiac monitors for four front-line Paramedic ambulances. No budget adjustment is needed.

10. **Section I Item 14 from the City Council Agenda: Ordinance approving a Waiver if Bid - Stryker Powercot & Load System for Braun Liberty Ambulance** **Ordinance***

The Fire Department requests approval to enter into an agreement purchasing a Stryker power cot & loading system for a Braun Liberty ambulance. No budget adjustment is needed.

11. **Section II Item 1 from the City Council Agenda: Ordinance for a Waiver of Bid to Purchase Required Parts to Rebuild WRRF Barscreen** **Ordinance***

Approval of an ordinance to waive competitive bidding to enter into an agreement with Price Schonstrom for the purchase of all required parts to completely rebuild the Water Resource Recovery Facility Barscreen. Utility Board approved 5-0. No budget adjustment is needed.

City of Bentonville, Arkansas Agenda Item Form

Item Details

Council Meeting Date:	1/28/2025	**Submitted By:**	Jennifer Lopez-Jones
Phone:	479-271-5923	**For Department(s):**	District Court
Email:	jenniferj@bentonvillear.com		

Item Type (Check all that apply)

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

Title, Recommendation & Justification

Title:	Resolution Recognizing Receipt of Grant Funds for Bentonville District Court Mediation Program
Action Recommendation & Justification:	Budget adjustment recognizing receipt of a grant from the Arkansas Alternative Dispute Resolution Committee and allocating funds for expenses related to the Bentonville District Court Mediation program. A budget adjustment is needed.
Additional Comments for Consideration (Optional):	The Bentonville District Court applied for and was awarded a grant from the Arkansas Alternative Dispute Resolution Committee in the amount of $1,500 to continue to grow a mediation program for our Small Claims cases and our Civil cases as well. This program allows our clients to have the services of a certified mediator prior to going to trial with their disputes. A mediator may resolve disputes in a manner that results in a greater sense of satisfaction to both parties. This is a voluntary.
Amount for Approval:	$ 1,500.00

Budget Impact

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

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

Account Number (ORG-OBJECT)	Account Description	Expense	Revenue
101210-33411	State Operating Grant	$	$1500.00
101210-43410	Professional Services/Other	$ 1500.00	$
		$	$
		$	$

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

Budget Impact Notes for Consideration (Optional):

RESOLUTION NO. __________

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A GRANT AGREEMENT WITH THE ARKANSAS ALTERNATIVE DISPUTE RESOLUTION COMMISSION IN THE AMOUNT OF ONE THOUSAND FIVE HUNDRED DOLLARS ($1,500.00); ADJUSTING THE 2025 BUDGET TO RECOGNIZE AND APPROPRIATE SAID FUNDS; AND FOR OTHER PURPOSES.

WHEREAS, the Bentonville District Court will receive one thousand five hundred dollars ($1,500.00), from the Arkansas Alternative Dispute Resolution Commission to assist with the expenses related to the Bentonville District Court Mediation Program; and

WHEREAS, there is no matching provision in this grant.

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

Section 1: The Mayor and City Clerk are hereby authorized to enter into a grant agreement with the Arkansas Alternative Dispute Resolution Commission in which Bentonville District Court will receive one thousand five hundred dollars ($1,500.00) in grant funds;

Section 2: The 2025 Budget is hereby adjusted to recognize said grant funds into Account #101210-33411 - State Operating Grant;

Section 3: The 2025 Budget is further adjusted to appropriate the same into Account #101210-43410 - Professional Services;

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 ________________________, 2025.

APPROVED:

____
STEPHANIE ORMAN, Mayor

ATTEST:

____
MALORIE MARRS, City Clerk

City of Bentonville, Arkansas Agenda Item Form

Item Details

Council Meeting Date:	1/28/2025	**Submitted By:**	Machele Bowen
Phone:	479-271-3117	**For Department(s):**	Human Resources
Email:	mbowen@bentonvillear.com		

Item Type (Check all that apply)

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

Title, Recommendation & Justification

Title:	Resolution Authorizing a Budget Adjustment for Workers Compensation Insurance
Action Recommendation & Justification:	Approval of a resolution authorizing a budget adjustment in the amount of $159,345.03, for the City's Workers Compensation carrier for additional funds owed for 2024 & 2025. A budget adjustment is needed.
Additional Comments for Consideration (Optional):	The budget adjustment is shown on the following page. This will be funded by each funds reserves.
Amount for Approval:	$ 159,345.03

Budget Impact

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

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

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

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

Budget Impact Notes for Consideration (Optional):

Budget Adjustment - 2024/2025 Workers Compensation Insurance

Account Number (ORG-OBJECT)	Account Description	Expense	Revenue
101010-41620	Workers' Compensation	81.02	
101020-41620	Workers' Compensation	113.67	
101030-41620	Workers' Compensation	68.78	
101040-41620	Workers' Compensation	168.21	
101050-41620	Workers' Compensation	222.19	
101060-41620	Workers' Compensation	19.74	
101210-41620	Workers' Compensation	189.05	
101610-41620	Workers' Compensation	200.52	
101630-41620	Workers' Compensation	3,019.38	
101650-41620	Workers' Compensation	8.52	
102010-41620	Workers' Compensation	31,658.99	
102020-41620	Workers' Compensation	56,720.84	
105020-41620	Workers' Compensation	4,990.68	
105030-41620	Workers' Compensation	16,912.61	
105050-41620	Workers' Compensation	397.32	
105060-41620	Workers' Compensation	406.26	
203810-41620	Workers' Compensation	12,136.33	
503010-41620	Workers' Compensation	12,135.25	
503020-41620	Workers' Compensation	7,451.40	
503030-41620	Workers' Compensation	5,139.88	
503040-41620	Workers' Compensation	5,418.01	
503520-41620	Workers' Compensation	541.18	
503530-41620	Workers' Compensation	1,345.20	
	Total	**159,345.03**	-

Memo

To: City Council, Mayor Orman

From: Machele Bowen, Human Resources Director

Date: January 22, 2025

Re: Council approval of a Resolution authorizing a Budget adjustment for 2025 Workers Compensation coverage.

Human Resources is seeking City Council's approval of a resolution authorizing a budget adjustment for Key Risk our Workers Compensation carrier in the amount of $159,345.03.

The 2023 workers compensation audit and the 2025 renewal was being conducted during the 2025 budget period, and was not finalized until January 2025. During the audit city staff was able to make reclassification corrections which resulted in a $14,608.00 savings to the City.

I have submitted a memo and renewal calculation example from our Broker, Stephens Insurance, LLC which outlines the process. This budget adjustment accounts for a true up of wages originally estimated for 2024. Working with our broker we were able to make additional adjustments which included review of pay codes that were included in eligible wages, and corrections to risk code classifications. Due to the policy renewal process of using previous years audited wages for renewal purposes it is estimated that the 2024 audit will result in an additional $74,000 in premium owed. The $74,000 is included in the budget adjustment requested.

Due to the timing of the 2025 Worker's Compensation renewal we were unable to obtain the renewal total for this in the budget passed by Council in December 2024. The additional budgeted needed to cover the 2025 renewal is $85,345.03. This amount is included in the budget adjustment request as well.

We have worked with our Broker to ensure we will have the data needed for future budget years to make an accurate estimate of premiums owed.

If you have any questions regarding this item, please contact Machele Bowen at mbowen@bentonvillear.com or call 479-271-3117.

Stephens
Stephens Insurance, LLC

January 15, 2025

RE: Workers Compensation – Payroll projections/Audit procedures

Dear City of Bentonville Team,

Regarding the 2024-2025 workers compensation policy, the basis of the policy rating is the estimated gross payroll per employee classification.

The payroll is estimated at the beginning of the policy period, and the policy is then rated and issued on that projection. At the end of the policy period and as a condition of the policy, an audit is conducted to conclude what the actual final gross payroll was during the policy term.

The attached exhibit outlines the gross payroll projection during the 1/1/2024-1/1/25 policy term by classification. The rate is a per $100 of payroll. The rating factors such as the experience modification, premium discounts, and terrorism are then added to determine a final estimated premium. Once the audit is completed, a final premium will be determined. If the actual payroll was increased, and additional premium charge will result. If a lesser payroll is determined, a premium credit would develop. **Note: the projected payroll for the 1/1/2024-1/1/2025 period shown on the exhibit were used as the estimates in the beginning of term since this payroll was the result of the 2023-2024 Final Audit.

The audit is being scheduled by KEYRISK auditor at this time and they will reach out to the City Team. The auditor will conduct, and reconcile the actual gross payroll for the 1/1/24-1/1/25 policy term providing a final report once complete.

Please let me know if I can assist with any questions or concerns.

Sincerely,

Sarah Day Goolsby, CIC
Senior Account Manager

Commercial Property & Casualty
o: 479-718-7411 |800-643-9691
sarah.goolsby@stephens.com

2024-2025 Policy Term-Payroll Estimates, and Estimated Premium

Classification	Code	2024 Estimated Payroll	Manual Rate	Estimated Premium
Street or Road Construction - Paving or Repaving & Drivers	5506	$1,267,121	$2.950	$37,380
Waterworks Operation & Drivers	7520	$3,116,662	$1.630	$50,802
Electric Light or Power Co. NOC - All Employees & Drivers	7539	$5,286,253	$0.980	$51,805
Sewage Disposal Plant Operation & Drivers	7580	$1,365,632	$1.680	$22,943
Firefighters & Drivers	7710	$7,086,387	$2.500	$177,160
Police Officers & Drivers	7720	$5,775,320	$1.500	$86,630
Clerical Office Employees NOC	8810	$7,475,394	$0.090	$6,728
Animal Control Officers & Drivers	8831	$133,832	$0.780	$1,044
Park NOC - All Employees & Drivers	9102	$5,896,043	$1.790	$105,539
Municipal, Township, County, or State Employee NOC	9410	$2,222,329	$1.250	$27,779
Subtotal		**$39,624,973**		**$567,809**
Employers Liability	9812		$0.011	$6,246
Experience Modification	9898		0.99	$568,314.41
Schedule Rating Premium	9887		0.84	$477,384.10
Premium Discount	63		-0.1019	-$48,645.44
Expense Constant	900			$320
Terrorism	9740		0.01	$3,962.50
Catastrophe(other than certified actas of Terrorism)	9741		0.02	$7,924.99
Total Premium				**$440,946.15**

RESOLUTION NO. _______________

A RESOLUTION AMENDING THE 2025 BUDGET TO APPROPRIATE ONE HUNDRED FIFTY-NINE THOUSAND THREE HUNDRED FORTY-FIVE DOLLARS AND THREE CENTS ($159,345.03) FROM THE GENERAL, UTILITY, AND STREET FUND RESERVES, INTO VARIOUS ACCOUNTS, FOR WORKERS COMPENSATION COVERAGE; AND FOR OTHER PURPOSES.

WHEREAS, Human Resources is seeking City Councils approval of a resolution authorizing a budget adjustment for Key Risk, the City of Bentonville's Workers Compensation carrier;

WHEREAS, the 2023 workers compensation audit and the 2025 renewal were conducted during the 2025 budget period, and was not finalized until January 2025; and

WHEREAS, it is estimated that the 2024 audit will result in an additional seventy-four thousand dollars ($74,000.00) in premium owed and a total of eighty-five thousand three hundred forty-five dollars and three cents ($85,345.03) for the 2025 Worker's Compensation renewal.

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

Section 1: The 2025 Budget is adjusted to appropriate one hundred fifty-nine thousand three hundred forty-five dollars and three cents ($159,345.03) from the General, Utility, and Street Department Fund Reserves into various accounts as listed on Exhibit "A";

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 this _______ day of __________________, 2025.

APPROVED:

ATTEST:

____

STEPHANIE ORMAN, Mayor

____

MALORIE MARRS, City Clerk

Exhibit "A"

Budget Adjustment - 2024/2025 Workers Compensation Insurance

Account Number (ORG-OBJECT)	Account Description	Expense	Revenue
101010-41620	Workers' Compensation	81.02	
101020-41620	Workers' Compensation	113.67	
101030-41620	Workers' Compensation	68.78	
101040-41620	Workers' Compensation	168.21	
101050-41620	Workers' Compensation	222.19	
101060-41620	Workers' Compensation	19.74	
101210-41620	Workers' Compensation	189.05	
101610-41620	Workers' Compensation	200.52	
101630-41620	Workers' Compensation	3,019.38	
101650-41620	Workers' Compensation	8.52	
102010-41620	Workers' Compensation	31,658.99	
102020-41620	Workers' Compensation	56,720.84	
105020-41620	Workers' Compensation	4,990.68	
105030-41620	Workers' Compensation	16,912.61	
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503040-41620	Workers' Compensation	5,418.01	
503520-41620	Workers' Compensation	541.18	
503530-41620	Workers' Compensation	1,345.20	
	Total	**159,345.03**	-

City of Bentonville, Arkansas Agenda Item Form

Item Details

Council Meeting Date:	1/28/2025	**Submitted By:**	Taylor Allen
Phone:	479-271-3122	**For Department(s):**	Planning
Email:	tallen@bentonvillear.com		

Item Type (Check all that apply)

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

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

Title, Recommendation & Justification

Title:	Resolution Approving the Boys and Girls Club CDBG Sub-Recipient Award 2024
Action Recommendation & Justification:	A Resolution approving a CDBG sub-recipient contract in the amount of $10,000.00 with the Boys and Girls Club for scholarships. No budget adjustment is needed.
Additional Comments for Consideration (Optional):	This action corresponds with the Council-approved CDBG consolidated plan from July, 2024 which included the Boys and Girls Club project.
Amount for Approval:	$ 10,000.00

Budget Impact

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

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

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

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

Budget Impact Notes for Consideration (Optional):

SUBRECIPIENT AGREEMENT

AGREEMENT BETWEEN THE CITY OF BENTONVILLE
AND
Boys and Girls Club of Benton County
FOR
BENTONVILLE CDBG PROGRAM YEAR 2024

THIS AGREEMENT, entered this _____ day of __________, 2025 by and between the City of Bentonville (herein called the "Grantee") and the Boys and Girls Club of Benton County (herein called the "Subrecipient").

WHEREAS, the Grantee has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93-383; and

WHEREAS, the Grantee wishes to engage the Subrecipient to assist the Grantee in utilizing such funds.

NOW, THEREFORE, it is agreed between the parties hereto that;

I. SCOPE OF SERVICE

A. Activities

The Subrecipient will be responsible for administering a CDBG Year 2024 in a manner satisfactory to the Grantee and consistent with any standards required as a condition of providing these funds. Such program will include the following activities eligible under the Community Development Block Grant program:

Program Delivery

Activity #1 The Subrecipient will use grant funds to support their scholarship program (both need based and programmatic). These scholarships will be awarded to children and teens from low income families and to children and teens in foster care in Bentonville, and will provide funding for these persons to participate in after-school and summer programming offered by the Subrecipient. All action needed from the Subrecipient is in relation to the administration of the scholarship. Demographic information about the persons served by the grant funding will be collected by the Subrecipient to ensure compliance with CDBG regulations. Measurement of success will be determined by the number of scholarship recipients and will be reported monthly by the Subrecipient to the Grantee. The schedule for these activities will begin upon completion of an environmental review and will extend for the period of performance. This is a public service activity and will take place at the Subrecipient's location of 2801 Walker Street, Bentonville AR 72712. All funds awarded will be used to reimburse the cost of scholarships to children and teens of low income families and to children and teens in foster care in Bentonville. No program income will be generated by this project. No funds will be committed until the completion of an environmental review by the City of Bentonville.

General Administration

All administrative tasks will be in relation to the scholarship program, including distributing funds, recordkeeping of adherence to CDBG requirements, communicating with the Grantee though reporting periods, and monitoring responsibilities. No amount of the CDBG funds will be used for administrative compensation. All funding will be used for the scholarship program tuition reimbursement.

B. National Objectives

All activities funded with CDGB funds must meet one of the CDBG program's National Objectives: benefit low- and moderate-income persons; aid in the prevention or elimination of slums or blight; or meet community development needs having a particular urgency, as defined in 24 CFR 570.208. The Subrecipient certifies that the activity (ies) carried out under this Agreement will meet the National Objective of Low and Moderate Income Limited Clientele.

This National Objective will be met by the income eligibility requirements for the needs-based scholarship program, which ensures that funding will only be distributed to families who are at or below 200% of the federal poverty level or have demonstrated emergency circumstances which place them as being principally low income such as foster youth. All programmatic scholarships awarded will require information on family size and income so that it is evident that these scholarships go to persons whose family does not exceed the low and moderate income limits.

C. Levels of Accomplishment – Goals and Performance Measures

The Subrecipient agrees to provide the following levels of program services:

Activity	Units per Month	Total Units/Year
Scholarship Funds	N/A	20 persons served

Units of service is defined by the number of persons the Subrecipient provides funding for through the scholarship program. Each person served will be a 'unit'. The per-month unit goal may fluctuate due to the seasonal nature of the program (such as providing after-school care only being possible during the school year) but the Subrecipient agrees to the Total Units per year as a program requirement, unless a request for amendment of this agreement is made. The time period to meet the Total Units program requirement spans from the distribution of funds by the Grantee through the performance period.

Performance will be measured by the number of scholarship recipients.

D. Staffing

Kari Fletcher, COO of the Boys & Girls Club of Benton County, is responsible for overseeing the distribution of scholarship funds, completing all reporting requirements to the Grantee, and communicating with the Grantee on the status of the project.

No CDBG funds will be used for staffing compensation.

E. Performance Monitoring

The Grantee will monitor the performance of the Subrecipient against goals and performance standards as stated above. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the Grantee, contract suspension or termination procedures will be initiated.

The Subrecipient will submit monthly reports to the Grantee documenting performance. The Subrecipient agrees to monitoring by the Grantee, including potential in-person monitoring visits.

II. TIME OF PERFORMANCE

Services of the Subrecipient shall start on the third day of February, 2025 and end on the first day of June, 2025. The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which the Subrecipient remains in control of CDBG funds or other CDBG assets, including program income.

III. BUDGET

Line Item	Amount:
Salaries	________
Fringe	________
Office Space (Program only)	________
Utilities	________
Communications	________
Reproduction/Printing	________
Supplies and Materials	________
Mileage	________
Audit	________
Other (Specify)	$10,000.00
Indirect Costs (Specify)	________
TOTAL	$10,000.00

For this agreement, the Subrecipient will receive a total of $10,000.00. The total amount of this funding will be put toward scholarships for child participants of the Subrecipient's programming. This $10,000.00 has been categorized as 'other' for the purpose of this line-item budget. No funds may be spent except on the delivery of scholarships.

Any indirect costs charged must be consistent with the conditions of Paragraph VIII (C)(2) of this Agreement. In addition, the Grantee may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Grantee. Any amendments to the budget must be approved in writing by both the Grantee and the Subrecipient.

IV. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the Grantee under this

Agreement shall not exceed $10,000.00. Drawdowns for the payment of eligible expenses shall be made against the line item budgets specified in Paragraph III herein and in accordance with performance. Expenses for general administration shall also be paid against the line item budgets specified in Paragraph III and in accordance with performance.

Payments may be contingent upon certification of the Subrecipient's financial management system in accordance with the standards specified in 24 CFR 84.21.

Payment will be made on a reimbursement basis, where the Subrecipient agrees to invoice the Grantee for the cost of scholarships provided to eligible program participants. The Subrecipient will invoice the Grantee on a monthly basis, unless a request is made in writing for an extension and approved by the Grantee. Invoices will be sent to the CDBG Coordinator.

V. NOTICES

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery, or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communication and details concerning this contract shall be directed to the following contract representatives:

Grantee	Subrecipient
Taylor Allen, Community and Economic Development Planner	______________________________ ______________________________
City of Bentonville	Boys and Girls Club of Benton County
305 SW A Street Bentonville, AR 72712	______________________________
(479) 271-3122	______________________________
	[Telephone] ______________________
	[Fax Number] _____________________

VI. SPECIAL CONDITIONS

The City reserves the right to terminate this contract upon written notification to the Subrecipient under any of the following conditions:

1) Notification by HUD to the City that said project is ineligible because of project location, services provided, or any other reason cited by HUD;
2) Notification by HUD to the City that said project is deficient and that continued support of the project is not providing an adequate level of services to low income and minority people; or

3) Written notification from HUD to the City that the program funds made available to the City are being curtailed, withdrawn, or otherwise restricted.

The City also reserves the right to terminate this Contract or to reduce the contract compensation amount if the Subrecipient:

1) Fails to file required reports or to meet project progress or completion deadlines;
2) Materially fails to comply with any provision of this Agreement (which may result in suspension or termination in accordance with 24 CFR 85.43 or OMB Circular A-110);
3) Expense funds under this Agreement for ineligible activities, services, or items;
4) Implements the project prior to notification from the City that the federal environmental review process has been completed;
5) Violates Labor Standards requirements; or
6) Fails to comply with written notice from the City of substandard performance under the terms of this Agreement.

VII. GENERAL CONDITIONS

A. General Compliance

The Subrecipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except that (1) the Subrecipient does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) the Subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Subrecipient also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract. The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

Requirements at Subpart K include:

- § 570.601 Public Law 88-352 and Public Law 90-284; affirmatively furthering fair housing; Executive Order 11063.
- § 570.602 Section 109 of the Act.
- § 570.603 Labor standards.
- § 570.604 Environmental standards.
- § 570.605 National Flood Insurance Program.
- § 570.606 Displacement, relocation, acquisition, and replacement of housing.
- § 570.607 Employment and contracting opportunities.
- § 570.608 Lead-based paint.
- § 570.609 Use of debarred, suspended or ineligible contractors or subrecipients.
- § 570.610 Uniform administrative requirements, cost principles, and audit requirements for Federal awards.
- § 570.611 Conflict of interest.
- § 570.612 Executive Order 12372.
- § 570.613 Eligibility restrictions for certain resident aliens.
- § 570.614 Architectural Barriers Act and the Americans with Disabilities Act.
- § 570.615 Housing counseling.

B. “Independent Contractor”

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Subrecipient shall at all times remain an “independent contractor” with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers’ Compensation Insurance, as the Subrecipient is an independent contractor.

C. Hold Harmless

The Subrecipient shall hold harmless, defend and indemnify the Grantee from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Subrecipient’s performance or nonperformance of the services or subject matter called for in this Agreement.

D. Workers’ Compensation

The Subrecipient shall provide Workers’ Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

E. Insurance & Bonding

The Subrecipient shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the Grantee.

The Subrecipient shall comply with the bonding and insurance requirements of 24 CFR 84.31 and 84.48, Bonding and Insurance.

F. Grantee Recognition

The Subrecipient shall insure recognition of the role of the Grantee in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

G. Amendments

The Grantee or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the Grantee’s governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Subrecipient from its obligations under this Agreement.

The Grantee may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Subrecipient.

H. Suspension or Termination

In accordance with 24 CFR 85.43, the Grantee may suspend or terminate this Agreement if the Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;

2. Failure, for any reason, of the Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;

3. Ineffective or improper use of funds provided under this Agreement; or

4. Submission by the Subrecipient to the Grantee reports that are incorrect or incomplete in any material respect.

In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the Grantee or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety.

VIII. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

The Subrecipient agrees to comply with 24 CFR 84.21–28 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The Subrecipient shall administer its program in conformance with OMB Circulars A-122, “Cost Principles for Non-Profit Organizations,” or A-21, “Cost Principles for Educational Institutions,” as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

B. Documentation and Record Keeping

4. Records to be Maintained

The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.506, that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

a. Records providing a full description of each activity undertaken;
b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
c. Records required to determine the eligibility of activities;
d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
f. Financial records as required by 24 CFR 570.502, and 24 CFR 84.21–28; and
g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

2. <u>Retention</u>

The Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of five (5) years. The retention period begins on the date of the submission of the Grantee's annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

3. <u>Client Data</u>

The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to Grantee monitors or their designees for review upon request.

To document financial eligibility, the Subrecipient will collect income documentation through an IRS 1040 form from each recipient household. That documentation will be retained by the Subrecipient in the activity file.

The Subrecipient will ensure that reasonable precautions are taken to preserve the privacy and confidentiality of all client data.

4. <u>Disclosure</u>

The Subrecipient understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or Subrecipient's responsibilities with respect to services provided under this contract, is prohibited by the A.C.A 25-19-101, et. Seq. Unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

5. Close-outs

The Subrecipient's obligation to the Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG funds, including program income.

6. Audits & Inspections

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the Grantee, grantor agency, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning subrecipient audits and OMB Circular A-133.

C. Reporting and Payment Procedures

1. Program Income

The Subrecipient shall report monthly all program income (as defined at 24 CFR 570.500(a)) generated by activities carried out with CDBG funds made available under this contract. The use of program income by the Subrecipient shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, the Subrecipient may use such income during the contract period for activities permitted under this contract and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unexpended program income shall be returned to the Grantee at the end of the contract period. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the Grantee.

2. Indirect Costs

In accordance with the City of Bentonville financial policies, no indirect costs may be charged.

3. Payment Procedures

The Grantee will pay to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with any approved budget and Grantee policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by the Grantee in accordance with advance fund and program income balances available in Subrecipient accounts. In addition, the Grantee reserves the right to liquidate funds available under this contract for costs incurred by the Grantee on behalf of the Subrecipient.

4. Progress Reports

The Subrecipient shall submit regular Progress Reports to the Grantee in the form, content, and frequency as required by the Grantee.

Progress reports must include the number of persons served, the cost associated with each scholarship award, the racial demographics of the recipients, the income level of the recipients, and the household size of the recipients.

Reports will be submitted monthly upon performance of the activities included in the scope of work and will continue until the project is completed and all funds and disbursed and closed out.

An invoice for the services provided each month must accompany the progress report submitted.

Changes in the report schedule may be requested by the Subrecipient if project conditions change.

D. Procurement

1. Compliance

The Subrecipient shall comply with current Grantee policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the Grantee upon termination of this Agreement.

2. OMB Standards

Unless specified otherwise within this agreement, the Subrecipient shall procure all materials, property, or services in accordance with the requirements of 24 CFR 84.40–48.

3. Travel

The Subrecipient shall obtain written approval from the Grantee for any travel outside the metropolitan area with funds provided under this Agreement.

E. Use and Reversion of Assets

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

1. The Subrecipient shall transfer to the Grantee any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.

2. Real property under the Subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of $25,000.00 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until five (5) years after expiration of this Agreement. If the Subrecipient fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the Subrecipient shall pay the Grantee an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the Grantee. The Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five-year period.

3. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the Subrecipient for activities under this Agreement shall be (a) transferred to the Grantee for the CDBG program or (b) retained after compensating the Grantee an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment.

IX. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT

The Subrecipient agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606(b); (b) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements in 24 CFR 570.606(d) governing optional relocation policies. The Subrecipient shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition, or conversion for a CDBG-assisted project. The Subrecipient also agrees to comply with applicable Grantee ordinances, resolutions and policies concerning the displacement of persons from their residences.

X. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The Subrecipient agrees to comply with the Arkansas Civil Rights Act of 1993 and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

2. Nondiscrimination

The Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

3. Land Covenants

This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, the Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the Grantee and the United States are beneficiaries of and entitled to enforce such covenants. The Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

4. Section 504

The Subrecipient agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The Grantee shall provide the Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B. Affirmative Action

1. Approved Plan

The Subrecipient agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The Grantee shall provide Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program. The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

2. Women- and Minority-Owned Businesses (W/MBE)

The Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. Access to Records

The Subrecipient shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Notifications

The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

6. Subcontract Provisions

The Subrecipient will include the provisions of Paragraphs X.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

C. Employment Restrictions

1. Prohibited Activity

The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

2. Labor Standards

The Subrecipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable Federal, state, and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Subrecipient agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 *et seq.*) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Grantee for review upon request.

The Subrecipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of $2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the Grantee pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Subrecipient of its obligation, if any, to require payment of the higher wage. The Subrecipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

3. <u>"Section 3" Clause</u>

a. <u>Compliance</u>

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the Grantee, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors. Failure to fulfill these requirements shall subject the Grantee, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors, their successors, and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The Subrecipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Subrecipient further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

> "The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and

employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

The Subrecipient further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The Subrecipient certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

b. Notifications

The Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

c. Subcontracts

The Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The Subrecipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

D. Conduct

1. Assignability

The Subrecipient shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the Subrecipient from the Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

2. Subcontracts

a. Approvals

The Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the Grantee prior to the execution of such agreement.

b. Monitoring

The Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. Content

The Subrecipient shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

d. Selection Process

The Subrecipient shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

3. Hatch Act

The Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

4. Conflict of Interest

The Subrecipient agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:

a. The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.

b. No employee, officer, or agent of the Subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Subrecipient, or any designated public agency.

5. Lobbying

The Subrecipient hereby certifies that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

c. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly:

d. Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

6. Copyright

If this contract results in any copyrightable material or inventions, the Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

7. Religious Activities

The Subrecipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

XI. ENVIRONMENTAL CONDITIONS

The Subrecipient agrees to abide by all applicable environmental regulations at 24 CFR 50.4, except that (1) the Subrecipient does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) the Subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Grantee assumes all responsibility for ensuring that the environmental review process has been completed before funds are allocated.

No funds will be obligated to the Subrecipient until an environmental review has been completed by the Grantee.

XII. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

XIII. SECTION HEADINGS AND SUBHEADINGS

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

XIV. WAIVER

The Grantee's failure to act with respect to a breach by the Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

XV. ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the Grantee and the Subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Grantee and the Subrecipient with respect to this Agreement.

GRANTEE

City of Bentonville

By ______________________________

Mayor Stephanie Orman

Attest ___________________________

Malorie Marrs, CITY CLERK

Countersigned __________________________

Patrick Johndrow, FINANCE OFFICER

SUBRECIPIENT

Boys and Girls Club of Benton County

By ____________________________

Title___________________________

By ___________________________

Title __________________________

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Fed. I.D. # ____

____

Bonnie Bridges, STAFF ATTORNEY

RESOLUTION NO. ____________

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A SUB-RECIPIENT AGREEMENT WITH THE BOYS AND GIRLS CLUB OF BENTON COUNTY, FOR USE OF FY24 COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS, IN THE AMOUNT OF TEN THOUSAND DOLLARS ($10,000.00); AND FOR OTHER PURPOSES.

WHEREAS, the City of Bentonville is an entitlement community with the Housing and Urban Development's (HUD) Community Development Block Grant (CDBG) Program;

WHEREAS, staff recommends the approval of the sub-recipient agreement in the amount of ten thousand dollars ($10,000.00) to the Boys and Girls Club of Benton County, for scholarship funds;

WHEREAS, this sub-recipient award will be funded through the reimbursement from the FY24 CDBG funds; and

WHEREAS, the Boys and Girls Club of Benton County applied to become a sub-recipient of Bentonville's FY24 CDBG funds, to reimburse the cost of scholarships to children and teens of low-income families and to children and teens in foster care in Bentonville.

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

Section 1: That the Mayor and City Clerk are authorized to enter into a sub-recipient agreement with the Boys and Girls Club of Benton County, in an amount not to exceed ten thousand dollars ($10,000.00), to provide scholarship assistance to low-to-moderate income families in Bentonville;

Section 2: The City of Bentonville will fund the project with reimbursement from FY24 CDBG funds;

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 and APPROVED this _____ day of ________________, 2025.

APPROVED:

____
STEPHANIE ORMAN, Mayor

ATTEST:

____
MALORIE MARRS, City Clerk

City of Bentonville, Arkansas Agenda Item Form

Item Details

Council Meeting Date:	1/28/2025	**Submitted By:**	Taylor Allen
Phone:	479-271-3122	**For Department(s):**	Planning
Email:	tallen@bentonvillear.com		

Item Type (Check all that apply)

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

- ☐ Ordinance
- ☑ Resolution
- ☐ Informational

Title, Recommendation & Justification

Title:	Resolution Approving the Continuum of Care CDBG Sub-Recipient Award 2024
Action Recommendation & Justification:	A Resolution approving a CDBG sub-recipient contract in the amount of $10,000.00 with the NWA Continuum of Care for homelessness services and outreach. No budget adjustment is needed.
Additional Comments for Consideration (Optional):	This action is in line with the Council-approved CDBG consolidated plan from July, 2024 which included the Continuum of Care project.
Amount for Approval:	$ 10,000.00

Budget Impact

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

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

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

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

Budget Impact Notes for Consideration (Optional):

SUBRECIPIENT AGREEMENT

AGREEMENT BETWEEN THE CITY OF BENTONVILLE
AND
NORTHWEST ARKANSAS CONTINUUM OF CARE
FOR
BENTONVILLE CDBG PROGRAM YEAR 2024

THIS AGREEMENT, entered this _____ day of __________, 2025 by and between the City of Bentonville (herein called the "Grantee") and Northwest Arkansas Continuum of Care (herein called the "Subrecipient").

WHEREAS, the Grantee has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93-383; and

WHEREAS, the Grantee wishes to engage the Subrecipient to assist the Grantee in utilizing such funds.

NOW, THEREFORE, it is agreed between the parties hereto that;

I. SCOPE OF SERVICE

A. Activities

The Subrecipient will be responsible for administering a CDBG Year 2024 in a manner satisfactory to the Grantee and consistent with any standards required as a condition of providing these funds. Such program will include the following activities eligible under the Community Development Block Grant program:

Program Delivery

Activity #1 The Subrecipient will perform community outreach focusing on homeless persons within the city limits of Bentonville. Outreach staff will connect with the persons served through word of mouth, and partnership with local organizations such as the Bentonville Police Department and Salvation Army. Outreach will be done in person or over the phone. Once contact with an individual is made, staff will determine immediate needs and assist with shelter and material supplies. Each person the staff make contact with will be provided with an intake that includes an assessment, allowing them to be added to the homeless by-name list. This assessment provides a score which can be translated to the amount of vulnerability that a person has. The area of service is all of Bentonville, as this project involves serving the needs of unhoused persons. The Subrecipient is responsible for oversight of the contract organization and reporting all data and compliance documentation to the Grantee. Measurements of success will come from the number of homeless persons served and will be reported monthly by the Subrecipient to the Grantee. The schedule for this project begins upon completion of a successful environmental review and allocation of contracted funds, extending for the period of performance. All funds awarded will be associated with the cost of homeless outreach efforts and no program income will be generated.

General Administration

All administrative tasks in relation to the homelessness outreach project, including distributing funds, recordkeeping of adherence to CDBG requirements, and communicating with the Grantee though reporting periods and monitoring responsibilities. No amount of the CDBG funds will be used for administrative compensation or salary. All funding will be used for the homelessness outreach program funds to directly benefit the persons served.

B. National Objectives

All activities funded with CDGB funds must meet one of the CDBG program's National Objectives: benefit low- and moderate-income persons; aid in the prevention or elimination of slums or blight; or meet community development needs having a particular urgency, as defined in 24 CFR 570.208. The Subrecipient certifies that the activity (ies) carried out under this Agreement will meet the National Objective of Low and Moderate Income Limited Clientele.

This National Objective will be met through the presumed clientele requirement, as homeless persons are presumed to be extremely low income. No part of this project will benefit non-homeless individuals.

C. Levels of Accomplishment – Goals and Performance Measures

The Subrecipient agrees to provide the following levels of program services:

Activity	Units per Month	Total Units/Year
Homeless Outreach	7 Persons Served	At least 45 Persons Served

Units of service refers to the number of people the Subrecipient makes contact with and serves through connection with resources or information, and who is added to the homeless by-name list. Each person is a 'unit'. The Subrecipient agrees to the Total Units per year as a program requirement unless a request for an amendment of this agreement is submitted in light of program performance. The time period to meet the Total Units program requirement spans from the distribution of funds by the Grantee through the performance period ending in December of 2024.

Performance will be evaluated by the number of homeless persons served.

D. Staffing

Executive Director, NWA Continuum of Care. Subrecipient and the person who provides all documentation and reimbursement requests to the Grantee. Responsible for overseeing the daily operations of the project and assessing the performance of the contractors.

Contract Outreach Team. Contract organization responsible for all outreach efforts. This organization will submit hours and invoice monthly for payment and submit all forms for intake and homelessness and income verification for persons served.

E. Performance Monitoring

The Grantee will monitor the performance of the Subrecipient against goals and performance standards as stated above. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the Grantee, contract suspension or termination procedures will be initiated.

II. TIME OF PERFORMANCE

Services of the Subrecipient shall start on the third day of February, 2025 and end on the first day of June, 2025. The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which the Subrecipient remains in control of CDBG funds or other CDBG assets, including program income.

III. BUDGET

Line Item	Amount:
Salaries	________
Fringe	________
Office Space (Program only)	________
Utilities	________
Communications	________
Reproduction/Printing	________
Supplies and Materials	________
Mileage	________
Audit	________
Other (Specify)	$10,000.00
Indirect Costs (Specify)	________
TOTAL	$10,000.00

For this agreement, the Subrecipient will receive a total of $10,000.00. The total amount of this funding will be put toward the cost of homelessness outreach through the contract organization. The cost of contracting has been categorized as ‘other’ for the purpose of this budget.

Any indirect costs charged must be consistent with the conditions of Paragraph VIII (C)(2) of this Agreement. In addition, the Grantee may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Grantee. Any amendments to the budget must be approved in writing by both the Grantee and the Subrecipient.

IV. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement shall not exceed $10,000.00. Drawdowns for the payment of eligible expenses shall be made against the line item budgets specified in Paragraph III herein and in accordance with performance. Expenses for general administration shall also be paid against the line item budgets specified in Paragraph III and in accordance with performance.

Payments may be contingent upon certification of the Subrecipient's financial management system in accordance with the standards specified in 24 CFR 84.21.

Payment will be made on a reimbursement basis by the Grantee to the Subrecipient. The Subrecipient will invoice the Grantee monthly for the cost of services specified in the Levels of Accomplishment. Invoices will be made on a monthly basis, unless the Subrecipient requests an extension in writing and it is approved by the Grantee. Invoices will be sent to the CDBG Coordinator.

V. NOTICES

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communication and details concerning this contract shall be directed to the following contract representatives:

Grantee	Subrecipient
Taylor Allen, Community and Economic Development Planner	Exec. Director ____________________
City of Bentonville	NWA Continuum of Care
305 SW A Street Bentonville, AR 72712	__________________________________
(479) 271-3122	__________________________________
	[Telephone] ________________________
	[Fax Number] ______________________

VI. SPECIAL CONDITIONS

The City reserves the right to terminate this contract upon written notification to the Subrecipient under any of the following conditions:

1) Notification by HUD to the City that said project is ineligible because of project location, services provided, or any other reason cited by HUD;
2) Notification by HUD to the City that said project is deficient and that continued support of the project is not providing an adequate level of services to low income and minority people; or
3) Written notification from HUD to the City that the program funds made available to the City are being curtailed, withdrawn, or otherwise restricted.

The City also reserves the right to terminate this Contract or to reduce the contract compensation amount if the Subrecipient:

1) Fails to file required reports or to meet project progress or completion deadlines;
2) Materially fails to comply with any provision of this Agreement (which may result in suspension or termination in accordance with 24 CFR 85.43 or OMB Circular A-110);
3) Expense funds under this Agreement for ineligible activities, services, or items;
4) Implements the project prior to notification from the City that the federal environmental review process has been completed;
5) Violates Labor Standards requirements; or
6) Fails to comply with written notice from the City of substandard performance under the terms of this Agreement.

VII. GENERAL CONDITIONS

A. General Compliance

The Subrecipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except that (1) the Subrecipient does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) the Subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Subrecipient also agrees to comply with all other applicable Federal, state, and local laws, regulations, and policies governing the funds provided under this contract. The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

Requirements at Subpart K include:

- § 570.601 Public Law 88-352 and Public Law 90-284; affirmatively furthering fair housing; Executive Order 11063.
- § 570.602 Section 109 of the Act.
- § 570.603 Labor standards.
- § 570.604 Environmental standards.
- § 570.605 National Flood Insurance Program.
- § 570.606 Displacement, relocation, acquisition, and replacement of housing.
- § 570.607 Employment and contracting opportunities.
- § 570.608 Lead-based paint.
- § 570.609 Use of debarred, suspended or ineligible contractors or subrecipients.
- § 570.610 Uniform administrative requirements, cost principles, and audit requirements for Federal awards.
- § 570.611 Conflict of interest.
- § 570.612 Executive Order 12372.
- § 570.613 Eligibility restrictions for certain resident aliens.
- § 570.614 Architectural Barriers Act and the Americans with Disabilities Act.
- § 570.615 Housing counseling.

B. "Independent Contractor"

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Subrecipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the Subrecipient is an independent contractor.

C. Hold Harmless

The Subrecipient shall hold harmless, defend, and indemnify the Grantee from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Subrecipient's performance or nonperformance of the services or subject matter called for in this Agreement.

D. Workers' Compensation

The Subrecipient shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

E. Insurance & Bonding

The Subrecipient shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the Grantee.

The Subrecipient shall comply with the bonding and insurance requirements of 24 CFR 84.31 and 84.48, Bonding and Insurance.

F. Grantee Recognition

The Subrecipient shall insure recognition of the role of the Grantee in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

G. Amendments

The Grantee or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Subrecipient from its obligations under this Agreement.

The Grantee may, in its discretion, amend this Agreement to conform with Federal, state, or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Subrecipient.

H. Suspension or Termination

In accordance with 24 CFR 85.43, the Grantee may suspend or terminate this Agreement if the Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;

2. Failure, for any reason, of the Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;

3. Ineffective or improper use of funds provided under this Agreement; or

4. Submission by the Subrecipient to the Grantee reports that are incorrect or incomplete in any material respect.

In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the Grantee or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety.

VIII. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

The Subrecipient agrees to comply with 24 CFR 84.21–28 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The Subrecipient shall administer its program in conformance with OMB Circulars A-122, “Cost Principles for Non-Profit Organizations,” or A-21, “Cost Principles for Educational Institutions,” as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

B. Documentation and Record Keeping

4. Records to be Maintained

The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.506, that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

a. Records providing a full description of each activity undertaken;
b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;

c. Records required to determine the eligibility of activities;

d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;

e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;

f. Financial records as required by 24 CFR 570.502, and 24 CFR 84.21–28; and

g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

2. Retention

The Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of five (5) years. The retention period begins on the date of the submission of the Grantee's annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations, or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

3. Client Data

The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to Grantee monitors or their designees for review upon request.

The Subrecipient will ensure that reasonable precautions are taken to preserve the privacy and confidentiality of all client data.

4. Disclosure

The Subrecipient understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or Subrecipient's responsibilities with respect to services provided under this contract, is prohibited by the A.C.A 25-19-101, et. Seq. Unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

5. Close-outs

The Subrecipient's obligation to the Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG funds, including program income.

6. Audits & Inspections

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the Grantee, grantor agency, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning subrecipient audits and OMB Circular A-133.

C. Reporting and Payment Procedures

1. Program Income

The Subrecipient shall report monthly all program income (as defined at 24 CFR 570.500(a)) generated by activities carried out with CDBG funds made available under this contract. The use of program income by the Subrecipient shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, the Subrecipient may use such income during the contract period for activities permitted under this contract and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unexpended program income shall be returned to the Grantee at the end of the contract period. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the Grantee.

2. Indirect Costs

In accordance with the City of Bentonville financial policies, no indirect costs may be charged.

3. Payment Procedures

The Grantee will pay to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with any approved budget and Grantee policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by the Grantee in accordance with advance fund and program income balances available in Subrecipient accounts. In addition, the Grantee reserves the right to liquidate funds available under this contract for costs incurred by the Grantee on behalf of the Subrecipient.

4. Progress Reports

The Subrecipient shall submit regular Progress Reports to the Grantee in the form, content, and frequency as required by the Grantee.

Progress reports must include the number of persons served, the cost of outreach efforts, and the racial demographics of the recipients.

Reports will be submitted monthly upon performance of the activities included in the scope of work and will continue until the project is completed and all funds are disbursed and closed out. Progress will be measured by the number of persons reflected in the HMIS data submitted to the Grantee with the invoice for service.

An invoice for the services provided each month must accompany the progress report submitted. For any materials or supplies that are purchased, a receipt must accompany the invoice.

For all activities involving salaries or compensation, a time sheet must be submitted with each monthly report and invoice. The time sheet must reflect the proportion of time spent on CDBG activities compared to other duties.

Changes in the report schedule may be requested by the Subrecipient if project conditions change.

D. Procurement

1. Compliance

The Subrecipient shall comply with current Grantee policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the Grantee upon termination of this Agreement.

2. OMB Standards

Unless specified otherwise within this agreement, the Subrecipient shall procure all materials, property, or services in accordance with the requirements of 24 CFR 84.40–48.

3. Travel

The Subrecipient shall obtain written approval from the Grantee for any travel outside the metropolitan area with funds provided under this Agreement.

E. Use and Reversion of Assets

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

1. The Subrecipient shall transfer to the Grantee any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.

2. Real property under the Subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of $25,000.00 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until five (5) years after expiration of this Agreement or such longer period of time as the Grantee deems appropriate. If the Subrecipient fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the Subrecipient shall pay the Grantee an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the Grantee. The Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five-year period or such longer period of time as the Grantee deems appropriate.

3. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the Subrecipient for activities under this Agreement shall be (a) transferred to the Grantee for the CDBG program or (b) retained after compensating the Grantee an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment.

IX. <u>RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT</u>

The Subrecipient agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606(b); (b) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements in 24 CFR 570.606(d) governing optional relocation policies. The Subrecipient shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition, or conversion for a CDBG-assisted project. The Subrecipient also agrees to comply with applicable Grantee ordinances, resolutions and policies concerning the displacement of persons from their residences.

X. <u>PERSONNEL & PARTICIPANT CONDITIONS</u>

A. <u>Civil Rights</u>

1. <u>Compliance</u>

The Subrecipient agrees to comply with the Arkansas Civil Rights Act of 1993 and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive

Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

2. Nondiscrimination

The Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

3. Land Covenants

This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, the Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the Grantee and the United States are beneficiaries of and entitled to enforce such covenants. The Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

4. Section 504

The Subrecipient agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The Grantee shall provide the Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B. Affirmative Action

1. Approved Plan

The Subrecipient agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The Grantee shall provide Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program. The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

2. Women- and Minority-Owned Businesses (W/MBE)

The Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. Access to Records

The Subrecipient shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Notifications

The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

6. Subcontract Provisions

The Subrecipient will include the provisions of Paragraphs X.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

C. Employment Restrictions

1. Prohibited Activity

The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

2. Labor Standards

The Subrecipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable Federal, state, and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Subrecipient agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 *et seq.*) and its implementing regulations of the U.S.

Department of Labor at 29 CFR Part 5. The Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Grantee for review upon request.

The Subrecipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of $2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the Grantee pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Subrecipient of its obligation, if any, to require payment of the higher wage. The Subrecipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

3. "Section 3" Clause

a. Compliance

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the Grantee, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors. Failure to fulfill these requirements shall subject the Grantee, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The Subrecipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Subrecipient further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

> "The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

The Subrecipient further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The Subrecipient certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

b. Notifications

The Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

c. Subcontracts

The Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The Subrecipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

D. Conduct

1. Assignability

The Subrecipient shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the Subrecipient from the Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

2. Subcontracts

a. Approvals

The Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the Grantee prior to the execution of such agreement.

b. Monitoring

The Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. Content

The Subrecipient shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

d. Selection Process

The Subrecipient shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

3. Hatch Act

The Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

4. Conflict of Interest

The Subrecipient agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:

a. The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.

b. No employee, officer or agent of the Subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Subrecipient, or any designated public agency.

5. Lobbying

The Subrecipient hereby certifies that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

c. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly.

d. Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

6. Copyright

If this contract results in any copyrightable material or inventions, the Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

7. Religious Activities

The Subrecipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

XI. ENVIRONMENTAL CONDITIONS

The Subrecipient agrees to abide by all applicable environmental regulations at 24 CFR 50.4, except that (1) the Subrecipient does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) the Subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Grantee assumes all responsibility for ensuring that the environmental review process has been completed before funds are allocated.

No funds will be obligated to the Subrecipient until an environmental review has been completed by the Grantee.

XII. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

XIII. SECTION HEADINGS AND SUBHEADINGS

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

XIV. WAIVER

The Grantee's failure to act with respect to a breach by the Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

XV. ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the Grantee and the Subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Grantee and the Subrecipient with respect to this Agreement.

Date ______________________

IN WITNESS WHEREOF, the Parties have executed this contract as of the date written first above.

GRANTEE

City of Bentonville

By ____________________________
Mayor Stephanie Orman

Attest _________________________
Malorie Marrs, CITY CLERK

Countersigned ________________________
Patrick Johndrow, FINANCE OFFICER

SUBRECIPIENT

Northwest Arkansas Continuum of Care

By __________________________

Title_________________________

By _________________________

Title ________________________

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Fed. I.D. # _____________________________________

____
Bonnie Bridges, STAFF ATTORNEY

RESOLUTION NO. _________

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A SUB-RECIPIENT AGREEMENT WITH THE NORTHWEST ARKANSAS CONTINUUM OF CARE, FOR USE OF FY24 COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS, IN THE AMOUNT OF TEN THOUSAND DOLLARS ($10,000.00); AND FOR OTHER PURPOSES.

WHEREAS, the City of Bentonville is an entitlement community with the Housing and Urban Development's (HUD) Community Development Block Grant (CDBG) Program;

WHEREAS, staff recommends the approval of the sub-recipient agreement in the amount of ten thousand dollars ($10,000.00) to the Northwest Arkansas Continuum of Care, for homelessness services and outreach;

WHEREAS, this sub-recipient award will be funded through the reimbursement from the FY24 CDBG funds; and

WHEREAS, the Northwest Arkansas Continuum of Care applied to become a subrecipient of Bentonville's FY24 CDBG funds, to perform community outreach focusing on homeless persons within the city limits of Bentonville.

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

Section 1: That the Mayor and City Clerk are authorized to enter into a sub-recipient agreement with the Northwest Arkansas Continuum of Care, in an amount not to exceed ten thousand dollars ($10,000.00), to provide homelessness services and outreach;

Section 2: The City of Bentonville will fund the project with reimbursement from FY24 CDBG funds;

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 and APPROVED this _____ day of ________________, 2025.

APPROVED:

____
STEPHANIE ORMAN, Mayor

ATTEST:

____
MALORIE MARRS, City Clerk

City of Bentonville, Arkansas Agenda Item Form

Item Details

Council Meeting Date:	1/28/2025	**Submitted By:**	Taylor Allen
Phone:	479-271-3122	**For Department(s):**	Planning
Email:	tallen@bentonvillear.com		

Item Type (Check all that apply)

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

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

Title, Recommendation & Justification

Title:	Resolution Approving the Helen Walton Children's Center CDBG Sub-Recipient Award 2024
Action Recommendation & Justification:	A Resolution approving a CDBG sub-recipient contract in the amount of $15,000.00 to the Helen Walton Children's Enrichment Center for scholarship funds. No budget adjustment is needed.
Additional Comments for Consideration (Optional):	This action is in line with the Council-approved CDBG consolidated plan from July, 2024 which included the Helen Walton Center project.
Amount for Approval:	$ 15,000.00

Budget Impact

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

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

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

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

Budget Impact Notes for Consideration (Optional):

SUBRECIPIENT AGREEMENT

AGREEMENT BETWEEN THE CITY OF BENTONVILLE
AND
HELEN R. WALTON CHILDREN'S ENRICHMENT CENTER
FOR
BENTONVILLE CDBG PROGRAM YEAR 2024

THIS AGREEMENT, entered this _____ day of __________, 2025 by and between the City of Bentonville (herein called the "Grantee") and the Helen R. Walton Children's Enrichment Center (herein called the "Subrecipient").

WHEREAS, the Grantee has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93-383; and

WHEREAS, the Grantee wishes to engage the Subrecipient to assist the Grantee in utilizing such funds.

NOW, THEREFORE, it is agreed between the parties hereto that;

I. <u>SCOPE OF SERVICE</u>

A. <u>Activities</u>

The Subrecipient will be responsible for administering a CDBG Year 2024 in a manner satisfactory to the Grantee and consistent with any standards required as a condition of providing these funds. Such program will include the following activities eligible under the Community Development Block Grant program:

Program Delivery

Activity #1 The Subrecipient will use grant funds to support their scholarship programs. These scholarships will be awarded to children from low income families within Bentonville, and will provide funding for these persons to participate in programming offered by the Subrecipient, including free childhood education, access to therapy, case management, and support services for the family in poverty. All action needed from the Subrecipient is in relation to the administration of the scholarship programs. Demographic information about the persons served by the grant funding will be collected by the Subrecipient to ensure compliance with CDBG regulations. Measurement of success will be determined by the number of program recipients and will be reported monthly by the Subrecipient to the Grantee. The schedule for these activities will begin upon completion of an environmental review and will extend for the period of performance, concluding in June of 2025, unless an extension is requested by the Subrecipient and approved of by the Grantee. This is a public service activity and will take place at the Subrecipient's location of 309 NE J Street, Bentonville AR 72712. All funds awarded will be used to reimburse the cost of the scholarship programs to low income families within Bentonville. No program income will be generated by this project.

General Administration

All administrative tasks will be in relation to the scholarship program, including distributing funds, recordkeeping of adherence to CDBG requirements, and communicating with the Grantee though reporting periods and monitoring responsibilities. No amount of the CDBG funds will be used for administrative compensation or salary. All funding will be used for the scholarship program funds to directly benefit low and moderate income persons.

B. National Objectives

All activities funded with CDGB funds must meet one of the CDBG program's National Objectives: benefit low- and moderate-income persons; aid in the prevention or elimination of slums or blight; or meet community development needs having a particular urgency, as defined in 24 CFR 570.208. The Subrecipient certifies that the activity (ies) carried out under this Agreement will meet the National Objective of Low and Moderate Income Limited Clientele.

This National Objective will be met by the Subrecipient placing income eligibility requirements for the scholarship program. All funding awarded will require information on family size and income level to ensure that it is evident that the CDBG funds are distributed to persons who do not exceed the low and moderate income limits. Income eligibility will be documented by an IRS 1040 form from each program recipient. This will meet the requirements set out in the National Objective of Low and Moderate Income Limited Clientele.

C. Levels of Accomplishment – Goals and Performance Measures

The Subrecipient agrees to provide the following levels of program services:

Activity	Units per Month	Total Units/Year
Scholarship funds	2 persons per month	4 persons per year

Units of service is defined by the number of persons the Subrecipient provides funding for through the scholarship programs. Each person served will be a 'unit'. The Subrecipient agrees to the Total Units per year as a program requirement, unless a request for amendment of this agreement is submitted in light of program performance or number of eligible recipients. The time period to meet the Total Units program requirement spans from the distribution of funds by the Grantee through the performance period ending in June of 2025.

Performance will be measured by the number of persons receiving tuition assistance.

D. Staffing

Family Services Coordinator, HWCEC. Serves as the primary liaison between community organizations and implements STP ONE program.

Executive Director, HWCEC. Oversees and manages project.

Director of Development, HWCEC. Reports program metrics, manages communications to community at large about program.

E. Performance Monitoring

The Grantee will monitor the performance of the Subrecipient against goals and performance standards as stated above. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the Grantee, contract suspension or termination procedures will be initiated.

II. TIME OF PERFORMANCE

Services of the Subrecipient shall start on the third day of February, 2025 and end on the first day of June, 2025. The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which the Subrecipient remains in control of CDBG funds or other CDBG assets, including program income.

III. BUDGET

Line Item	Amount:
Salaries	________
Fringe	________
Office Space (Program only)	________
Utilities	________
Communications	________
Reproduction/Printing	________
Supplies and Materials	________
Mileage	________
Audit	________
Other (Specify)	$15,000.00
Indirect Costs (Specify)	________
TOTAL	$15,000.00

For this agreement, the Subrecipient will receive a total of $15,000.00. The total amount of this funding will be put toward tuition for child participants of the Subrecipient's programming. This $15,000.00 has been categorized as 'other' for the purpose of this line-item budget. No funds may be spent except on the delivery of scholarships.

Any indirect costs charged must be consistent with the conditions of Paragraph VIII (C)(2) of this Agreement. In addition, the Grantee may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Grantee. Any amendments to the budget must be approved in writing by both the Grantee and the Subrecipient.

IV. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement shall not exceed $15,000.00. Drawdowns for the payment of eligible expenses shall be made against the line-item budgets specified in Paragraph III herein and in accordance with performance. Expenses for general administration shall also be paid against the line-item budgets specified in Paragraph III and in accordance with performance.

Payments may be contingent upon certification of the Subrecipient's financial management system in accordance with the standards specified in 24 CFR 84.21.

Payment will be made on a reimbursement basis, where the Subrecipient agrees to invoice the Grantee for the cost of tuition provided to eligible program participants. The Subrecipient will invoice the Grantee on a monthly basis, unless a request is made in writing for an extension and approved by the Grantee. Invoices will be sent to the CDBG Coordinator.

V. NOTICES

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, personal delivery, or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communication and details concerning this contract shall be directed to the following contract representatives:

Grantee	Subrecipient
Taylor Allen, Community and Economic Development Planner	Exec. Director ____________________
City of Bentonville	Helen R. Walton's Children Enrichment Center
305 SW A Street Bentonville, AR 72712	___________________________________
(479) 271-3122	___________________________________
	[Telephone] ________________________
	[Fax Number] _______________________

VI. SPECIAL CONDITIONS

The City reserves the right to terminate this contract upon written notification to the Subrecipient under any of the following conditions:

1) Notification by HUD to the City that said project is ineligible because of project location, services provided, or any other reason cited by HUD;
2) Notification by HUD to the City that said project is deficient and that continued support of the project is not providing an adequate level of services to low income and minority people; or

3) Written notification from HUD to the City that the program funds made available to the City are being curtailed, withdrawn, or otherwise restricted.

The City also reserves the right to terminate this Contract or to reduce the contract compensation amount if the Subrecipient:

1) Fails to file required reports or to meet project progress or completion deadlines;
2) Materially fails to comply with any provision of this Agreement (which may result in suspension or termination in accordance with 24 CFR 85.43 or OMB Circular A-110);
3) Expense funds under this Agreement for ineligible activities, services, or items;
4) Implements the project prior to notification from the City that the federal environmental review process has been completed;
5) Violates Labor Standards requirements; or
6) Fails to comply with written notice from the City of substandard performance under the terms of this Agreement.

VII. GENERAL CONDITIONS

A. General Compliance

The Subrecipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except that (1) the Subrecipient does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) the Subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Subrecipient also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract. The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

Requirements at Subpart K include:

- § 570.601 Public Law 88-352 and Public Law 90-284; affirmatively furthering fair housing; Executive Order 11063.
- § 570.602 Section 109 of the Act.
- § 570.603 Labor standards.
- § 570.604 Environmental standards.
- § 570.605 National Flood Insurance Program.
- § 570.606 Displacement, relocation, acquisition, and replacement of housing.
- § 570.607 Employment and contracting opportunities.
- § 570.608 Lead-based paint.
- § 570.609 Use of debarred, suspended or ineligible contractors or subrecipients.
- § 570.610 Uniform administrative requirements, cost principles, and audit requirements for Federal awards.
- § 570.611 Conflict of interest.
- § 570.612 Executive Order 12372.
- § 570.613 Eligibility restrictions for certain resident aliens.
- § 570.614 Architectural Barriers Act and the Americans with Disabilities Act.
- § 570.615 Housing counseling.

B. <u>"Independent Contractor"</u>

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Subrecipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the Subrecipient is an independent contractor.

C. <u>Hold Harmless</u>

The Subrecipient shall hold harmless, defend, and indemnify the Grantee from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Subrecipient's performance or nonperformance of the services or subject matter called for in this Agreement.

D. <u>Workers' Compensation</u>

The Subrecipient shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

E. <u>Insurance & Bonding</u>

The Subrecipient shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the Grantee.

The Subrecipient shall comply with the bonding and insurance requirements of 24 CFR 84.31 and 84.48, Bonding and Insurance.

F. <u>Grantee Recognition</u>

The Subrecipient shall insure recognition of the role of the Grantee in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

G. <u>Amendments</u>

The Grantee or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Subrecipient from its obligations under this Agreement.

The Grantee may, in its discretion, amend this Agreement to conform with Federal, state, or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Subrecipient.

H. Suspension or Termination

In accordance with 24 CFR 85.43, the Grantee may suspend or terminate this Agreement if the Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or, directives as may become applicable at any time;

2. Failure, for any reason, of the Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;

3. Ineffective or improper use of funds provided under this Agreement; or

4. Submission by the Subrecipient to the Grantee reports that are incorrect or incomplete in any material respect.

In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the Grantee or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety.

VIII. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

The Subrecipient agrees to comply with 24 CFR 84.21–28 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The Subrecipient shall administer its program in conformance with OMB Circulars A-122, “Cost Principles for Non-Profit Organizations,” or A-21, “Cost Principles for Educational Institutions,” as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

B. Documentation and Record Keeping

1. Records to be Maintained

The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.506, that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

a. Records providing a full description of each activity undertaken;
b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
c. Records required to determine the eligibility of activities;
d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
f. Financial records as required by 24 CFR 570.502, and 24 CFR 84.21–28; and
g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

2. <u>Retention</u>

The Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of five (5) years. The retention period begins on the date of the submission of the Grantee's annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations, or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

3. <u>Client Data</u>

The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to Grantee monitors or their designees for review upon request.

4. <u>Disclosure</u>

The Subrecipient understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or Subrecipient's responsibilities with respect to services provided under this contract, is prohibited by the A.C.A 25-19-101, et. Seq. unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

5. <u>Close-outs</u>

The Subrecipient's obligation to the Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG funds, including program income.

6. Audits & Inspections

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the Grantee, grantor agency, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning subrecipient audits and OMB Circular A-133.

C. Reporting and Payment Procedures

1. Program Income

The Subrecipient shall report monthly all program income (as defined at 24 CFR 570.500(a)) generated by activities carried out with CDBG funds made available under this contract. The use of program income by the Subrecipient shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, the Subrecipient may use such income during the contract period for activities permitted under this contract and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unexpended program income shall be returned to the Grantee at the end of the contract period. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the Grantee.

2. Indirect Costs

In accordance with the City of Bentonville financial policies, no indirect costs may be charged.

3. Payment Procedures

The Grantee will pay to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with any approved budget and Grantee policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by the Grantee in accordance with advance fund and program income balances available in Subrecipient accounts. In addition, the Grantee reserves the right to liquidate funds available under this contract for costs incurred by the Grantee on behalf of the Subrecipient.

4. Progress Reports

The Subrecipient shall submit regular Progress Reports to the Grantee in the form, content, and frequency as required by the Grantee. Reports should be submitted on at least a monthly basis.

Progress reports must include the number of persons served, the cost associated with each scholarship award, the racial demographics of the recipients, the income level of the recipients, and the household size of the recipients.

Reports will be submitted monthly upon performance of the activities included in the scope of work and will continue until the project is completed and all funds are disbursed and closed out.

An invoice for the services provided each month must accompany the progress report submitted.

Changes in the report schedule may be requested by the Subrecipient if project conditions change.

D. Procurement

1. Compliance

The Subrecipient shall comply with current Grantee policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the Grantee upon termination of this Agreement.

2. OMB Standards

Unless specified otherwise within this agreement, the Subrecipient shall procure all materials, property, or services in accordance with the requirements of 24 CFR 84.40–48.

3. Travel

The Subrecipient shall obtain written approval from the Grantee for any travel outside the metropolitan area with funds provided under this Agreement.

E. Use and Reversion of Assets

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

1. The Subrecipient shall transfer to the Grantee any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.

2. Real property under the Subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of $25,000.00 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until five (5) years after expiration of this Agreement. If the Subrecipient fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the Subrecipient shall pay the Grantee an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the Grantee. The Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five-year period.

3. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the Subrecipient for activities under this Agreement shall be (a) transferred to the Grantee for the CDBG program or (b) retained after compensating the Grantee an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment.

IX. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT

The Subrecipient agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606(b); (b) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements in 24 CFR 570.606(d) governing optional relocation policies. The Subrecipient shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition, or conversion for a CDBG-assisted project. The Subrecipient also agrees to comply with applicable Grantee ordinances, resolutions and policies concerning the displacement of persons from their residences.

X. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The Subrecipient agrees to comply with Arkansas Civil Rights Act of 1993 and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

2. Nondiscrimination

The Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

3. Land Covenants

This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, the Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the Grantee and the United States are beneficiaries of and entitled to enforce such covenants. The Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

4. Section 504

The Subrecipient agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The Grantee shall provide the Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B. Affirmative Action

1. Approved Plan

The Subrecipient agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The Grantee shall provide Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program. The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

2. Women- and Minority-Owned Businesses (W/MBE)

The Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. Access to Records

The Subrecipient shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Notifications

The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

6. Subcontract Provisions

The Subrecipient will include the provisions of Paragraphs X.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

C. Employment Restrictions

1. Prohibited Activity

The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

2. Labor Standards

The Subrecipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable Federal, state, and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Subrecipient agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 *et seq.*) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Grantee for review upon request.

The Subrecipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of $2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the Grantee pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Subrecipient of its obligation, if any, to require payment of the higher wage. The Subrecipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

3. <u>"Section 3" Clause</u>

a. <u>Compliance</u>

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the Grantee, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors. Failure to fulfill these requirements shall subject the Grantee, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The Subrecipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Subrecipient further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

> "The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

The Subrecipient further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The Subrecipient certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

b. Notifications

The Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

c. Subcontracts

The Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The Subrecipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

D. Conduct

1. Assignability

The Subrecipient shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the Subrecipient from the Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

2. Subcontracts

a. Approvals

The Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the Grantee prior to the execution of such agreement.

b. Monitoring

The Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. Content

The Subrecipient shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

d. Selection Process

The Subrecipient shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

3. Hatch Act

The Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

4. Conflict of Interest

The Subrecipient agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:

a. The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.

b. No employee, officer, or agent of the Subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Subrecipient, or any designated public agency.

5. Lobbying

The Subrecipient hereby certifies that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

c. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly.

d. Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

6. Copyright

If this contract results in any copyrightable material or inventions, the Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

7. Religious Activities

The Subrecipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

XI. ENVIRONMENTAL CONDITIONS

The Subrecipient agrees to abide by all applicable environmental regulations at 24 CFR 50.4, except that (1) the Subrecipient does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) the Subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Grantee assumes all responsibility for ensuring that the environmental review process has been completed before funds are allocated.

XII. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

XIII. SECTION HEADINGS AND SUBHEADINGS

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

XIV. WAIVER

The Grantee's failure to act with respect to a breach by the Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

XV. ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the Grantee and the Subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Grantee and the Subrecipient with respect to this Agreement.

GRANTEE

City of Bentonville

By ______________________________
Mayor Stephanie Orman

Attest ___________________________
Malorie Marrs, CITY CLERK

Countersigned __________________________
Patrick Johndrow, FINANCE OFFICER

SUBRECIPIENT

Helen R. Walton's Children's Enrichment Center

By ____________________________

Title___________________________

By ___________________________

Title __________________________

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Fed. I.D. # ____

____
Bonnie Bridges, STAFF ATTORNEY

RESOLUTION NO. _________

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A SUB-RECIPIENT AGREEMENT WITH HELEN WALTON CHILDREN'S CENTER, FOR USE OF FY24 COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS, IN THE AMOUNT OF FIFTEEN THOUSAND DOLLARS ($15,000.00); AND FOR OTHER PURPOSES.

WHEREAS, the City of Bentonville is an entitlement community with the Housing and Urban Development's (HUD) Community Development Block Grant (CDBG) Program;

WHEREAS, staff recommends the approval of the sub-recipient agreement in the amount of fifteen thousand dollars ($15,000.00) to Helen Walton Children's Center, for scholarship funds;

WHEREAS, this sub-recipient award will be funded through the reimbursement from the FY24 CDBG funds; and

WHEREAS, Helen Walton Children's Center applied to become a subrecipient of Bentonville's FY24 CDBG funds, to reimburse the cost of scholarships low-income families within Bentonville.

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

Section 1: That the Mayor and City Clerk are authorized to enter into a sub-recipient agreement with the Helen Walton Children's Center, in an amount not to exceed fifteen thousand dollars ($15,000.00), to provide scholarship assistance to low-income families in Bentonville;

Section 2: The City of Bentonville will fund the project with reimbursement from FY24 CDBG funds;

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 and APPROVED this _____ day of ________________, 2025.

APPROVED:

____
STEPHANIE ORMAN, Mayor

ATTEST:

____
MALORIE MARRS, City Clerk

City of Bentonville, Arkansas Agenda Item Form

Item Details

Council Meeting Date:	1/28/2025	**Submitted By:**	Josh Stacey
Phone:	479-418-8653	**For Department(s):**	Parks
Email:	jstacey@bentonvillear.com		

Item Type (Check all that apply)

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

Title, Recommendation & Justification

Title:	Resolution to Enter Into an Agreement with Musco Sports Lighting, LLC
Action Recommendation & Justification:	A Resolution authorizing an agreement with Musco Sports Lighting, LLC in the amount of $174,800.00 for sports lighting replacement at Memorial Park necessary due to the May 26, 2024, storm. A budget adjustment is needed.
Additional Comments for Consideration (Optional):	Use of a cooperative purchasing agreement can be used pursuant to Arkansas State Statute §19-11-249. Purchasing and Compliance performed an evaluation of Contract No. 041123-MSL determining that the solicitation was in line with both Arkansas State Statute and the City's Purchasing and Compliance Policy.
Amount for Approval:	$ 174,800.00

Budget Impact

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

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

Account Number (ORG-OBJECT)	Account Description	Expense	Revenue
105030-44430	Building/Ground Maintenance	$ 174,800.00	$
		$	$
		$	$
		$	$

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

Budget Impact Notes for Consideration (Optional):

Memo

To: City Council, Mayor Orman

From: Josh Stacey, Parks and Recreation Deputy Director

CC: David Wright, Parks and Recreation Director

Date: January 23, 2025

Re: Council approval of a Resolution authorizing the Mayor and City Clerk to enter into an agreement with Musco Sports Lighting, LLC in the amount of $174,800 for sports lighting replacement at Memorial Park necessary due to the May 26 storm.

Parks and Recreation Staff is seeking City Council's approval of a resolution authorizing the Mayor and City Clerk to enter into an agreement with Musco Sports Lighting, LLC in the amount of $174,800 for sports lighting replacement at Memorial Park necessary due to the May 26 storm.

The May 26 storm damaged a sports light pole on Field #9 at Memorial Park Baseball and Softball Complex. The pole had to be removed due to it being a safety risk. Due to this, the sports lights on Field #9 need to be replaced. Unfortunately, all the lights on the field will need to be replaced to provide a safe playing environment due to the age of the old lights currently at Memorial. The new LED lights will not blend with the current lights at the complex and installing the old lights is not possible as they are no longer made.

A budget adjustment is required for this work to be completed. Property insurance will cover up to $200,000.00 for sports lighting repair due to storm damage.

If you have any questions regarding this item, please contact Josh Stacey at jstacey@bentonvillear.com or call 418.8653.

Attachments:
Musco Quote

MEMORANDUM

PURCHASING AND COMPLIANCE DEPARTMENT

TO: ADMINISTRATION

FROM: Kelsi Frederick, Purchasing and Compliance Manager

DATE: January 28, 2025

SUBJECT: 24Storm Sports Lighting at Memorial Park Field 9

Purchasing and Compliance recommends approval of resolution authorizing the Mayor and City Clerk to enter into an agreement with Musco Sports Lighting, LLC in the amount of $174,800.00 for the replacement of sports lighting at Memorial Park. This replacement is necessary due to damage sustained during the May 26, 2024, storm.

The agreement utilizes Contract No. 041123-MSL through Sourcewell a cooperative purchasing agreement, as permitted by Arkansas State Statute §19-11-249. The Purchasing Department conducted a thorough evaluation of the contract and determined that the solicitation complies with both Arkansas State Statute and the City's Purchasing and Compliance Policy.

Approval of this resolution will ensure timely restoration of lighting at Memorial Park, maintaining its usability and safety for the community.

Please feel free to contact me with any questions.

Kelsi Frederick

(479) 271-3115

kfrederick@bentonvillear.com

RESOLUTION NO. ______________

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO AN AGREEMENT WITH MUSCO SPORTS LIGHTING, LLC., FOR MEMORIAL PARK SPORTS LIGHTING REPLACEMENT, IN AN AMOUNT NOT TO EXCEED ONE HUNDRED SEVENTY-FOUR THOUSAND EIGHT HUNDRED DOLLARS ($174,800.00); AMENDING THE 2025 BUDGET; AND FOR OTHER PURPOSES.

WHEREAS, the Parks and Recreation department requests approval to enter into an agreement with Musco Sports Lighting, LLC. to replace damaged sports lighting at Memorial Park caused by the May 26, 2024, storm;

WHEREAS, this firm was selected following the City's Purchasing Policy for using cooperative purchasing agreements; and

WHEREAS, a budget adjustment will be needed to fund this agreement.

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 Musco Sports Lighting, LLC., for the replacement of sports lighting at Memorial Park, in an amount not to exceed one hundred seventy-four thousand eight hundred dollars ($174,800.00);

Section 2: The 2025 Budget is adjusted to appropriate one hundred seventy-four thousand eight hundred dollars ($174,800.00) from General Fund Reserves into account #105030-44430, Building/Ground Maintenance;

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 _________________________, 2025.

APPROVED:

____
STEPHANIE ORMAN, Mayor

ATTEST:

____
MALORIE MARRS, City Clerk

City of Bentonville, Arkansas Agenda Item Form

Item Details

Council Meeting Date:	1/28/2025	**Submitted By:**	Greg Hughes
Phone:	479-696-0204	**For Department(s):**	Parks
Email:	ghughes@bentonvillear.com		

Item Type (Check all that apply)

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

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

Title, Recommendation & Justification

Title:	Ordinance to Enter into an Agreement with Upstart Athletics for Soccer Services
Action Recommendation & Justification:	An Ordinance authorizing an agreement, and waiving competitive bidding, with Upstart Athletics for soccer services and youth soccer programs for Bentonville Parks and Recreation for 2025. No budget adjustment is needed.
Additional Comments for Consideration (Optional):	Upstart Athletics was selected during the RFP-24-87 process. The cost is fully budgeted and will be covered by program registration revenue.
Amount for Approval:	$ 81,400.00

Budget Impact

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

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

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

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

Budget Impact Notes for Consideration (Optional):

-

Memo

To: City Council, Mayor Orman

Thru: David Wright, Parks and Recreation, Director

From: Greg Hughes, Parks and Recreation, Recreation Services Manager

Date: 1/15/2025

Re: Upstart Athletics – 2025 MOU

A Resolution to Enter into an Agreement with Upstart Athletics.

I am writing to formally request a resolution to enter into an agreement with Upstart Athletics for providing soccer services and youth soccer programs for Bentonville Parks and Recreation.

Upstart Athletics had an agreement in 2024 with the City of Bentonville's Parks and Recreation department to provide soccer services and has proven to provide quality services in this area. They were also selected through the RFP-24-87 process.

The amount of the proposed agreement has an estimated total payment of $81,400. This amount is funded entirely by program registration fees.

I believe that entering into this agreement will continue to offer the residents of Bentonville valuable resources.

If you have questions concerning this item, please email me at ghughes@bentonvillear.com or call 479.696.0204.

Attachments:
Upstart Athletics MOU

Administrative Services
1000 SW 14th Street
Bentonville, AR 72712

CITY OF BENTONVILLE

ARKANSAS

City Hall
305 SW A Street
Bentonville, AR 72712

MEMORANDUM OF UNDERSTANDING

To: Upstart Athletics

From: City of Bentonville, Arkansas Parks and Recreation Department

Date: 1/29/2025

Re: Partnership for providing soccer services for youth soccer programs for Bentonville Parks and Recreation

---

1. **Intent.**
   This Memorandum of Understanding (MOU) intends to outline the partnership and working arrangement between Upstart Athletics ("Provider" must match W-9) and the City of Bentonville, Arkansas (City), for the use and benefit of Bentonville Parks and Recreation Department (BPR) for providing soccer services and youth soccer programs for Bentonville Parks and Recreation (referred to as "Program").
2. **Term.**
   The term for this MOU will commence on the effective date of this Agreement, and shall end on December 31, 2025. The Effective Date of this Agreement shall be defined as the executed date on the Signature Page of this Agreement. There shall be no renewal periods permitted without written authorization from the City's Legal Department.
   A. In the event that Program days or times are cancelled (due to inclement weather such as rainouts, or class cancellations), additional dates may be added to the end of the Program season as "make-up dates", or additional classes may be added as "make-up classes", as applicable to the Program described in this MOU. BPR will communicate the need for make-up dates to Provider. Provider agrees to be present for make-up dates or classes.
   B. This MOU may be renewed annually, in accordance with all original terms and conditions, via mutual written agreement between the Parties for a maximum term not to exceed three (3) years. There shall be no change in the intent/purpose, or terms and conditions of this MOU during the original term or for any renewal year. There shall be no change in pricing for the original term or for any renewal term unless the change is directly related to a BPR fee/rate increase approved by the Bentonville City Council. Any change in pricing shall be mutually agreed upon by the Parties and shall not exceed an aggregate total of $10.00 (ten dollars) per participant for the lesson/camp for the entire term of the Agreement (the initial term including all renewal years). Mutually agreed upon changes in the schedule (days/times etc.) and per lesson or camp fees for renewal years shall be handled via Amendment at the time of renewal. Any Amendment to this MOU may require approval from the Bentonville City Council in accordance with the City's Purchasing Policy and applicable laws.
3. **Duties of the City.**
   Bentonville Parks and Recreation:
   A. Is responsible for camps, recreation programs, instruction services, classes and other recreation programs for the citizens of Bentonville.
   B. Will create the program format, allowing for input and recommendation from Provider.
   C. Will create marketing and registration material for the program(s), allowing for input and recommendation from Provider where it pertains to participant's needs.
   D. Will create all schedules for all programs, allowing for input and direction from Provider where it pertains to participant needs.

E. Will provide BPR employees or counselors, if necessary, to participate with check-in and check-out for the program(s), or other operations of the program(s). BPR shall have the final determination if BPR employee participation is necessary.

4. **Duties of the Provider.**
Provider:
   - **A.** Responsible for providing four (4) experienced soccer coaches for each planned session date and time. Coaches are expected to arrive thirty (30) minutes prior to the scheduled session start time and will be responsible for the check in and check out of participants.
   - **B.** Responsible for all personnel training and/or certifications provided for the performance of the Program(s).
   - **C.** Providing all equipment necessary for training.
   - **D.** Providing all participants a soccer uniform (jersey, shorts, socks) with the BPR and Provider logo on the front and player number on the back.

5. **Location and Schedule.**
   A. Location
   Citizens Park Soccer Complex (1101 SW Citizens Circle Bentonville, AR) or Memorial Park Soccer Complex (1600 John Deshields Blvd. Bentonville AR)

   B. Schedule
   a. Season Dates (estimates):
   Spring Season: April – May (date range), 2025
   Fall Season: August – October (date range), 2025
   b. Program Times (estimates):

Day	Time	Day	Time
Mondays	5:30 PM	6:30 PM	NA
Wednesdays	4:30 PM	5:30 PM	6:30 PM
Thursdays	5:30 PM	6:30 PM	N/A
Saturdays	8:30 AM	9:30 AM	10:30 AM
Saturdays	1:00 PM	2:00 PM	3:00 PM

   *Dates/times are estimates only and are subject to change as determined by BPR. Modifications to the schedule, including location and program times, do not require a formal Amendment.

6. **Payment.**
City agrees to pay Provider the following rate(s) for the Program.
   a. **$119.00** per participant for Feet First U3-U5
   b. **$135.00** per participant for Step Up U5-U7
   c. Estimated total payment in 2025: **$81,400.00**
   d. Payment will be made only for completed sessions of the program(s).

7. Invoicing.

Provider shall submit an invoice for the program(s) upon completion of registration for 50% of the total amount with the remaining 50% balance to be invoiced at the conclusion of the program season to the remittance address below within one (1) week from conclusion of the season. Provider is responsible for confirming that the City has received the invoice. Invoices received correctly and on-time will be paid within fourteen (14) days of receipt. Invoices shall be submitted to:

Via Mail:
City of Bentonville Administrative Services
ATTN: Accounts Payable
1000 SW 14th Street
Bentonville, AR 72712
Via Email: accountspayable@bentonvillear.com

8. Terms and Conditions.

- **A.** Payments will only be made for participants whom actually attend/participate in the Program(s). No payments will be made for cancelled Program(s), or for participants who do not attend/participate in the Program(s). This includes classes, lessons, camps, special programs etc.
- **B.** Provider and Provider's personnel are required to display professional etiquette at all times. This MOU may be voided immediately by the City if Provider's or any of their personnel exhibits behavior that is detrimental to the operation of BPR.
- **C.** Provider understands that neither Provider, nor any of Provider's employees or independent contractors are employees of the City of Bentonville, and that Provider is solely responsible for their employees and independent contractors.
- **D.** Provider may be required to maintain insurance and provide proof of such. Provider is responsible for maintaining insurance for themselves, their employees or independent contractors, as applicable and as required by law.
- **E.** It is understood that Provider (and any of Provider's employees or personnel) is not acting as an agency for the City (or BPR) and that the City's statutory immunity does not extend to Provider's acts or omissions.
- **F.** Upon the time of signing this MOU, Provider shall provide BPR with IRS Form W-9, and proof of Worker's Compensation Insurance as required by Arkansas Statute.
- **G.** Provider and any of Provider's personnel who will be on-site providing the Program will be required to pass a mandatory background check, to be administered by BPR, prior to the Program beginning.
- **H.** Provider indemnifies and holds harmless the City and all City personnel and officials against any liability resulting from Provider's negligence or wrongful acts, failure or breach of law.
- **I.** Termination:
  - a. General: This MOU may be terminated with thirty (30) days written notification from the BPR Director or assignee. Provider may terminate this agreement with ninety (90) days written notification to the BPR Director or assignee.
  - b. Termination for Cause: Breach of this MOU may result in immediate termination by the BPR Director or assignee.
  - c. Termination for Lack of Funding: 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 Provider under this MOU, City may terminate or reduce the amount of services to be provided by Provider under this MOU. In

such event, City will notify Provider in writing at least thirty (30) days in advance of such termination or reduction of services for lack of funds.

[This space has been intentionally left blank]

Administrative Services
1000 SW 14th Street
Bentonville, AR 72712

City Hall
305 SW A Street
Bentonville, AR 72712

CITY OF BENTONVILLE

ARKANSAS

SIGNATURE PAGE

BY SIGNING BELOW, THE PARTIES HERETO HAVE CAUSED THIS AGREEMENT TO BE EXECUTED THIS

____(MONTH/DAY/YEAR).

CITY OF BENTONVILLE, ARKANSAS

BY:_____________________________________

Stephanie Orman, Mayor (Signature)

PROVIDER COMPANY NAME*:__________________________
(Must match W-9)

BY (Provider's Signature):____________________________

Provider's Printed Name:____________________________

Provider's Address (Street/City/State/Zip):

____

____

*The person signing must be an authorized signer for the entity entering into this MOU.

ORDINANCE NO. _______________

AN ORDINANCE WAIVING COMPETITIVE BIDDING FOR SOCCER SERVICES AND YOUTH SOCCER PROGRAMS, FOR BENTONVILLE PARKS AND RECREATION; AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO AN AGREEMENT WITH UPSTART ATHLETICS, FOR SAID SERVICES, IN THE AMOUNT OF EIGHTY-ONE THOUSAND FOUR HUNDRED DOLLARS ($81,400.00); AND FOR OTHER PURPOSES.

WHEREAS, due to the high demand and success of the soccer services and youth soccer programs, the amount payable exceeds the competitive bid threshold;

WHEREAS, Upstart Athletics was selected during the RFP-24-87 Soccer Service and Program proposal process;

WHEREAS, competitive bidding should be waived as it would be impractical for the City to create this bid process; and

WHEREAS, this is a budgeted item and will be covered by program registration revenue.

NOW, THEREFORE, BE IT ORDAINED 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 Upstart Athletics, in the amount of eight-one thousand four hundred dollars ($81,400.00) for soccer services and youth soccer programs;

Section 2: There exists an exceptional circumstance whereby the requirements of competitive bidding are neither practical nor feasible and the City Council; therefore, waives the requirements of competitive bidding for soccer camp services;

Section 3 - Severability Provision: If any part of this Ordinance is held invalid, the remainder of this Ordinance 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 Ordinance 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:	1/28/2025	**Submitted By:**	Curtis Sharp
Phone:	479-271-3151	**For Department(s):**	Fire
Email:	csharp@bentonvillear.com		

Item Type (Check all that apply)

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

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

Title, Recommendation & Justification

Title:	Ordinance for Waiver of Bid for Secured Medication Management System for Paramedic Ambulance
Action Recommendation & Justification:	The Fire Department requests the purchase of a Pyxis medication management system for the Paramedic ambulance service from CareFusion Solutions, LLC, the sole-source manufacturer. No budget adjustment is needed.
Additional Comments for Consideration (Optional):	This system maintains daily counts on DEA regulated medications increasing safety and maximizing security to enhance both state and federal compliance. An emergency clause is requested for the immediate purchase and implementation of the Pyxis system. This is a budgeted item for 2025.
Amount for Approval:	$ $46,000.00

Budget Impact

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

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

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

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

Budget Impact Notes for Consideration (Optional):

102020-47410 Machinery & Equipment

Inter-office Memorandum

To: Mayor Orman and City Council

From: Justin Scantlin, Fire Chief

CC: Camille Thompson, Staff Attorney

Date: 1/28/2025

Re: Purchase of a Pyxis medication management system

The Fire Department requests the purchase of a CareFusion Solutions Pyxis medication management system. This system maintains accurate inventory to maximize security and safety associated with the stocking and administration documentation to enhance state and federal compliance. Utilization of the Pyxis system allows medications to be purchased from a variety of suppliers to reduce costs associated with other systems tied to specific manufacturers. The Pyxis system is used by NWA hospitals as the gold standard for medication inventory. This is a budgeted item for 2025. The emergency clause is to allow immediate purchasing and implementation of the system and to reduce manufacturing and delivery delays.

MEMORANDUM

PURCHASING AND COMPLIANCE DEPARTMENT

TO: ADMINISTRATION

FROM: Kelsi Frederick, Purchasing and Compliance Manager

DATE: January 23, 2025

SUBJECT: Pyxis Medication Management System

Purchasing and Compliance recommends that City Council approve the Fire Department's request to purchase the Pyxis medication management system for the Paramedic ambulance service from CareFusion Solutions, LLC. CareFusion Solutions, LLC, is the sole-source manufacturer of this system.

The Pyxis medication management system is a critical tool for maintaining daily counts of DEA-regulated medications. This system is designed to enhance safety and maximize security while ensuring compliance with both state and federal regulations. The implementation of this system will allow the Fire Department to better manage controlled substances and maintain the highest standards of accountability and efficiency in medication handling.

The Purchasing and Compliance Department has conducted a thorough review and has verified that CareFusion Solutions, LLC, is the sole-source provider of the Pyxis system. This verification ensures that no other vendors are capable of supplying this proprietary system.

Please feel free to contact me with any questions.

Kelsi Frederick

(479) 271-3115

kfrederick@bentonvillear.com

3750 Torrey View Court
San Diego, CA 92130

bd.com

June 21st, 2023

To whom it may concern,

Please note that CareFusion Solutions, LLC, a BD subsidiary, is the sole-source manufacturer for BD Pyxis™ MedStation™ ES and BD Pyxis™ MedBank ™ system products.

Should you have any further questions or require additional information on this, please contact us at your convenience.

Sincerely,

Christina BradenMoore
VP, Global Pyxis Commercialization Leader, BD

Oscar Cateriano
Sr. Dir, Global MedBank Platform Leader, BD

Department Sole Source Justification Form

Purchasing and Compliance Department

Sole source procurements of commodities and services must only be available from a single source and cannot be competitively bid. Pursuant to the law, sole source requests will not be processed without proper justification and compliance with the statutes, rules, and policy.
Complete this form for contracts with a value greater than $12,500 (total) where bidding may be restricted or where multiple proposals can not obtained. Completing this form does not guarantee that the proposed vendor will be selected.
This completed form must be submitted with the Contract Request Form along with any additional supporting documentation.

Requesting Department Name: Fire | Department 2 (if applicable)

Supplier Name: CareFusion Solutions, LLC

JUSTIFICATION

Note: Brand name preferences, aesthetic design specifications, or price are not sufficient justification for sole source procurements. Select one or more of the following statements (check the box) to support why the contract request attached and noted above should be a single sole source purchase. ANY selection requires explanation in the additional space provided.

- [x] 1. Items sold through vendor only; no other comparable vendor available.
- [ ] 2. Must match existing piece of equipment. Available only from the same source of original equipment.
- [ ] 3. Upgrade to existing system. Available only from the producer of this system who sells on a direct basis only.
- [ ] 4. Repair/Maintenance service requires expertise in operations on unit. Necessary parts unavailable from any source except original equipment manufacturer or their designated servicing dealer.
- [ ] 5. Service(s) provided by the vendor are unique and therefore competitive bids are not applicable.
- [ ] 6. Other reason.

Explanation is required for ANY selected statement. Information provided might include research performed or subject matter expertise detailed to justify the use of this particular vendor. This must clearly indicate why the proposed vendor is the ONLY vendor that will meet your requirements. (Please attach documents if additional space is required)

Explanation: CareFusion Solutions, LLC, a BD subsidiary, is the sole-source manufacturer for BD Pyxis MedStation ES and BD Pyxis MedBank system trade marked products. BD stands for Becton, Dickinson and Company.

FURTHER JUSTIFICATION

Is this sole source based on performance specifications, and if so, what is the unique performance requirement?

BD Pyxis MedStation ES and BD Pyxis MedBank system.

And, why is this feature necessary?

This is the same system hospitals use for securing and managing controlled and legend medication

Can requirements be modified so that the services or commodity may be competitively bid? If no, why?

This medication management system is trademarked.

Are there patent, copyright, or proprietary rights which make the required service or commodity unavailable from other sources? If yes, describe.

Only CareFusion Solutions, LLC is authorized to sell the system.

What would the agency do if the service or commodity were no longer available?

Continue the paper and direct observation system currently in place.

Detail any program considerations, which make the use of a "Sole Source" critical to the agency.

Many medical devices are trademarked and proprietary, which is the case with these.

I certify that to the best of my knowledge I have investigated and found that the above reasons and explanations justify this contract request as a single/sole source procurement, and that price reasonableness is adequately confirmed. I am the individual who has gathered and provided this detailed information and any further questions regarding these details can be directed to my attention.

Signature [redacted] Date 1/16/25

Print Name Curtis Sharp Title Deputy Chief

E-mail Address csharp@bentonvillear.com Phone # 479-271-3151

Purchasing and Compliance Manager Approval

☑ Justification appears appropriate.

☐ Justification appears inappropriate. Explanation is attached.

Purchasing and Compliance Signature [redacted] Date 1/23/25

BD PYXIS™ MEDBANK – STANDARD TERMS AND CONDITIONS

The Quote(s) and, notwithstanding anything to the contrary on the Quote, these terms and conditions, govern your purchase of BD Pyxis™ MedBank equipment (the "***Equipment***"), software, and services, and form the entire agreement (**"Agreement"**) between the customer identified in the Quote(s) ("***you***" or "***Customer***") and CareFusion Solutions, LLC, a wholly owned subsidiary of Becton, Dickinson and Company, on behalf of itself and its affiliates ("***we***" or "***CFN***"), and is effective upon your acceptance of the Quote(s), which upon your acceptance, shall become your "Customer Order" or "Customer Orders". Any reference to a "Master Agreement" on the Quote, shall mean these terms and conditions for purpose of this Quote. Additional or conflicting terms (whether included in a purchase order or otherwise) do not amend or modify the Agreement. THE CUSTOMER ORDER IS NON-CANCELLABLE AND, EXCEPT AS OTHERWISE PROVIDED IN THE AGREEMENT, NON-REFUNDABLE.

1. **Products and Services**. The products ("***Products***"), software ("***Software***") and services ("***Services***") purchased under this Agreement, are detailed in the Customer Order and described in all applicable user guides, technical specifications, product security white papers that apply to the Products, Software and Services purchased under the Agreement (the '***Documentation***").
2. **Equipment Terms**. Title to the Equipment will remain with CFN indefinitely in cases where the Customer Order calls for a lease or rental and until payment of the purchase price in cases where the Customer Order calls for a purchase. In the case of a lease or rental, you agree to maintain the Equipment in accordance with the Documentation and bear the risk (and expense) of loss and damage for any cause from delivery until the Equipment is returned to CFN at the end of the lease or rental term.
3. **Pricing; Shipping; Payment Terms**. Each Customer Order includes prices, fees and other specific terms and conditions for the Equipment and Software (collectively, the "***Products***") and Services. Equipment that is shipped directly from CFN will ship to the facility designated in each Customer Order, F.O.B. Origin, with freight charges and insurance being paid by CFN and added to the invoice. Payment terms are Net 30 from the date of your receipt of the invoice, which invoices shall be sent no later than 30 days after the applicable Term Begin Date; fee-based credit cards are accepted if approved in advance by CFN. You are responsible for all taxes and assessments levied against the Products, including, without limitation, withholding or value added taxes, and personal property taxes imposed on CFN as the Equipment lessor; CFN will not collect sales tax if you provide CFN with written evidence of exemption.
4. **Software License Terms and Restrictions**. CFN grants Customer a nonexclusive, nontransferable, limited license to use the Software and Documentation licensed solely in connection with Products purchased/rented under this Agreement and only in conjunction with your internal business purposes, provided that all licensing of third party software will be subject to the terms of any third party software terms included in the Documentation, and subject in all cases to payment of applicable fees. During the Agreement Term, you may access and use, and may permit Users to access and use, the Software in the ordinary course of your business at your "location" or "ship to facility" identified in the Customer Order, or as otherwise agreed to by the Parties (each such location, a "***Facility***"). "**Users**" shall mean those Customer employees, agents, consultants and similar personnel, or Customer's clients who Customer authorizes to use and access Software. Customer shall maintain responsibility for all obligations and ensuring compliance with the terms and conditions of this Agreement, including with respect to all Users. From time to time, CFN may add, modify, discontinue, condition the use of, and otherwise change elements of Software, but will not materially lessen core features or functions. You shall not, and shall not permit any User to: (i) circumvent or bypass any technological protection measures in or relating to a Product; (ii) decompile, disassemble, decrypt, hack, emulate, exploit, or reverse engineer or otherwise attempt to obtain or perceive the source code of Software; (iii) modify or create any derivative work from Software or Documentation; (iv) copy, publish, display, perform, transfer, rent, sublicense, lease, sell, assign, pledge, encumber, export, import, distribute, or lend Software or Documentation; (v) enable access to Software by a third-party software application, except as expressly authorized by CFN in writing; (vi) remove, alter or obscure any proprietary notice or legend from a Product or Documentation; (vii) permit use of a Product by any person not qualified or not authorized to do so; or (viii) use a Product in violation of any law or regulation.
5. **Data Security and Rights**.
   a. During the Term, CFN will maintain a written information security program of policies, procedures and controls governing the processing, storage, transmission and security of Customer Data (the "***Security Program***"). The Security Program includes industry-standard practices designed to protect Customer Data from accidental or unlawful destruction, loss, alteration, unauthorized disclosure, or access. CFN updates the Security Program to address new and evolving security technologies, changes to industry standard practices, and changing security threats, although no such update will materially reduce the commitments, protections or overall level of service provided to Customer as described herein.
   b. CFN's information security policies shall be documented and communicated to personnel, contractors, and third parties with access to Customer Data, including appropriate ramifications for non-compliance, and are available at https://cybersecurity.bd.com/?_ga=2.254414920.1133650491.1634222395-1074638392.1514910707.
   c. CFN shall perform risk assessments with the objective to regularly test, assess and evaluate the effectiveness of the Security Program supporting the Software. CFN shall have the risk program audited annually by an independent third-party in accordance with **Section 5(d)** below.
   d. CFN shall use commercially reasonably efforts to establish and maintain sufficient controls to meet certification and attestation for the objectives stated in ISO 27001, ISO 27018, SSAE 18 / SOC 1 and SOC 2 Type 2 (or equivalent standards) for the Security Program supporting the Software. Commencing on January 1, 2023, CFN shall, at least once per calendar year, obtain an assessment against such standards and audit methodologies by an independent third-party auditor and, upon request make the executive reports available to the Customer.
   e. Any data center facilities include (1) physical access restrictions and monitoring; and (2) fire detection and fire suppression systems both localized and throughout the data center floor. The systems, machines and devices include (1) physical protection mechanisms; and (2) entry controls to limit physical access.
   f. CFN shall use NIST 800-88 industry standard (or substantially equivalent) destruction of sensitive materials, including Customer Data, before such media leaves CFN's data centers for disposition.
   g. CFN conducts regular security risk evaluations to identify critical information assets, assess threats to such assets, determine potential vulnerabilities, and provide for remediation. When software vulnerabilities are revealed and addressed by a vendor patch, CFN will obtain the patch from the applicable vendor and apply it within an appropriate timeframe in accordance with CFN's then-current vulnerability management and security patch management standard operating procedure and only after such patch is tested and determined to be safe for installation in all production systems.
   h. CFN updates antivirus, anti-malware, and anti-spyware software on regular intervals and

      centrally logs events for effectiveness of such software.
   i. CFN uses industry standard encryption to encrypt Customer Data in transit over public networks to the Software.
   j. Software patches are regularly made available to Customers to address known vulnerabilities.
   k. Software shall not contain viruses, malware, worms, date bombs, time bombs, shut-down devices, that may result in, either: (a) any inoperability of the Software; or (b) any interruption, interference with the operation of the Software (collectively, "***Illicit Code***"). If the Software is found to contain any Illicit Code that adversely affects the performance of the Software or causes a material security risk to Customer Data, CFN shall, as Customer's exclusive remedy, use commercially reasonable efforts to remove the Illicit Code or to advise and assist Customer to remove such Illicit Code.
   l. CFN maintains a disaster recovery related plan for CFN-hosted Products and Services that is consistent with industry standards for the Software.
   m. CFN monitors, analyzes, and responds to security incidents in a timely manner in accordance with CFN's standard operating procedure. CFN's security group will escalate and engage response teams as may be necessary to address a security incident. CFN will report to Customer any accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Customer Data (a "***Breach***") without undue delay following determination by CFN that a Breach has occurred. As information is collected or otherwise becomes available, CFN shall provide without undue delay any further information regarding the nature and consequences of the Breach to allow Customer to notify relevant parties, including affected individuals, government agencies, and data protection authorities in accordance with data protection laws. Customer will cooperate with CFN by providing any information that is reasonably requested by CFN to resolve any security incident, including any Breaches, identify its root cause(s), and prevent a recurrence. Customer is solely responsible for determining whether to notify the relevant supervisory or regulatory authorities and impacted parties and for providing such notice.

n. This **Section 5** does not apply to: (a) information shared with CFN that is not Customer Data; (b) data in Customer's VPN or a third-party network; and (c) any data processed by Customer or its users in violation of the Agreement.

o. CFN may access and use Customer Data: only to provide Products, Support, and Implementation Services; (ii) to improve Products and to develop new Products to improve the delivery, quality, or safety of healthcare; (iii) for benchmarking; and (iv) for aggregate analysis. Notwithstanding the foregoing, CFN may only use or disclose PHI in accordance with Section 15. If Customer Data contains PHI, then CFN will use such Data in conformance with the Privacy Rules.

6. **Service and Support**. Support and Services purchased under Customer Orders are provided in accordance with the descriptions and conditions in **Schedule A**. CFN provides Support during the Term subject to Customer's payment of the applicable fees, and CFN may increase the Monthly Support Fees, if any, stated on the Customer Order for the Products, once every twelve (12) months by no more than the Consumer Price Index for medical care plus two percent (2%), provided the increase will be effective (i) upon at least ninety (90) days' written notice to Customer and (ii) as of the anniversary date of the initial Term (as defined under **Section 16**, below) stated on the Customer Order. Only CFN's designated service technicians may service, perform maintenance that is not expressly required to be performed by Customer, or repair the Equipment. After termination or expiration of any Support plan Customer may purchase an extended service plan and, if Customer chooses not to purchase such plan, then Customer will be responsible for charges for Services on a time and material basis. Support is not assignable by Customer and shall not pass to the benefit of any eventual transferee of the Equipment from Customer. Customer shall cooperate with CFN in providing Support, including by ensuring that the system requirements specified in the Documentation are satisfied, with such system requirements a condition of Implementation Services. If Customer at any time fails to pay any fees for either Service or Support, as applicable, and does not dispute the fees reasonably and in good faith, then, on not less than 30 days' notice, CFN may cease providing such Service or Support for so long as the fees remain unpaid.

7. **Implementation Services**. Products will be implemented pursuant to the option set forth in the Customer Order. The Implementation Service options are described in **Schedule A.** Each Party shall use reasonable efforts to fulfill its responsibilities, conduct its activities, and provide its deliverables as specified in the implementation timeline. Customer shall reasonably cooperate with CFN in its performance of Implementation Services, including providing any resources (including technology and physical environment) and with all necessary permits and free of obstructions, in each case as specified in the Documentation. Acceptance will be deemed to occur upon completion of the Implementation Services, and Customer will provide CFN with written acknowledgment of Acceptance.

8. **Updates and Upgrades**. A charge may apply for Upgrades. Updates, Upgrades and any other revisions to third party software are not provided by CFN. Customer must remain within the last two (2) software versions to continue to receive Support. In the event Equipment is required to be upgraded to support the installation of Updates and Upgrades, the Customer shall be responsible for the purchase of such Equipment.

9. **Customer Responsibilities**. You shall (i) maintain virus and malware protection and operating system security updates to network connected computing systems which run Software and for backing up any information generated by the Equipment; (ii) maintain a safe work environment in connection with our provision of Service and/or Support; (iii) provide high-speed internet access and firewall modifications to enable connectivity for Support, if applicable, and (iv) not move or transfer Products from a Facility without providing CFN with reasonable prior written notice of such move or transfer. Remote support service ("***RSS***") is required to provide support for security patches and assistance with cybersecurity incident response. If Customer chooses not to allow RSS to connect, security patch management and cybersecurity incident response will be the sole responsibility of Customer. RSS for requests received outside of working hours in the continental United States may be provided from locations outside of the United States, including Malaysia and Canada. Notwithstanding the foregoing, the Data Security protections set forth in Section 5 shall apply to such support.

10. **Term; Termination; Effect of Termination**. The Agreement will remain in effect until terminated and will remain in effect thereafter with respect to any Customer Order entered into prior to the effective date of termination. If a Customer Order does not include an expiration date, the Customer Order shall terminate concurrently with and on the terms set forth in the Agreement; Customer Orders that include an expiration date shall automatically renew for an additional 1 year term, and shall be subject to all applicable charges, unless Customer notifies CFN in writing, at least 60 days prior to the expiration of the then current term that it does not wish to extend the term. Either party may immediately terminate any Customer Order and the Agreement, as its sole remedy, if the other Party's key personnel is convicted of an offense related to health care or listed by a federal agency as being debarred, excluded, or otherwise ineligible for federal healthcare program participation. Either Party may terminate any Customer Order if the other Party materially breaches such Customer Order and, except with respect to a payment breach, fails to cure such breach within 30 days after notice of the breach. The termination or expiration of the Agreement shall not terminate any Customer Order between CFN and Customer, and any such Customer Order shall survive the expiration or termination of the Agreement, according to its terms and shall be subject to the applicable terms and conditions of the Agreement for the term of such Customer Order. Termination of the Agreement or any Customer Order will not release a Party from any liability that exists at the time of termination or that accrues thereafter with respect to any act or omission before termination. If previously-installed Pyxis™ products are being upgraded or subject to new terms and conditions under this Quote, then the previously-applicable terms and conditions, including payment terms, for those products shall remain in full force and effect until the Term Begin Date of this Quote, unless otherwise agreed to in writing by the Parties.

11. **Limited Warranty; Exclusions**. CFN represents and warrants that the Products will meet the specifications stated in the Documentation in all respects, shall be free from defects in material and workmanship for either the warranty period or expiration date stated in the Documentation for such Products, or, for Products without a stated warranty period or expiration date, 90 days (the "***Warranty Period***"). Services and Support will be performed in a professional manner in accordance with generally accepted industry standards. Customer's sole and exclusive remedy for any breach of this warranty shall be (i) repair or replacement of the non-conforming Products, (ii) a refund of the amount paid to CFN for non-conforming Products, or (iii) correct any service not performed in accordance with the warranty, with such remedy to be at CFN's option. Customer must provide written notice of any such non-conformance to CFN within the Warranty Period. Any alteration, abuse, misuse, further manufacture, packaging, processing, adjustment or repair by any person or entity other than CFN or a person or entity authorized in writing by CFN shall void any Products warranty. THIS LIMITED WARRANTY IS THE ONLY WARRANTY PROVIDED BY CFN AND IS IN LIEU OF ANY OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING TITLE, NON-INFRINGEMENT, NON-INTERFERENCE, INTEROPERABILITY, QUALITY OR CONDITION, ACCURACY, COMPLETENESS, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THE ABSENCE OF ANY DEFECTS, WHETHER LATENT OR PATENT. NEITHER CFN NOR ANY EMPLOYEE OF CFN IS ENGAGED IN THE PRACTICE OF MEDICINE. CUSTOMER IS RESPONSIBLE FOR VERIFYING THE ACCURACY, COMPLETENESS, AND PERTINENCE OF ANY PHARMACOLOGICAL, MEDICAL, PATIENT, LEGAL OR OTHER RESULTS, DATA OR INFORMATION ENTERED IN, RECEIVED BY, PROCESSED BY, STORED IN, TRANSMITTED BY, PRODUCED BY, DISPLAYED BY, OR USED IN CONNECTION WITH THE PRODUCTS. CUSTOMER ASSUMES ALL RISKS AND LIABILITIES ASSOCIATED WITH THE USE OF SUCH INFORMATION, WHETHER SUCH INFORMATION IS USED ALONE OR IN COMBINATION WITH OTHER INFORMATION.

12. **Exclusions**. Any warranties provided hereunder will not apply to failure of any Products caused by (i) Customer's abuse, neglect or misuse of the Product or failure to maintain the Product in accordance with its Documentation (ii) implementation, repair, modification, alteration, adjustment, or relocation of the Product other than as expressly authorized by CFN; (iii) malicious software not introduced by CFN; or (vi) Customer's failure to permit installation of an Update, or otherwise comply with Customer Responsibilities set forth in **Section 9**.

13. **Confidentiality**; **IP**.

a. ***General***. Except as provided below, neither Party shall disclose Confidential Information to any other person, or entity other than the Federal Government, a Party's advisors for purposes consistent with the Agreement, or as required by law. In the event a Party in receipt of Confidential Information ("***Receiving Party***") is requested or becomes compelled, by a court of competent jurisdiction, administrative agency or other governmental body, to disclose Confidential Information of the Party that disclosed the Confidential Information ("***Disclosing Party***"), the Receiving Party will provide the Disclosing Party with prompt notice. CFN's obligations in this paragraph and the exceptions in paragraph 13(b) below supersede any obligations of CFN or any CFN representative contained in any confidentiality agreement or statement executed or acknowledged at the entry of any Customer facility, which agreements or statements are void.

b. ***Exceptions***. The obligations of this confidentiality section do not apply to information that: (i) was in the public domain or was known to the Receiving Party before the information was received by the Receiving Party; (ii) is developed by the Receiving Party or on its behalf independently of the information disclosed by the Disclosing Party as shown by written record; (iii) is acquired by the Receiving Party from a third party not under an obligation of confidentiality to the Disclosing Party; or (iv) becomes public knowledge without breach by the Receiving Party of any obligations of confidence to the Disclosing Party.

c. ***Rights upon Termination.*** Upon termination of the Agreement or termination or expiration of a Customer Order, each Party shall (i) immediately discontinue all use of the other Party's Confidential Information; (ii) use reasonable efforts to promptly purge the other Party's Confidential Information from its computer storage or other media, including online and off-line libraries (however, to the extent it is not feasible for the Party to purge such Confidential Information from back-up storage, the Party shall retain it in accordance with **Section 13**; and (iii) upon the request of the other Party, certify in writing that it has complied with the terms of this section.

d. ***IP Rights***. CFN owns or has rights to all Intellectual Property embodied or embedded in, or practiced by, the Products, Documentation, or CFN Data, and all rights therein. No services, including design technical support or advisory services, will be performed as works made for hire, and CFN retains full rights to design or market the same or similar designs for other customers. If Customer provides feedback on Products or ideas for new products, CFN may use and commercialize such feedback and ideas in any way and for any purpose.

14. **Indemnification; Limit of Liability**.

a. ***General.*** CFN shall defend against and indemnify the other Party for any loss, damages, or liability, including reasonable attorneys' fees, resulting from any third party claim ("***Claim***") to the extent arising from CFN's negligence or willful misconduct or breach of its representations, warranties and covenants under this Agreement; provided, however, that such obligation shall not apply to Claims arising from the negligence or willful misconduct of any healthcare professional in performing services in a healthcare facility owned or operated by Customer. Customer shall give prompt notice of the Claim to CFN; however, any delay in giving notice will not excuse CFN's obligations under this section, except to the extent Customer has been prejudiced by the delay. Customer shall cooperate with CFN in the defense of the Claim and in any settlement of the Claim.

b. ***Infringement***. CFN shall defend Customer against any Claim that CFN's manufacture or sale of a Product infringes any patent or copyright of such person enforceable in the U.S. or misappropriates any trade secret of such person ("***Infringement Claim***"). On the occurrence of any Infringement Claim, or in the event CFN believes an Infringement Claim is likely, CFN may, at its option (i) modify the Product to make it non-infringing, or substitute functionally equivalent hardware or software; or (ii) obtain a license to the applicable third-party intellectual property rights; or (iii) refund the purchase price of the Product in question.

CFN will have no obligation or liability to the extent the Infringement Claim arises from: (i) the combination or use of the Product with products, services, hardware, software, technology, data or other materials not furnished or approved by CFN; (ii) modification of the Product, except as expressly authorized by CFN in writing; or (iii) use of the Product other than in accordance with the Documentation, in violation of the Customer Order or applicable laws, or after notice from CFN that Customer should cease use of the Product. The obligations set forth in this section will constitute CFN's entire liability and Customer's sole remedy for any actual or alleged Infringement Claim.

c. NO PARTY WILL BE LIABLE TO THE OTHER PARTY FOR: (I) ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM (WHETHER IN CONTRACT, TORT, NEGLIGENCE OR OTHERWISE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; (II) ANY DAMAGES FOR BUSINESS INTERRUPTION; OR (III) REPROCUREMENT COSTS, LOSS OF PROFITS, INCOME, BUSINESS, USE, DATA OR GOODWILL. Other than with respect to payment claims, and subject to the exceptions in **14(d)** below, the total liability of a Party in connection with any matter arising from or relating to a Customer Order (whether in contract, tort, negligence or otherwise) will be limited to the amount of all fees paid or to be paid by Customer under the Customer Order(s) to which the matter relates during the 12 month period immediately preceding the event giving rise to such liability.

d. The exclusions set forth in **14(c)** will apply to the fullest extent permitted by applicable laws, but will not apply to any liability arising from: (i) indemnification obligations hereunder related to death or bodily injury; (ii) a Party's fraud, gross negligence or willful misconduct; and (iii) breaches of confidentiality obligations. Notwithstanding the foregoing, the total aggregate liability of CFN for claims arising out of CFN's failure to comply with its obligations of confidentiality and data security under this Agreement (other than with respect to claims arising from CFN's gross negligence or willful misconduct, for which CFN's liability will be uncapped), shall be limited to $200,000.

15. **Business Associate Terms**.

a. **Permitted Uses and Disclosures by Business Associate.** In the performance of its obligations under this Agreement, CFN will receive PHI from or on behalf of Customer. CFN shall not use or further disclose PHI except:

(i) Business associate may use or disclose protected health information as necessary to perform the services set forth in this Agreement; or

(ii) Business associate may Use protected health information for the proper management and administration of the business associate or to carry out the legal responsibilities of the business associate, provided the disclosures are required by law, or business associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies business associate of any instances of which it is aware in which the confidentiality of the information has been breached; or

(iii) Business Associate may use or disclose PHI as otherwise expressly permitted in writing by Covered Entity; or

(iv) Solely to the extent permitted by 45 C.F.R. §164.514, Business Associate shall de-identify PHI and use such de-identified PHI only as permitted by law and in a manner that would not violate the HIPAA Rules and this Agreement; or

(v) If CFN provides data aggregation services to Customer, CFN may use PHI to provide Data Aggregation services to Customer as permitted by the HIPAA Rules.

b. **Minimum Necessary**. In conducting functions and/or activities under this Agreement that involve the use and/or disclosure of PHI, CFN shall make reasonable efforts to limit the use and/or disclosure of PHI to the minimum amount of information necessary to accomplish the intended purpose of the use or disclosure.

c. **Protection of PHI.** CFN shall use appropriate safeguards to prevent use or disclosure of PHI other than as permitted by this Agreement.

d. **Reporting**. CFN shall promptly and without undue delay report to Customer any Breach, Security Incident, or improper Use or Disclosure of PHI as required by the HIPAA Rules and applicable State law. Notwithstanding the foregoing, no report shall be required for unsuccessful attempts at unauthorized Access, Use, Disclosure, modification, or destruction of PHI or unsuccessful attempts at interference with systems operations in an information system, which shall include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above with respect to Business Associate's information systems, unless such incident appears to be an attempt to obtain unauthorized access, use or disclosure of Covered Entity's electronic PHI.

e. **Mitigation**. CFN shall mitigate, to the extent practicable, any harmful effect that is known to CFN of a use or disclosure of PHI by CFN in violation of this Agreement.

f. **Subcontractors and Agents**. CFN agrees to ensure that any subcontractors and agents to whom it provides PHI received from, or created, or received by, CFN on behalf of Customer agree in writing to the same restrictions and conditions set forth in the business associate provisions of the HIPAA Rules that apply through this Agreement to CFN with respect to such information in accordance with such rules.

g. **Accounting to HHS**. CFN shall make its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary of Health and Human Services (the "***Secretary***"), in a time and manner designated by Customer or the Secretary, for the purpose of the Secretary determining Customer's compliance with the HIPAA Rules.

h. **Documentation of Disclosures**. CFN shall document and maintain documentation of such disclosures of PHI and information related to such disclosures as would be required for Customer to respond to a request by an

Individual for an accounting of disclosures of PHI in accordance with HIPAA Rules.

i. **Accounting of Disclosures.** If CFN receives a request from an individual pursuant to the HIPAA Rules for an accounting of Customer's disclosures of the individual's PHI and, in the course of attempting to satisfy the individual's request, Customer provides a written request to CFN, then Business Associate shall promptly provide Customer the information required to be included in an accounting pursuant to applicable HIPAA Rules for CFN's disclosures of PHI that are subject to an accounting pursuant to HIPAA Rules.

j. **Access and Designated Record Set**. To the extent CFN maintains PHI in a "Designated Record Set," as that term is defined in the HIPAA Rules, CFN agrees to provide access, at the request of Customer, and in a reasonable time and manner, to PHI in a Designated Record Set to Customer in order for Customer to meet the requirements under the HIPAA Rules. If applicable, CFN agrees to make any amendment(s) to PHI in a Designated Record Set that Customer directs or agrees to pursuant to HIPAA Rules at the request of Customer and in a reasonable time and manner.

k. To the extent the Business Associate is to carry out one or more of Covered Entity's obligations(s) under the HIPAA Rules, it will comply with the requirements that apply to the Covered Entity in the performance of such obligation(s).

l. **Return or Destruction of PHI**. Upon termination of this Agreement for any reason, CFN shall either return or destroy, if feasible, all PHI received from Customer, or created, maintained or received by CFN on behalf of Customer. This provision shall apply to all such PHI in the possession of subcontractors or agents of CFN. CFN shall retain no copies of the PHI. If CFN determines that returning or destroying the PHI is infeasible, then CFN shall provide to Customer notification of the conditions that make return or destruction infeasible. CFN shall extend the protections of this Section to such PHI and limit further uses and disclosures of such PHI to those purposes that makes the return or destruction infeasible, for so long as CFN maintains the PHI.

m. **Electronic PHI Safeguards**. To the extent CFN creates, receives, maintains or transmits Electronic PHI on behalf of Customer, CFN shall comply with the applicable HIPAA Rules and shall implement Administrative, Physical and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic PHI, in accordance with the applicable HIPAA Rules, and ensure that any agent, including a subcontractor, that creates, receives, maintains or transmits Electronic PHI on CFN's behalf will (i) implement reasonable and appropriate safeguards to protect Electronic PHI; and (ii) comply with any applicable requirement of the applicable HIPAA Rules.

n. **Conformance with Modification of HIPAA Rules or Regulations**. If an amendment to or modification of HIPAA Rules, requires modification of this Section to permit Customer or CFN to remain in compliance during the term of this Agreement, then CFN and Customer shall enter into good faith negotiations to amend this Section to conform to any change required by such amendment or modification. Notwithstanding the foregoing, if Customer and CFN have not amended this Agreement to address a law or final regulation that becomes effective after the Effective Date and that is applicable to this Agreement, then upon the effective date of such law or regulation (or any portion thereof) this Agreement shall be amended automatically and deemed to incorporate such new or revised provisions as are necessary for this Agreement to be consistent with such law or regulation and for Customer and CFN to be and remain in compliance with all applicable laws and regulations.

o. **Survival**. The obligations of CFN pursuant to this Section shall survive the termination, cancellation or expiration of this Agreement.

16. **Certain Defined Terms**.

a. "***Acceptance***" means the completion of Implementation Services or, if no Implementation Services are provided, the delivery of the Products or, as applicable, the protocols, keys or access codes needed to access and use the Products.

b. "***CFN Data***" means data that is part of a Product or Service and data derived from that data. and includes event data, operational data, device health data, database structure, and machine metrics of or relating to a Product or Service.

c. "***Confidential Information***" means any confidential or proprietary information of a Party, however disclosed or recorded that is disclosed in connection with the Customer Order (including, with respect to Customer, Customer Data, and, with respect to CFN, CFN Data).

d. "***Customer Data***" means data that is created by Customer, or as between Customer and CFN, originates with Customer and is stored, transmitted to, or accessed by CFN through a Product, as applicable. For avoidance of doubt, Customer Data includes PHI and personally identifiable information of any member of Customer's workforce and excludes CFN Data.

e. "***Term***" means the period of time specified in a Customer Order during which Customer is entitled to access and use a Product.

f. "***Implementation Services***" means the professional services and training provided by CFN to assist Customer in the implementation of a Product.

a. "***IP***" means all (a) processes, methodologies, procedures and trade secrets, algorithms, apparatus, circuit designs and assemblies, scripts, databases, data collections, data models, designs, diagrams, formulae, ideas and inventions (whether or not patentable or reduced to practice), know-how, materials, marketing and development plans, methods, models, network configurations and architectures, protocols, schematics, specifications, subroutines, techniques, tools, uniform resource identifiers, user interfaces, web sites and domain names, (b) trademark, service mark, logos, or trade dress, (c) Software, tools and machine-readable texts and files, and (d) copyrights, literary work or other work of authorship, including documentation, reports, manuals, training materials, artwork, drawings, fonts, photographs, charts and graphics.

b. "***PHI***" means "protected health information" as defined in 45 CFR §160.103, of any patient of Customer.

c. "***HIPAA Rules***" means Health Insurance Portability and Accountability Act of 1996, and regulations promulgated thereunder, and the Health Information Technology for Economic and Clinical Health Act (Division A, Title XIII and Division B, Title IV, of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5).

d. "***Update***" means software to update, patch, fix, enhance or otherwise modify an already existing feature for the purposes of maintaining current functionality of the Equipment or Software that is a less substantial change than an Upgrade, as designated by CFN in its sole discretion and made generally available to its customers.

e. "***Upgrade***" means any new functionality to either Software or Equipment that does not exist in the current configuration and which requires additional payment by the Customer. "Functionality" is defined as a combined set of features that each CFN product can perform that is a more substantial change than an Update, as designated by CFN in its sole discretion and made generally available to its customers.

f. "***Term Begin Date***" means the first day of the month following Acceptance, or a date otherwise mutually agreed upon by the parties in writing.

17. **Miscellaneous**.

a. Each Party hereby represents that it shall comply with applicable laws.

b. All claims, controversies or disputes arising out of or relating to the Agreement or a Customer Order, the relationship of the parties and/or the interpretation and enforcement of their respective rights and obligations herein, shall be governed by the laws of the State of Delaware, except for any choice or conflict of law principles.

c. Either Party may assign, sell, or otherwise transfer the Agreement without the prior consent of the other Party (a) to an Affiliate or (b) in connection with a sale or transfer of all or substantially all of the assets of such Party related to the subject matter described therein.

d. Either Party's failure to insist upon performance of any provision of the Agreement is not a waiver of any of its rights under the Agreement. No waiver under the Agreement will be valid or binding unless set forth in a writing signed by the Party against which enforcement of the waiver is sought. The waiver will constitute a waiver only with respect to the specific matter described in the waiver and will not impair the rights of the Party granting the waiver in any other respect or at any other time. No delay or forbearance by either Party in exercising any right under the Agreement will be deemed a waiver of that right.

e. If any provision of the Agreement should for any reason be held invalid, unenforceable or contrary to public policy, the remainder of the Agreement shall remain in full force and effect.

f. The Agreement together with any Customer Orders (i) are the entire agreement between the parties and supersedes any other oral or written communications, advertisements or understandings with respect to the subject matter hereunder.

BD PYXIS™ MEDBANK – STANDARD TERMS AND CONDITIONS

g. No amendment of the Agreement will be valid unless such amendment is made in writing and is signed by authorized representatives of CFN and the applicable Customer.

h. Nothing in this Agreement may be construed to place the parties in the relationship of partners, joint ventures, principal and agent, or employer and employee. Neither Party may assume, create, or incur any liability or obligation in the name of or on behalf of the other Party by virtue of the Agreement. Each Party shall bear the costs of performance of its obligations under the Agreement.

i. The Parties agree that there are no third-party beneficiaries of this Agreement, except Customer's affiliates to the extent they execute a Customer Order.

[End of document]

BD PYXIS™ MEDBANK – ACKNOWLEDGEMENTS

Please review and initial below:

_____ Unless otherwise specified and mutually agreed to, I acknowledge that BD's standard lead time to first site installation is approximately 90 days.

Please select one of the following:

_____ PO is Required: If a Purchase Order is a customer requirement for payment of the financial obligation proposed under this customer order, please check to confirm and provide applicable Purchase Order numbers below:

Rental/Purchase PO#: ___________

Support PO#: _________________

_____ PO not Required: If a Purchase Order is not a customer requirement in order to remit payments, customer acknowledges that invoices are due upon receipt and payments will not be withheld or delayed in the event BD is not provided a PO subsequent to execution of this Customer Order.

Each person signing below represents: (i) its authority to sign each of the agreements attached hereto, including this Agreement, any Quote/Customer Order, Implementation Timeline as applicable, and any other attachments as applicable (collectively, the "Agreements"); and (ii) that signature shall for all intents and purposes constitute signature of each of the respective Agreements attached hereto.

CUSTOMER	**CAREFUSION SOLUTIONS, LLC**
Customer By: ______________________	CFN By: ______________________
Customer Print: Curtis Sharp	CFN Print: ______________________
Customer Title: ______________________	CFN Title: ______________________
Date: ______________________	Effective Date: ______________________

SCHEDULE A – SMS AND IMPLEMENTATION SERVICES DESCRIPTION

1. **Support and Maintenance Service Description.**
   a. **Proper Performance and Updates**. To the extent you have purchased Support and Maintenance Services ("**SMS**") in a Customer Order, we will provide, during the purchased support term, (i) SMS that is required to keep the Product functioning substantially in accordance with the user, specifications or product guides provided in the Documentation "**Proper Performance**"), and (ii) Updates. Upon release we will coordinate delivery of the Update (via the Internet) and assist you with installation, using reasonable efforts to minimize disruption to your use of MedBank Software. Updates will be provided with scripts and programs that install complete, working versions of the applicable Updates.
   b. **Customer Support.** Customer Support is available by phone at 1.866.930.9251 24/7/365 and may also be requested online at MedbankSupport@BD.com, via the support chat feature on its myQlink.net website.
   c. **Exclusions**. SMS is not provided if: (i) you are not in compliance with your obligations under the Agreement; (ii) use, operation, repair or maintenance of the Products are not in compliance with the manufacturer's terms and conditions of use in the Documentation; (iii) a Product is being used in combination with any item with which such Product is not intended to be operated or used, (iv) a Product has been subject to abnormal physical or electrical stress; (v) the Product has been modified or altered other than by CareFusion or as permitted by CareFusion in writing, (vi) the performance issue is caused by your act, omission, negligence, Loss or damage in relation to a Product, (vii) you fail to follow the recommended operating environment for the Product, (viii) the problem is with third party software or hardware not licensed through or sold by CFN, (ix) you have not installed and implemented all released Updates; or (x) you moved or relocated the Product or assigned any right or interest in the Product without our advance written consent. Any service not specifically identified herein as a component of SMS may be provided by us upon or provision of an estimate and your issuance of a PO.
   d. **Subcontractor**. All or a portion of SMS may be provided by subcontractors, provided that we shall remain obligated to the terms herein to ensure quality performance of Support Services in accordance with the terms herein.
2. **Implementation Services Description**.
   a. **Implementation Services**. If purchased in a Customer Order, we will provide implementation services in accordance with our standard service offerings and implementation timeline for the type of purchased services, "Concierge" or "Guided", and Acceptance will be deemed to occur upon completion of services.
   b. **Self-Install.** Except for initial Customer Orders, you may elect to self-install under a subsequent Customer Order if you designate one or more employees (each, a "**Customer Implementation Specialist**") who satisfactorily completes "train the trainer" training provided by our personnel during implementation of BD Pyxis MedBank Products under a prior Customer Order. If you elect to self-install in a Customer Order, then your Customer Implementation Specialist(s) shall be responsible for implementing installation of Products under such Customer Order.
   c. **Per Diem Services**. If you request any implementation-related or other services which are not included in the Quote/Customer Order, including: (i) on-site implementation services and troubleshooting; (ii) any additional implementation- or training-related services provided after Acceptance; or (iii) other services then CareFusion shall use best commercially reasonable efforts to provide the Per Diem Service under a separate agreement based on then-current per diem pricing applicable to all customers.

[End of Schedule A]

Customer Order

Customer Order Date: 01/07/2025
Customer Order : 1000277839

Customer Information

Sold To:		Ship To:	Bill To
Legal Name:	BENTONVILLE FIRE DEPARTMENT		Same as (Circle) Sold To: Ship To:
DBA:	BENTONVILLE FIRE DEPARTMENT	BENTONVILLE FIRE DEPARTMENT	
Street Address:	800 SW A ST	800 SW A ST	
City,St.,Zip:	BENTONVILLE, AR 72712-6225	BENTONVILLE, AR 72712-6225	
Customer No.	10288872	10288872	

1. Customer Orders. Effective as of the date of both signatures below ("**Effective Date**") this Customer Order is entered by and between CareFusion and Customer as separate and distinct agreements (combined for administrative convenience) for (i) the purchase or acquisition of the Products listed in the Product Schedule attached hereto and incorporated by this reference (each, a "**Product**" and, collectively, the "**Products**"); and (ii) Services applicable to the Products (collectively, the "**Customer Orders**"). The Customer Orders shall be governed by the latest Master Agreement and Schedule(s) applicable to the Products and Services and in effect between the Parties ("**Master Agreement**"). Notwithstanding the foregoing, if applicable to the Products hereunder, (a) a reference to "**Master Agreement**" will alternately refer to the latest Master Purchase Terms and Conditions, Master Rental Terms and Conditions or Master Support Terms and Conditions, and (b) Customer Order shall alternately mean "**Purchase Agreement**" , "**Rental Agreement**" or "**Support Agreement**".

2. Configurations. Pricing set forth on the product schedules attached to these Customer Orders is based on the specific configuration, including type and quantities of drawers in the Products, as applicable. Any changes to the products or configurations may result in a change in pricing, subject to the applicable Group Purchasing Organization Agreement or other related pricing agreements between the Parties. Customer's execution of the Equipment Confirmation form shall be confirmation of the Customer's intended final configuration of the Products as Accepted.

Any one-time shipping, implementation or service fees listed on the Product Schedule attached hereto ("**One-Time Fees**") will be invoiced on the first day of the month following the date the Agreement is signed by both Parties and shall be due and payable net 30 days from the date of the invoice.

Will a Purchase Order be required for payment of the financial obligation proposed under this Customer Order?**(Please Circle)**		
Yes	**No**	Purchase PO#:
		Support PO#:

Copies of this Customer Order will be sent to Ship To signer listed above.
When complete, additional copies will be sent to the following address:

Name:
Street Address:
City,St.,Zip:

Each person signing this document represents that he/she intends to and has the authority to bind his/her respective Party to the Purchase Customer Order and the separate Support Customer Order.

BENTONVILLE FIRE DEPARTMENT	**CAREFUSION SOLUTIONS, LLC** ATTN: CONTRACTS, 3750 TORREY VIEW CT, SAN DIEGO, CA 92130 888.876.4287
Sign:	Sign:
Print:	Print:
Title: Date:	Title: Date:

This Customer Order is not valid until executed by both Customer and CareFusion Solutions, LLC.

SALES ASSOCIATE:Karen Vail
Email: karen.vail@bd.com

Customer Order
Product Schedule
Customer Order : 1000277839

Sold To: BENTONVILLE FIRE DEPARTMENT #10288872
Ship To: BENTONVILLE FIRE DEPARTMENT #10288872

Product Discounts:
Non-Std Disc %: 14 %
Support Level: Basic / Standard 24h
Support Term: 60 months

The fees stated in this Customer Order are offered by CareFusion for acceptance by the Customer for a period expiring on: 04/07/2025

New Products					Purchase Terms			Rental Terms			Support Terms		
					Purchase Fees			Monthly Rental Fees			Monthly Support Fee		
Proposed Location	Product ID	Product Name	Tr. Type	QTY	List	Net	**Extended**	List	Net	**Extended**	List	Net	**Extended**
	1145-00	MDBNK TWR MN,MEDBANK,6, PREM	NEW	1	$ 32,980.00	$ 28,493.00	**$ 28,493.00**	$ 0.00	$ 0.00	**$ 0.00**	$ 45.00	$ 45.00	**$ 45.00**
	139077-01	BD Pyxis MedBank Facility Concierge Imp	NEW	1	$ 2,875.00	$ 2,875.00	**$ 2,875.00**	$ 0.00	$ 0.00	**$ 0.00**	$ 0.00	$ 0.00	**$ 0.00**
	139405-01	BD Pyxis MedBank Shipping Fee - Large	NEW	1	$ 1,100.00	$ 1,100.00	**$ 1,100.00**	$ 0.00	$ 0.00	**$ 0.00**	$ 0.00	$ 0.00	**$ 0.00**
	139090-01	BD Pyxis MedBank Facility Software	SWN	1	$ 0.00	$ 0.00	**$ 0.00**	$ 102.00	$ 102.00	**$ 102.00**	$ 0.00	$ 0.00	**$ 0.00**
	155244-01	KIT BD PYXIS QLOCK (LEFT)	NEW	2	$ 2,356.00	$ 2,356.00	**$ 4,712.00**	$ 0.00	$ 0.00	**$ 0.00**	$ 0.01	$ 0.00	**$ 0.00**
Totals:							**$ 37,180.00**			**$ 102.00**			**$ 45.00**

Total Purchase Fees	**$ 37,180.00**
Total Monthly Rental Fees	**$ 102.00**
Total Monthly Support Fees	**$ 45.00**

All fees mentioned are in USD

Customer Initials:

ORDINANCE NO. ___________

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO AN AGREEMENT WITH CAREFUSION SOLUTIONS, LLC., FOR THE PURCHASE OF A PYXIS MEDICATION MANAGEMENT SYSTEM, IN AN AMOUNT NOT TO EXCEED FORTY-SIX THOUSAND DOLLARS ($46,000.00); WAIVING COMPETITIVE BIDDING; PROVIDING FOR THE EMERGENCY CLAUSE; AND FOR OTHER PURPOSES.

WHEREAS, the Bentonville Fire Department requires a medication management system to maintain daily counts on DEA regulated medications increasing safety and maximizing security to enhance both state and federal compliance;

WHEREAS, CareFusion Solutions, LLC. is the sole-source manufacturer for Pyxis Medicine Management Systems; therefore, bidding would not result in competitive submittals; and

WHEREAS, this agreement will be funded with budgeted monies.

NOW, THEREFORE, BE IT ORDAINED 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 CareFusion Solutions, LLC., for the purchase a Pyxis Medication Management System, in an amount not to exceed forty-six thousand dollars ($46,000.00);

Section 2: This purchase will be made using budgeted funds;

Section 3: There exists an exceptional circumstance whereby the requirements of competitive bidding are neither practical nor feasible and the City Council; therefore, waives the requirements of competitive bidding for the purchase of a Pyxis Medication Management System for the Bentonville Fire Department;

Section 4 - Emergency Clause: The need to make this purchase is immediate, an emergency is hereby declared to exist, and this Ordinance shall be in full force and effect from the date of its passage and approval;

Section 5 - Severability Provision: If any part of this Ordinance is held invalid, the remainder of this Ordinance shall continue in effect as if such invalid portion never existed; and

Section 6 - Repeal of Conflicting Provisions: All Ordinances, Resolutions, or Orders of the City Council, or parts of the same, in conflict with this Ordinance are repealed to the extent of such conflict.

PASSED this __________ **day of** ________________________**, 2025.**

APPROVED:

ATTEST:

____

STEPHANIE ORMAN, Mayor

____

MALORIE MARRS, City Clerk

THE CITY OF BENTONVILLE

City of Bentonville, Arkansas Agenda Item Form

Item Details

Council Meeting Date:	1/28/2025	**Submitted By:**	Curtis Sharp
Phone:	479-271-3151	**For Department(s):**	Fire
Email:	csharp@bentonvillear.com		

Item Type (Check all that apply)

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

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

Title, Recommendation & Justification

Title:	Ordinance Approving Waiver of Bid to Purchase Stryker Lifepak 35 Cardiac Monitors for Ambulances
Action Recommendation & Justification:	The Fire Department requests the purchase of Stryker Lifepak 35 cardiac monitors for four front-line Paramedic ambulances. No budget adjustment is needed.
Additional Comments for Consideration (Optional):	These are updated versions and will replace four of the existing Lifepak 15 cardiac monitors allowing those Lifepak 15 monitors to be used for Advanced Response fire engines. Stryker is the sole-source provider for Lifepak 35 cardiac monitor/defibrillators. An emergency clause is requested to allow the immediate purchase and avoid any unnecessary manufacture production order delays. This is a budgeted item for 2025.
Amount for Approval:	$ 360,000.00

Budget Impact

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

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

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

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

Budget Impact Notes for Consideration (Optional):

102020-47410 Machinery & Equipment

Inter-office Memorandum

To: Mayor Orman and City Council

From: Justin Scantlin, Fire Chief

CC: Camille Thompson, Staff Attorney

Date: 1/28/2025

Re: Purchase of a Stryker Lifepak 35 heart monitor/defibrillators

---

The Fire Department requests the purchase of four Stryker Lifepak 35 heart monitor for our four frontline paramedic ambulances. These new medical items are proprietary to Stryker Manufacturing, which is the sole source supplier of these new items. This is a new monitor for 2025 with numerous updates over current Lifepak 15 models. Our entire EMS system utilizes Stryker software, AEDs, Lifepak 15, and proprietary defibrillator pads and connective leads for blood pressure, capnography, and pulse oximetry. Changing to another manufacturer would impact the entirety of the fleet, negating interoperability and be cost prohibitive. An emergency clause is needed for the immediate purchase and ordering of these new monitors to prevent manufacturing and delivery delays caused by increased demand for these new monitors. These are budgeted items for 2025.

MEMORANDUM

PURCHASING AND COMPLIANCE DEPARTMENT

TO: ADMINISTRATION

FROM: Kelsi Frederick, Purchasing and Compliance Manager

DATE: January 23, 2025

SUBJECT: The purchase of Stryker Lifepak 35 Cardiac Monitors

The Purchasing and Compliance Department recommends Council approval of the Fire Department's request to purchase four Stryker Lifepak 35 cardiac monitor/defibrillators for their front-line Paramedic ambulances.

These updated monitors will replace four existing Lifepak 15 models, which will be reassigned for use on Advanced Response fire engines. This strategic reassignment ensures the department maximizes the utility of its existing equipment while equipping front-line ambulances with the latest technology.

Stryker is the sole-source provider of the Lifepak 35 cardiac monitor/defibrillators, as verified by their proprietary status. An emergency clause is requested to allow for the immediate purchase of these devices, ensuring there are no unnecessary delays caused by manufacturing production schedules.

Please feel free to contact me with any questions.

Kelsi Frederick

(479) 271-3115

kfrederick@bentonvillear.com

January 2025

Stryker is the sole-source provider in the Hospital (hospitals and hospital-owned facilities), Emergency Response Services and Emergency Response Training (paramedics, professional and volunteer fire) markets in the U.S. for the following products:

- New LIFEPAK® 35 monitor/defibrillators
- New LIFEPAK® 15 monitor/defibrillators
- New LIFEPAK 20e defibrillator/monitors
- New LIFEPAK CR2 automated external defibrillators
- New LIFEPAK CR2 cellular automated external defibrillators
- New LIFEPAK 1000 automated external defibrillators
- New LUCAS® chest compression system
- CODE-STAT™ data review software and service

Stryker is the sole-source provider in all markets for the following products and services:

- RELI™ (Refurbished Equipment from the Lifesaving Innovators) devices
- LIFENET® system and related software
- ACLS (non-clinical) LIFEPAK defibrillator/monitors
- LIFELINKcentral™ Government Campus Solution
- MultiTech 4G and Titan III gateways
- Factory-authorized inspection and repair services which include repair parts, upgrades, inspections and repairs.

Stryker does not authorize any third parties to sell these products or services in the markets listed above. We will not fulfill orders placed by non-authorized businesses seeking to resell our products or services. If you have questions, please feel free to contact your local Stryker customer service representative at 800.442.1142.

Sincerely,

[redacted]

Matt Van Der Wende, Vice President, Americas Sales

EC-GSNPS-COMM-1157704_REV-1_en_us

Emergency Care
11811 Willows Road NE, Redmond, WA 98052 USA | P +1 425 867 4000 | Toll-free +1 800 442 1142 | stryker.com

THE CITY OF BENTONVILLE

Department Sole Source Justification Form

Purchasing and Compliance Department

Sole source procurements of commodities and services must only be available from a single source and cannot be competitively bid. Pursuant to the law, sole source requests will not be processed without proper justification and compliance with the statutes, rules, and policy.
Complete this form for contracts with a value greater than $12,500 (total) where bidding may be restricted or where multiple proposals can not obtained. Completing this form does not guarantee that the proposed vendor will be selected.
This completed form must be submitted with the Contract Request Form along with any additional supporting documentation.

Requesting Department Name: Fire | Department 2 (if applicable)

Supplier Name: Stryker

JUSTIFICATION

Note: Brand name preferences, aesthetic design specifications, or price are not sufficient justification for sole source procurements. Select one or more of the following statements (check the box) to support why the contract request attached and noted above should be a single sole source purchase. ANY selection requires explanation in the additional space provided.

- [x] 1. Items sold through vendor only; no other comparable vendor available.
- [ ] 2. Must match existing piece of equipment. Available only from the same source of original equipment.
- [ ] 3. Upgrade to existing system. Available only from the producer of this system who sells on a direct basis only.
- [ ] 4. Repair/Maintenance service requires expertise in operations on unit. Necessary parts unavailable from any source except original equipment manufacturer or their designated servicing dealer.
- [ ] 5. Service(s) provided by the vendor are unique and therefore competitive bids are not applicable.
- [ ] 6. Other reason.

Explanation is required for ANY selected statement. Information provided might include research performed or subject matter expertise detailed to justify the use of this particular vendor. This must clearly indicate why the proposed vendor is the ONLY vendor that will meet your requirements. (Please attach documents if additional space is required)

Explanation: Stryker is the sole manufacturer and distributor of the Stryker Power-Pro XT (model 6506) ambulance cot, the Power-Pro 2 (model 6507) ambulance cot, and the Power-LOAD (model 6390) cot fastener.

FURTHER JUSTIFICATION

Is this sole source based on performance specifications, and if so, what is the unique performance requirement?

System meets SAE J3027 dynamic crash test safety standards when the 6506 or 6507 cot is paired

And, why is this feature necessary?

Provide patient and provider safety when the ambulance is in motion or if it is involved in an acciden

Can requirements be modified so that the services or commodity may be competitively bid? If no, why?

These have proprietary batteries and compatible to be utilized with all EMS vehicles.

Are there patent, copyright, or proprietary rights which make the required service or commodity unavailable from other sources? If yes, describe.

Only Stryker or its affiliated entities are authorized to sell. Only Stryker sales or affiliated ambulance

What would the agency do if the service or commodity were no longer available?

Be unable to license or utilize the associated ambulance.

Detail any program considerations, which make the use of a "Sole Source" critical to the agency.

Many medical devices are trademarked and proprietary, which is the case with these Stryker produc

I certify that to the best of my knowledge I have investigated and found that the above reasons and explanations justify this contract request as a single/sole source procurement, and that price reasonableness is adequately confirmed. I am the individual who has gathered and provided this detailed information and any further questions regarding these details can be directed to my attention.

Signature [redacted] Date 1/16/25

Print Name Curtis Sharp Title Deputy Chief

E-mail Address csharp@bentonvillear.com Phone # 479-271-3151

Purchasing and Compliance Manager Approval

☑ Justification appears appropriate.

☐ Justification appears inappropriate. Explanation is attached.

Purchasing and Compliance Signature [redacted] Date 1/23/25

stryker

LP35 (4)

Quote Number:	10973239	Remit to:	Stryker Sales, LLC 21343 NETWORK PLACE CHICAGO IL 60673-1213 USA
Version:	1		
Prepared For:	BENTONVILLE FIRE DEPT	Rep:	Logan Cruse
	Attn:	Email:	logan.cruse@stryker.com
		Phone Number:	

Quote Date:	01/06/2025
Expiration Date:	04/06/2025
Contract Start:	08/19/2024
Contract End:	08/18/2025

Delivery Address		**Sold To - Shipping**		**Bill To Account**	
Name:	BENTONVILLE FIRE DEPT	Name:	BENTONVILLE FIRE DEPT	Name:	CITY OF BENTONVILLE
Account #:	20019323	Account #:	20019323	Account #:	20126333
Address:	800 SW A ST	Address:	800 SW A ST	Address:	1000 SW 14TH ST
	BENTONVILLE		BENTONVILLE		BENTONVILLE
	Arkansas 72712-6225		Arkansas 72712-6225		Arkansas 72712-3625

Equipment Products:

#	Product	Description	Qty	Sell Price	Total
1.0	70335-000042	LP35,EN-US,MAS-SP/CO,MED-CO2,SUN-NIBP,12L,WIFI/ CELL/LN/CPRIN,STD,BT	4	$47,900.00	$191,600.00
2.0	11335-000001	BATTERY, LI-ION, WITH IFU, LP35	8	$1,000.00	$8,000.00
3.0	11140-000102	CHARGER, BATTERY, LP35	4	$3,000.00	$12,000.00
4.0	11140-000131	POWER CORD,C13 ST,10FT,HOSPITAL GRADE	4	$108.00	$432.00
5.0	11996-000519	LNCS-II rainbow DCI 8? SpCO, Adult Reusable Sensor	6	$859.00	$5,154.00
6.0	11996-000520	LNCS-II rainbow DCIP 8? SpCO, Pediatric Reusable Sensor	6	$945.00	$5,670.00
7.0	11171-000017	Masimo LNCS DCI, Adult SpO2 only Reusable Sensor. For use with LNC Patient Cable.	8	$449.00	$3,592.00
8.0	11171-000018	Masimo LNCS DCIP, Pediatric SpO2 only Reusable Sensor. For use with LNC Patient Cable.	8	$416.00	$3,328.00
9.0	11111-000035	ASSY, CABLE, ECG, 4 WIRE, AHA, 8 FT	6	$514.00	$3,084.00
10.0	11111-000037	ASSY, CABLE, ECG, 15LEAD, 6 WIRE PRECORD	4	$310.00	$1,240.00
11.0	11160-000015	NIBP Cuff-Reusable, Adult	4	$41.00	$164.00
12.0	11335-000005	KIT, PRINTER, LP35	4	$3,000.00	$12,000.00
13.0	11335-000008	KIT, STORAGE BAGS, LP35	6	$600.00	$3,600.00
14.0	11260-000073	KIT, SHOULDER STRAP, LP35	6	$75.00	$450.00
15.0	11150-000020	KIT, MODEM, NA, LP35	4	$1,500.00	$6,000.00

stryker

LP35 (4)

Quote Number:	10973239	Remit to:	Stryker Sales, LLC 21343 NETWORK PLACE CHICAGO IL 60673-1213 USA
Version:	1		
Prepared For:	BENTONVILLE FIRE DEPT	Rep:	Logan Cruse
	Attn:	Email:	logan.cruse@stryker.com
		Phone Number:	

Quote Date: 01/06/2025
Expiration Date: 04/06/2025
Contract Start: 08/19/2024
Contract End: 08/18/2025

#	Product	Description	Qty	Sell Price	Total
16.0	11330-000026	ASSY, DOCKING STATION, LP35	4	$3,200.00	$12,800.00
17.0	11996-000536	PATIENT SIMULATOR, ECG,15-LEAD	1	$1,500.00	$1,500.00
				Equipment Total:	$270,614.00

Trade In Credit:

Product	Description	Qty	Credit Ea.	Total Credit

ProCare Products:

#	Product	Description	Qty	Sell Price	Total
18.1	LIFEPK35-DEP-PRO	Lifepak35 for LP35,EN-US,MAS-SP/CO,MED-CO2,SUN-NIBP,12L,WIFI/CELL/LN/CPRIN,STD,BT *08/20/2024 - 08/19/2031* √ Parts, Labor, Travel √ Preventative Maintenance √ Batteries Service	4	$12,670.00	$50,680.00
				ProCare Total:	$50,680.00

Price Totals:

Estimated Sales Tax (9.500%):	$30,522.93
Freight/Shipping:	$5,043.56
Grand Total:	$356,860.49

Prices: In effect for 30 days

Terms: Net 30 Days

stryker

LP35 (4)

Quote Number:	10973239	Remit to:	Stryker Sales, LLC 21343 NETWORK PLACE CHICAGO IL 60673-1213 USA
Version:	1		
Prepared For:	BENTONVILLE FIRE DEPT	Rep:	Logan Cruse
	Attn:	Email:	logan.cruse@stryker.com
		Phone Number:	

Quote Date:	01/06/2025
Expiration Date:	04/06/2025
Contract Start:	08/19/2024
Contract End:	08/18/2025

Terms and Conditions:
Deal Consummation: This is a quote and not a commitment. This quote is subject to final credit, pricing, and documentation approval. Legal documentation must be signed before your equipment can be delivered. Documentation will be provided upon completion of our review process and your selection of a payment schedule. Confidentiality Notice: Recipient will not disclose to any third party the terms of this quote or any other information, including any pricing or discounts, offered to be provided by Stryker to Recipient in connection with this quote, without Stryker’s prior written approval, except as may be requested by law or by lawful order of any applicable government agency. A copy of Stryker Medical's terms and conditions can be found at https://techweb.stryker.com/Terms_Conditions/index.html.

ORDINANCE NO. ___________

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO AN AGREEMENT WITH STRYKER, FOR THE PURCHASE OF FOUR (4) LIFEPAK '35' CARDIAC MONITORS, IN AN AMOUNT NOT TO EXCEED THREE HUNDRED SIXTY THOUSAND DOLLARS ($360,000.00); WAIVING COMPETITIVE BIDDING; PROVIDING FOR THE EMERGENCY CLAUSE; AND FOR OTHER PURPOSES.

WHEREAS, the Bentonville Fire Department requests to purchase four (4) Stryker Lifepak '35' Cardiac Monitors for the four (4) front-line paramedic ambulances;

WHEREAS, these updated versions of cardiac monitors will replace four (4) of the existing Lifepak '15' cardiac monitors allowing those monitors to be used for Advance Response fire engines;

WHEREAS, Stryker is the sole-source provider in the Hospital, Emergency Response Services, and Emergency Response Training markets; therefore, bidding would not result in competitive submittals; and

WHEREAS, this agreement will be funded with budgeted monies.

NOW, THEREFORE, BE IT ORDAINED 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 Stryker, for the purchase of four (4) Lifepak '35' Cardiac Monitors, in an amount not to exceed three hundred sixty thousand dollars ($360,000.00);

Section 2: This purchase will be made using budgeted funds;

Section 3: There exists an exceptional circumstance whereby the requirements of competitive bidding are neither practical nor feasible and the City Council; therefore, waives the requirements of competitive bidding for the purchase of four (4) Stryker Lifepak '35' Cardiac Monitor, for the Bentonville Fire Department;

Section 4 - Emergency Clause: The need to make this purchase is immediate, an emergency is hereby declared to exist, and this Ordinance shall be in full force and effect from the date of its passage and approval;

Section 5 - Severability Provision: If any part of this Ordinance is held invalid, the remainder of this Ordinance shall continue in effect as if such invalid portion never existed; and

Section 6 - Repeal of Conflicting Provisions: All Ordinances, Resolutions, or Orders of the City Council, or parts of the same, in conflict with this Ordinance are repealed to the extent of such conflict.

PASSED this __________ **day of** ________________________**, 2025.**

APPROVED:

ATTEST:

____
STEPHANIE ORMAN, Mayor

____
MALORIE MARRS, City Clerk

City of Bentonville, Arkansas Agenda Item Form

Item Details

Council Meeting Date:	1/28/2025	**Submitted By:**	Curtis Sharp
Phone:	479-271-3151	**For Department(s):**	Fire
Email:	csharp@bentonvillear.com		

Item Type (Check all that apply)

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

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

Title, Recommendation & Justification

Title:	Ordinance approving a Waiver if Bid - Stryker Powercot & Load System for Braun Liberty Ambulance
Action Recommendation & Justification:	The Fire Department requests approval to enter into an agreement purchasing a Stryker power cot & loading system for a Braun Liberty ambulance. No budget adjustment is needed.
Additional Comments for Consideration (Optional):	These items are standard equipment and required for secure patient transport. We have applied for a federal grant for these items, but will not know the outcome until a future date. Stryker is the sole-source provider for Power-Pro XT and the Power-LOAD transport system. This is a budgeted item for 2025.
Amount for Approval:	$ 67,000.00

Budget Impact

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

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

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

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

Budget Impact Notes for Consideration (Optional):

102020-47410 Machinery & Equipment

Inter-office Memorandum

To: Mayor Orman and City Council

From: Justin Scantlin, Fire Chief

CC: Camille Thompson, Staff Attorney

Date: 1/28/2025

Re: Purchase of a Stryker power cot and load restraint system

---

The Fire Department requests the purchase of a Stryker PowerPro XT cot and PowerLOAD restraint system for a new paramedic ambulance. These new medical items are proprietary to Stryker Manufacturing, which is the sole source supplier of these new items, unlike refurbished models sold by other vendors. These items are necessary for interoperability, so that all ambulance systems work for all patients. Changing to another manufacturer would impact the entirety of the fleet, negating interoperability and be cost prohibitive. These are budgeted items for 2025.

MEMORANDUM

PURCHASING AND COMPLIANCE DEPARTMENT

TO: ADMINISTRATION

FROM: Kelsi Frederick, Purchasing and Compliance Manager

DATE: January 23, 2025

SUBJECT: The purchase of Stryker Power Cot and Loading System

---

Purchasing and Compliance recommends Council approval for the purchase of a Stryker Power-Pro XT cot and Power-LOAD loading system for a Braun Liberty ambulance.

Stryker is the sole-source provider of the Power-Pro XT cot and Power-LOAD transport system, which are designed to work seamlessly together. The sole-source status is critical to ensure compatibility with existing equipment, standardization within the department, and the safety of both patients and emergency personnel.

Approval of this agreement will enable the Fire Department to maintain compliance with safety and operational standards while ensuring the secure transport of patients. It is recommended that the Council approve the request to enter into this agreement with Stryker.

Please feel free to contact me with any questions.

Kelsi Frederick

(479) 271-3115

kfrederick@bentonvillear.com

January 2025

Power-PRO™ XT Cot sole source information

To whom it may concern,

Stryker certifies that we are the sole manufacturer of Stryker's Power-PRO XT Cot (Model 6506). This correspondence is to inform you of the characteristics of the Power-PRO Cot. These characteristics can be broken down into two primary categories: **qualifications** and **ease of use**.

Qualifications:

- IPX6: The system is tested to withstand powerful water jets.
- IEC 60601-1 and IEC 60601-1-2: The Power-PRO XT Cot conforms to industry standards for mechanical and electrical safety for medical electrical devices, as well as electromagnetic compatibility and immunity.
- BS EN-1789:2007, clause 4.5.9 when used with Power-LOAD Cot Fastener and X-Restraints: This is a European dynamic crash test which subjects a 50th percentile dummy to nominal 10g deceleration for a minimum of 50ms. Following the test there shall be no sharp edges.
- Meets SAE J3027 dynamic crash test safety standards when used with Power-LOAD/Performance-LOAD Cot Fastener and X-Restraints.

Ease of use:

- The cot has a weight capacity of 700 lb.
- When unloading with the manual release handle, the cot utilizes hydraulic dampening. Thus, the cot will not abruptly jar the operator or patient.
- The battery is placed at the foot end of the stretcher.
- The cot legs power-retract in 3.5 seconds which speeds load time.
- The cot provides a load height of 36" and is operator adjustable to match the deck height of individual ambulances.
- The foot-end of the cot provides lifting bars and operator controls at two different heights, thus providing optimal ergonomics to most operator heights.
- The foot end of the cot contains a large battery indicator light which displays amber or green which indicates battery level. A warning is given by a flashing amber light, providing the operator the time to change the battery before full depletion of power.
- The Model 6506 has 6" x 2" sealed casters and bearings.
- The cot features a foot end mounted hourly usage meter. This tool can be used to determine the timing of preventative maintenance checks.
- The cot features powder-coating of the aluminum frame (including the patient handling surfaces) and sealed caster bearings, thus reducing aluminum oxidation throughout the cot.
- The cot is power washable.

Please contact your Sales Representative for further information.

Sincerely,

[redacted]

John Guyeskey, Sr. Manager, Downstream Marketing

Emergency Care
3800 E. Centre Avenue, Portage, MI 49002 USA | P +1 269 329 2100 | Toll-free +1 800 327 0770 | stryker.com

January 2025

Power-LOAD® Cot Fastener sole source information

To whom it may concern,

Stryker certifies that we are the sole manufacturer of Stryker's Power-LOAD Cot Fastener (Model 6390). This correspondence is to inform you of the characteristics of the Power-LOAD Cot Fastener. These characteristics can be broken down into two primary categories: **qualifications** and **ease of use**.

Stryker's Power-LOAD (Model 6390) Cot Fastener is mounted within the patient compartment and is intended to aid in the loading/unloading of patients. Stryker's Power-LOAD is the only powered cot fastening system that meets the following:

Qualifications:

- IPX6: The system is tested to withstand powerful water jets.
- IEC 60601-1 and IEC 60601-1-2: The Power-LOAD Cot Fastener conforms to industry standards for mechanical and electrical safety for medical electrical devices, as well as electromagnetic compatibility and immunity.
- BS EN-1789:2007, clause 4.5.9 when used with Power-PRO Cot and X-Restraints: This is a European dynamic crash test which subjects a 50th percentile dummy to nominal 10g deceleration for a minimum of 50ms. Following the test there shall be no sharp edges.
- SAE J3027 compliant when used with Stryker's Power-PRO Cot and X-Restraints

Ease of use:

- Provides a linear guide for loading and unloading the cot.
- Allows for remote actuation from Power-PRO foot end controls.
- Engages to the cot during loading and unloading, providing a means of lifting and lowering.
- Safe working load of 870 lb and capable of lifting patients weighing up to 700 lb.
- Mounts inside the patient compartment to prevent environmental exposure and corrosion.
- Power washable.
- Capable of inductively charging Stryker's SMRT Battery.

Please contact your Sales Representative for further information.

Sincerely,

[redacted]

John Guyeskey, Sr. Manager, Downstream Marketing

M0000001062 REV AB

Emergency Care
3800 E. Centre Avenue, Portage, MI 49002 USA | P +1 269 329 2100 | Toll-free +1 800 327 0770 | stryker.com

Department Sole Source Justification Form

Purchasing and Compliance Department

Sole source procurements of commodities and services must only be available from a single source and cannot be competitively bid. Pursuant to the law, sole source requests will not be processed without proper justification and compliance with the statutes, rules, and policy.
Complete this form for contracts with a value greater than $12,500 (total) where bidding may be restricted or where multiple proposals can not obtained. Completing this form does not guarantee that the proposed vendor will be selected.
This completed form must be submitted with the Contract Request Form along with any additional supporting documentation.

Requesting Department Name: Fire | Department 2 (if applicable)

Supplier Name: Stryker

JUSTIFICATION

Note: Brand name preferences, aesthetic design specifications, or price are not sufficient justification for sole source procurements. Select one or more of the following statements (check the box) to support why the contract request attached and noted above should be a single sole source purchase. ANY selection requires explanation in the additional space provided.

- [x] 1. Items sold through vendor only; no other comparable vendor available.
- [ ] 2. Must match existing piece of equipment. Available only from the same source of original equipment.
- [ ] 3. Upgrade to existing system. Available only from the producer of this system who sells on a direct basis only.
- [ ] 4. Repair/Maintenance service requires expertise in operations on unit. Necessary parts unavailable from any source except original equipment manufacturer or their designated servicing dealer.
- [ ] 5. Service(s) provided by the vendor are unique and therefore competitive bids are not applicable.
- [ ] 6. Other reason.

Explanation is required for ANY selected statement. Information provided might include research performed or subject matter expertise detailed to justify the use of this particular vendor. This must clearly indicate why the proposed vendor is the ONLY vendor that will meet your requirements. (Please attach documents if additional space is required)

Explanation: Stryker is the sole manufacturer and distributor of the Stryker Power-Pro XT (model 6506) ambulance cot, the Power-Pro 2 (model 6507) ambulance cot, and the Power-LOAD (model 6390) cot fastener.

FURTHER JUSTIFICATION

Is this sole source based on performance specifications, and if so, what is the unique performance requirement?

System meets SAE J3027 dynamic crash test safety standards when the 6506 or 6507 cot is paired

And, why is this feature necessary?

Provide patient and provider safety when the ambulance is in motion or if it is involved in an acciden

Can requirements be modified so that the services or commodity may be competitively bid? If no, why?

These have proprietary batteries and compatible to be utilized with all EMS vehicles.

Are there patent, copyright, or proprietary rights which make the required service or commodity unavailable from other sources? If yes, describe.

Only Stryker or its affiliated entities are authorized to sell. Only Stryker sales or affiliated ambulanc

What would the agency do if the service or commodity were no longer available?

Be unable to license or utilize the associated ambulance.

Detail any program considerations, which make the use of a "Sole Source" critical to the agency.

Many medical devices are trademarked and proprietary, which is the case with these Stryker produc

I certify that to the best of my knowledge I have investigated and found that the above reasons and explanations justify this contract request as a single/sole source procurement, and that price reasonableness is adequately confirmed. I am the individual who has gathered and provided this detailed information and any further questions regarding these details can be directed to my attention.

Signature [redacted] Date 1/16/25

Print Name Curtis Sharp Title Deputy Chief

E-mail Address csharp@bentonvillear.com Phone # 479-271-3151

Purchasing and Compliance Manager Approval

☑ Justification appears appropriate.

☐ Justification appears inappropriate. Explanation is attached.

Purchasing and Compliance Signature [redacted] Date 1/23/25

stryker

Power system

Quote Number:	11023268	Remit to:	Stryker Sales, LLC 21343 NETWORK PLACE CHICAGO IL 60673-1213 USA
Version:	1		
Prepared For:	BENTONVILLE FIRE DEPT	Rep:	Logan Cruse
	Attn:	Email:	logan.cruse@stryker.com
		Phone Number:	
Quote Date:	01/06/2025		
Expiration Date:	04/06/2025		

Delivery Address		Sold To - Shipping		Bill To Account	
Name:	BRAUN INDUSTRIES	Name:	BENTONVILLE FIRE DEPT	Name:	CITY OF BENTONVILLE
Account #:	20202330	Account #:	20019323	Account #:	20126333
Address:	1170 PRODUCTION DR	Address:	800 SW A ST	Address:	1000 SW 14TH ST
	VAN WERT		BENTONVILLE		BENTONVILLE
	Ohio 45891-9391		Arkansas 72712-6225		Arkansas 72712-3625

Equipment Products:

#	Product	Description	Qty	Sell Price	Total
1.0	650605550003	6506 MTS PWRPRO COT HIGH CNFIG	1	$31,097.11	$31,097.11
2.0	639005550003	MTS PWLD EXCLUDES FLOOR PLATE	1	$29,180.79	$29,180.79
				Equipment Total:	$60,277.90

Price Totals:

Estimated Sales Tax (9.500%):	$5,726.40
Freight/Shipping:	$753.47
Grand Total:	$66,757.77

Prices: In effect for 30 days

Terms: Net 30 Days

stryker

Power system

Quote Number:	11023268	Remit to:	Stryker Sales, LLC 21343 NETWORK PLACE CHICAGO IL 60673-1213 USA
Version:	1		
Prepared For:	BENTONVILLE FIRE DEPT	Rep:	Logan Cruse
	Attn:	Email:	logan.cruse@stryker.com
		Phone Number:	
Quote Date:	01/06/2025		
Expiration Date:	04/06/2025		

Terms and Conditions:
Deal Consummation: This is a quote and not a commitment. This quote is subject to final credit, pricing, and documentation approval. Legal documentation must be signed before your equipment can be delivered. Documentation will be provided upon completion of our review process and your selection of a payment schedule. Confidentiality Notice: Recipient will not disclose to any third party the terms of this quote or any other information, including any pricing or discounts, offered to be provided by Stryker to Recipient in connection with this quote, without Stryker's prior written approval, except as may be requested by law or by lawful order of any applicable government agency. A copy of Stryker Medical's terms and conditions can be found at https://techweb.stryker.com/Terms_Conditions/index.html.

ORDINANCE NO. ___________

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO AN AGREEMENT WITH STRYKER, FOR THE PURCHASE OF A POWER COT AND LOADING SYSTEM, IN AN AMOUNT NOT TO EXCEED SIXTY-SEVEN THOUSAND DOLLARS ($67,000.00); WAIVING COMPETITIVE BIDDING; AND FOR OTHER PURPOSES.

WHEREAS, the Bentonville Fire Department request the purchase of a Stryker Power Cot and Load System for a Braun Liberty Ambulance;

WHEREAS, these items are standard equipment and required for secure patient transport;

WHEREAS, Stryker is the sole-source provider for Power-Pro XT and the Power-LOAD transport system; therefore, bidding would not result in competitive submittals;

WHEREAS, the Bentonville Fire Department has applied for a federal grant for said items, but will not know the outcome until a future date; and

WHEREAS, this agreement will be funded with budgeted monies.

NOW, THEREFORE, BE IT ORDAINED 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 Stryker, for the purchase of a Power Cot and Load System, in an amount not to exceed sixty-seven thousand dollars ($67,000.00);

Section 2: This purchase will be made using budgeted funds;

Section 3: There exists an exceptional circumstance whereby the requirements of competitive bidding are neither practical nor feasible and the City Council; therefore, waives the requirements of competitive bidding for the purchase of a Power Cot and Load System, for the Bentonville Fire Department;

Section 4 - Severability Provision: If any part of this Ordinance is held invalid, the remainder of this Ordinance 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 Ordinance are repealed to the extent of such conflict.

PASSED this __________ **day of** ________________________**, 2025.**

APPROVED:

____
STEPHANIE ORMAN, Mayor

ATTEST:

____
MALORIE MARRS, City Clerk

City of Bentonville, Arkansas Agenda Item Form

Item Details

Council Meeting Date:	1/28/2025	**Submitted By:**	Chris Earl
Phone:	479-696-0273	**For Department(s):**	Water Resource Recovery Facility
Email:	cearl@bentonvillear.com		

Item Type (Check all that apply)

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

- ☑ Ordinance
- ☐ Resolution
- ☐ Informational

Title, Recommendation & Justification

Title:	Ordinance for a Waiver of Bid to Purchase Required Parts to Rebuild WRRF Barscreen
Action Recommendation & Justification:	Approval of an ordinance to waive competitive bidding to enter into an agreement with Price Schonstrom for the purchase of all required parts to completely rebuild the Water Resource Recovery Facility Barscreen. Utility Board approved 5-0. No budget adjustment is needed.
Additional Comments for Consideration (Optional):	This is a sole source item, it is neither practical or feasible to solicit competitive bids. See attached documentation verifying the current equipment and associated materials may only be purchased through Price Schonstrom who is sole source. This is a critical piece of equipment that must be repaired to maintain proper treatment of the incoming wastewater stream.
Amount for Approval:	$ 65,089.26

Budget Impact

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

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

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

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

Budget Impact Notes for Consideration (Optional):

Department Sole Source Justification Form

Purchasing and Compliance Department

THE CITY OF BENTONVILLE

Sole source procurements of commodities and services must only be available from a single source and cannot be competitively bid. Pursuant to the law, sole source requests will not be processed without proper justification and compliance with the statutes, rules, and policy.
Complete this form for contracts with a value greater than $12,500 (total) where bidding may be restricted or where multiple proposals can not obtained. Completing this form does not guarantee that the proposed vendor will be selected.
This completed form must be submitted with the Contract Request Form along with any additional supporting documentation.

Requesting Department Name: Wastewater | Department 2 (if applicable)

Supplier Name: Price Schonstrom, Inc.

JUSTIFICATION

Note: Brand name preferences, aesthetic design specifications, or price are not sufficient justification for sole source procurements. Select one or more of the following statements (check the box) to support why the contract request attached and noted above should be a single/sole source purchase. ANY selection requires explanation in the additional space provided.

- [x] 1. Items sold through vendor only; no other comparable vendor available.
- [x] 2. Must match existing piece of equipment. Available only from the same source of original equipment.
- [ ] 3. Upgrade to existing system. Available only from the producer of this system who sells on a direct basis only.
- [x] 4. Repair/Maintenance service requires expertise in operations on unit. Necessary parts unavailable from any source except original equipment manufacturer or their designated servicing dealer.
- [ ] 5. Service(s) provided by the vendor are unique and therefore competitive bids are not applicable.
- [ ] 6. Other reason.

Explanation is required for ANY selected statement. Information provided might include research performed or subject matter expertise detailed to justify the use of this particular vendor. This must clearly indicate why the proposed vendor is the ONLY vendor that will meet your requirements. (Please attach documents if additional space is required)

Explanation: Price Schonstrom is the manufacturer of the Arlat Barscreen that is existing in our facility. Price Schonstrom does not have distributors in the states. They are a direct buy vendor for the parts and equipment that we need to refurbish our barscreen with.

FURTHER JUSTIFICATION

Is this sole source based on performance specifications, and if so, what is the unique performance requirement?

NO

And, why is this feature necessary?

Can requirements be modified so that the services or commodity may be competitively bid? If no, why?

No, the barscreen is the only barcreen we have in the facility and it is specified for influent channel

Are there patent, copyright, or proprietary rights which make the required service or commodity unavailable from other sources? If yes, describe.

What would the agency do if the service or commodity were no longer available?

We would have to have engineers get involvedand then have a barscreen completely built for our ch

Detail any program considerations, which make the use of a "Sole Source" critical to the agency.

I certify that to the best of my knowledge I have investigated and found that the above reasons and explanations justify this contract request as a single/sole source procurement, and that price reasonableness is adequately confirmed. I am the individual who has gathered and provided this detailed information and any further questions regarding these details can be directed to my attention.

Signature [redacted] Date 1/14/20

Print Name Chris Earl Title Manager, WRRF

E-mail Address cearl@bentonvillear.com Phone # 479-696-0273

Purchasing and Compliance Manager Approval

☑ Justification appears appropriate.

☐ Justification appears inappropriate. Explanation is attached.

Purchasing and Compliance Signature [redacted] Date 1/15/25

Joshua Epling

From: Chris Earl
Sent: Tuesday, January 14, 2025 9:12 AM
To: Joshua Epling
Subject: RE: Bar Screen Info

See Comments Below

Chris Earl, Manager
Water Resource Recovery Facility
1901 N.E. "A" Street
Bentonville, AR 72712
Phone: 479-696-0273
Fax: 479-271-3163
cearl@bentonvillear.com

From: Joshua Epling <jepling@bentonvillear.com>
Sent: Monday, January 13, 2025 8:20 AM
To: Chris Earl <chrise@bentonvillear.com>
Subject: FW: Bar Screen Info

From: Joshua Epling
Sent: Monday, January 6, 2025 1:35 PM
To: Kevin Dobson <kdobson@psicanada.com>
Subject: RE: Bar Screen Info

Hello Kevin,

I hope you a had a great holiday season. I spoke with my Manager and mentioned the sole source letter and that you said to use the email that you provided with that information. He was wondering if you could provide a more formal sole source with letterhead for him to take to Counsil. He said it would ensure things to go much quicker with the formal letter.

Sorry for inconvenience.

Thank you,

Joshua Epling, Maintenance Supervisor
City of Bentonville
Water Resource Recovery Facility
1901 N.E. "A" Street
Bentonville, AR 72712
479-696-0296
jepling@bentonvillear.com

From: Kevin Dobson <kdobson@psicanada.com>
Sent: Friday, December 13, 2024 10:16 AM
To: Joshua Epling <jepling@bentonvillear.com>
Cc: Rich Grubb <rgrubb@psicanada.com>
Subject: RE: Bar Screen Info

Hi Joshua,

During the quoting stage I spoke with a number of potential carriers. They indicated that the expected delivery date was too far into the future to estimate. Based on past shipments I can safely say there is no typical amount to assume. Final shipping weight, size, distance, fuel surcharges, border delays and many other things factor into the cost.

We send the shipment with appropriate paperwork for customs, but we typically don't see those costs as our customer typically has their customs broker handle those costs. It's just not something we see.

To the best of my knowledge the waste water treatment equipment and parts do not typically have any tariffs applied, but I can't begin to guess what will happen between now and the time of shipment.

In short, I guess what I am saying is that I can't help beyond the detail already supplied. In your shoes, I would probably include and additional 10 to 15% to cover these costs with the understanding that the details will be worked out closer to the time of shipment.

Sorry I don't have a better answer.
Kevin

From: Joshua Epling <jepling@bentonvillear.com>
Sent: Friday, December 13, 2024 9:32 AM
To: Kevin Dobson <kdobson@psicanada.com>
Subject: RE: Bar Screen Info

Kevin,

I spoke with my manager this morning about the quote. In order for him to go to the board and request this repair he will need shipping, tariff, and all fees to be included in the quote. If you could please revise the quote to reflect these changes then we could start the PO request process.

We understand that some of these changes could change over time and they may be estimates as well. We just need a total price for all.

Sorry for the inconvenience.

Thank you,

Joshua Epling, Maintenance Supervisor
City of Bentonville
Water Resource Recovery Facility
1901 N.E. "A" Street
Bentonville, AR 72712
479-696-0296
jepling@bentonvillear.com

From: Kevin Dobson <kdobson@psicanada.com>
Sent: Thursday, December 12, 2024 9:00 AM
To: Joshua Epling <jepling@bentonvillear.com>
Cc: Rich Grubb <rgrubb@psicanada.com>
Subject: RE: Bar Screen Info

Hi Joshua,

Yes, Price Schonstrom Inc is the manufacturer, and sole supplier of these parts. We no longer maintain a distribution network. Please use this email as for your records indicating that we are the sole supplier for these parts.

We might be your system already – possibly as Arlat Technology a Division of Price Schonstrom Inc., or some combination of the two. You were already in our system, with the most recent purchase being in 2013 for some screw conveyor parts. Regardless I have included a completed W-8BEN, rather than a W-9 since we are not a US company.

I spoke with my manager regarding payment terms. Since we have an existing relationship – albeit an old one – we can accept payment terms of N30 after receipt of product. I have attached our revised quote showing the same.

Please let me know if you need anything else as you process your order.

Thanks,
Kevin

Kevin Dobson
Arlat Division,
PRICE SCHONSTROM INC.
35 ELM ST. BOX 249
WALKERTON ON. N0G2V0
519-881-0262

From: Joshua Epling <jepling@bentonvillear.com>
Sent: Thursday, December 12, 2024 9:19 AM
To: Kevin Dobson <kdobson@psicanada.com>
Subject: RE: Bar Screen Info

Kevin,

Thank you for the quote. Is Price Schonstrom INC. the sole source provider for this product or is there a distributor in the states we would have to use? I would need a sole source letter stating that Price Schonstrom is the sole provider of this product. I spoke with my manager about the terms as well and with how the City of Bentonville operates its PO system. We request for the full amount of the invoice and payment is made when parts are onsite. I also may have to request a W-9 from Price Schonstrom to get them setup as a new vendor for us.

As soon as I get some of this information back I can start the PO process.
Thank you for all your help in this matter.

Joshua Epling, Maintenance Supervisor
City of Bentonville
Water Resource Recovery Facility
1901 N.E. "A" Street
Bentonville, AR 72712
479-696-0296
jepling@bentonvillear.com

From: Kevin Dobson <kdobson@psicanada.com>
Sent: Thursday, December 12, 2024 7:05 AM
To: Joshua Epling <jepling@bentonvillear.com>
Cc: Rich Grubb <rgrubb@psicanada.com>
Subject: RE: Bar Screen Info

Hi Joshua,

Attached please find our quote for your replacement filter screen belt and drive sprockets. Unfortunately, I have not had much luck finding screenshots or photos that I can share at this time. Upon receipt of purchase order, we will send drawings for your review as well as any other details we need confirmed prior to us ordering any materials.

Thanks,
Kevin

Kevin Dobson
Arlat Division,
PRICE SCHONSTROM INC.
35 ELM ST. BOX 249
WALKERTON ON. N0G2V0
519-881-0262

From: Joshua Epling <jepling@bentonvillear.com>
Sent: Wednesday, December 4, 2024 12:18 PM
To: Kevin Dobson <kdobson@psicanada.com>
Subject: RE: Bar Screen Info

Sounds good

From: Kevin Dobson <kdobson@psicanada.com>
Sent: Wednesday, December 4, 2024 11:03 AM
To: Joshua Epling <jepling@bentonvillear.com>
Subject: RE: Bar Screen Info

Hi Joshua,

I'll send screen shots of each item that I include in our quote, and at time of order, we will send reference drawings for your approval prior to us ordering anything.

Thanks,
Kevin

From: Joshua Epling <jepling@bentonvillear.com>
Sent: Wednesday, December 4, 2024 11:58 AM
To: Kevin Dobson <kdobson@psicanada.com>
Subject: RE: Bar Screen Info

Ok. We definitely need them included in the quote. There are many of them that are damaged and cracked.

Thank you

From: Kevin Dobson <kdobson@psicanada.com>
Sent: Tuesday, December 3, 2024 4:55 PM
To: Joshua Epling <jepling@bentonvillear.com>
Subject: RE: Bar Screen Info

Yes.

From: Joshua Epling <jepling@bentonvillear.com>
Sent: Tuesday, December 3, 2024 4:12 PM
To: Kevin Dobson <kdobson@psicanada.com>
Subject: FW: Bar Screen Info

From: Joshua Epling <jepling@bentonvillear.com>
Sent: Tuesday, December 3, 2024 3:11 PM
To: Joshua Epling <jepling@bentonvillear.com>
Subject: RE: Bar Screen Info

Kevin,

Quick question. Are the UHMW drive sprockets the white plastic part?

From: Joshua Epling
Sent: Monday, December 2, 2024 9:08 AM
To: Kevin Dobson <kdobson@psicanada.com>
Subject: RE: Bar Screen Info

Yes, please!

From: Kevin Dobson <kdobson@psicanada.com>
Sent: Wednesday, November 27, 2024 7:24 AM
To: Joshua Epling <jepling@bentonvillear.com>
Subject: RE: Bar Screen Info

HI Joshua,

Does your machine need new UHMW drive sprockets as part of your repair?

Thanks,
Kevin

From: Joshua Epling <jepling@bentonvillear.com>
Sent: Thursday, November 21, 2024 9:12 AM

To: Kevin Dobson <kdobson@psicanada.com>
Subject: Bar Screen Info

Kevin,

Another thing about our bar screen is that back in 2012 we had ¼ “ elements installed and that is the spacing that we would like to stick with. Please insure that the elements are ¼”

Thank you again for all your help.

Joshua Epling, Maintenance Supervisor
City of Bentonville
Water Resource Recovery Facility
1901 N.E. “A” Street
Bentonville, AR 72712
479-696-0296
jepling@bentonvillear.com

7

PRICE-SCHONSTROM *INC.*

P.O. Box 249 - 35 Elm Street, Walkerton, Ontario N0G 2V0

Tel (519) 881-0262 Fax (519) 881-3573

Web Page: www.psicanada.com E-mail: kdobson@psicanada.com

DATE: 12-DEC-2024

City of Bentonville
Water Resource Recovery Facility
1901 N.E. “A” Street
Bentonville, AR 72712

Attention: Joshua Epling, Maintenance Supervisor, jepling@bentonvillear.com

Quote #: BENWAS Q25001R1

Item: One (1) Lot of repair parts for filter screen, originally fabricated as Arlat Model TS-1000, serial #1680, as modified circa 2010 to 1/4” clear spacing elements, consisting of:

- 126ea Rollers complete with bronze bushings,
- 63ea Shafts.
- 126ea Stainless side plates
- 126ea UHWM side links
- 252ea Stainless steel washers
- 252ea UHMW washers
- 3050ea Screen elements for ¼ clear spacing.
- 126ea External snap rings.
- All assembled into as few of sections as practical for shipping,
- 8ea UHMW Sprocket Segments – to form 2 full sprockets.

Note: Pricing and delivery to be confirmed at time of order.

- All items are non-stocking at PSI, as such all parts are non-returnable/non-refundable.
- Various drawings to be sent upon receipt of purchase order for customer’s field verification prior to ordering.
- Any tariffs/fees or other expenses for export to the US are above and beyond this quotation, and will be added to quote at a rate of cost plus 20%

Quote: FOB Walkerton ---------- $56,942.25 USD
Shipping not included. We can arrange for shipment, as prepaid and bill or on your account if you have a preferred carrier.

Terms: Net 30 from receipt of product (invoiced after shipping)

Delivery: 12 to 16 weeks, subject to approved drawings.

Sincerely,

Kevin Dobson
Engineering

CUSTOM FABRICATION OF STAINLESS STEEL, ALUMINUM, PLATE & SHEET METAL FOR ALL INDUSTRIES

ORDINANCE NO. ___________

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO AN AGREEMENT WITH PRICE SCHONSTROM, FOR THE PURCHASE OF REQUIRED PARTS TO REBUILD THE WATER RESOURCE RECOVERY FACILITY BARSCREEN, IN AN AMOUNT NOT TO EXCEED SIXTY-FIVE THOUSAND EIGHTY-NINE DOLLARS AND TWENTY-SIX CENTS ($65,089.26); WAIVING COMPETITIVE BIDDING; PROVIDING FOR THE EMERGENCY CLAUSE; AND FOR OTHER PURPOSES.

WHEREAS, the Bentonville Water Resource Recovery Facility (WRRF) request the purchase of all required parts to completely rebuild the WRRF Barscreen;

WHEREAS, this is a critical piece of equipment that must be repaired to maintain proper treatment of the incoming wastewater stream;

WHEREAS, Price Schonstrom is the sole-source provider of require parts; therefore, bidding would not result in competitive submittals; and

WHEREAS, this agreement will be funded with budgeted monies.

NOW, THEREFORE, BE IT ORDAINED 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 Price Schonstrom, for the purchase of required parts to rebuild the WRRF Barscreen, in an amount not to exceed sixty-five thousand eight-nine dollars and twenty-six cents ($65,089.26);

Section 2: This purchase will be made using budgeted funds;

Section 3: There exists an exceptional circumstance whereby the requirements of competitive bidding are neither practical nor feasible and the City Council; therefore, waives the requirements of competitive bidding for the purchase of all required parts to completely rebuild the WRRF Barscreen;

Section 4 - Emergency Clause: The need to make this purchase is immediate, an emergency is hereby declared to exist, and this Ordinance shall be in full force and effect from the date of its passage and approval;

Section 5 - Severability Provision: If any part of this Ordinance is held invalid, the remainder of this Ordinance shall continue in effect as if such invalid portion never existed; and

Section 6 - Repeal of Conflicting Provisions: All Ordinances, Resolutions, or Orders of the City Council, or parts of the same, in conflict with this Ordinance are repealed to the extent of such conflict.

PASSED this __________ **day of** ________________________**, 2025.**

APPROVED:

____
STEPHANIE ORMAN, Mayor

ATTEST:

____
MALORIE MARRS, City Clerk