Utility Committee
Meeting Agenda
June 3, 2025
11:30 AM
Bentonville City Hall

Call to Order

Pledge of Allegiance

Attendance

Approval of Minutes: May 20, 2025

I. New Business

1. **Ordinance to Accept Rate Design, Campus Billing, & Line Extension Policy per UFS's Recommendation** — **Ordinance***

   An ordinance to accept the recommendations from UFS concerning the proposed electric rate changes, establishing the campus billing, and establishing the line extension policy per UFS's recommendations. Changes go into affect with bills due on or after August 1, 2025.

2. **Resolution to award bid IFB-25-42 - Boring and Trenching Services to Calcon, Inc.** — **Resolution**

   Resolution to award bid IFB 25-42 - Boring and Trenching Services to Calcon, Inc. per the unit prices attached. The contract will be available for use by all City Departments in need of these services. The term of the contract will be for 1 year, renewable annually upon mutual written agreement via amendment for a total maximum term of 3 years. No budget adjustment is needed.

3. **Resolution Amending IFB-24-70 - IDIQ Water Service Line Replacement Agreement** — **Resolution**

   A Resolution amending the 2025 budget and authorizing the Mayor and City Clerk to amend the IDIQ contract for Calcon, Inc, increasing the amount by $500,000.00. A budget adjustment is needed.

4. **Resolution for Amendment 1 - WMP Project 1 - I St. 48" Water Main Ext., Environmental Assessment** — **Resolution**

   A Resolution authorizing the Mayor and City Clerk to enter into an amended agreement with Freese and Nichols, in the amount of $40,000.00, for an Environmental Assessment associated with WMP Project 1 - I Street 48" Water

Main Extension. The original contract with Water Utilities for the 48" Water Main Extension is valued at $1,145,670.00. Amendment #1 increases that contract amount to $1,185,670.00. A budget adjustment is needed.

5. **Ordinance Waiving Competitive Bidding to Purchase an Additional 48" Transmission Main Valve** **Ordinance***

Waiving the requirement for competitive bidding for purchase and delivery of one (1) additional 48" Transmission Main Valve, from DeZurik Inc., in the amount of $60,692.00, for Project 1- I street Extension. This Waiver of Bid for one valve is needed due to the extended lead time associated with 48" butterfly valves and the need to tie the extension during a period of low demand early 2026. No budget adjustment is needed.

City of Bentonville, Arkansas Agenda Item Form

Item Details

Council Meeting Date:	6/10/2025	**Submitted By:**	Travis Matlock
Phone:	479-271-5941	**For Department(s):**	Electric
Email:	tmatlock@bentonvillear.com		

Item Type (Check all that apply)

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

Title, Recommendation & Justification

Title:	Ordinance to Accept Rate Design, Campus Billing, & Line Extension Policy per UFS's Recommendation
Action Recommendation & Justification:	An ordinance to accept the recommendations from UFS concerning the proposed electric rate changes, establishing the campus billing, and establishing the line extension policy per UFS's recommendations. Changes go into affect with bills due on or after August 1, 2025.
Additional Comments for Consideration (Optional):	
Amount for Approval:	$

Budget Impact

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

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

		$ 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
Account Number (ORG-OBJECT)	Account Description		

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

Budget Impact Notes for Consideration (Optional):

City of Bentonville, Arkansas Agenda Item Form

Item Details

Council Meeting Date:	6/10/2025	**Submitted By:**	Travis Matlock
Phone:	479-271-5941	**For Department(s):**	Electric
Email:	tmatlock@bentonvillear.com		

Item Type (Check all that apply)

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

Title, Recommendation & Justification

Title:	Resolution to award bid IFB-25-42-Boring and Trenching Services to Calcon, Inc.
Action Recommendation & Justification:	Resolution to award bid IFB 25-42-Boring and Trenching Services to Calcon, Inc. per the unit prices attached. The contract will be available for use by all City Departments in need of these services. The term of the contract will be for 1 year, renewable annually upon mutual written agreement via amendment for a total maximum term of 3 years. No budget adjustment is needed.
Additional Comments for Consideration (Optional):	Calcon, Inc. was the lowest most responsive and responsible bidder.
Amount for Approval:	$

Budget Impact

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

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

		$ 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
Account Number (ORG-OBJECT)	Account Description		

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

Budget Impact Notes for Consideration (Optional):

CITY OF BENTONVILLE, ARKANSAS PURCHASING AND COMPLIANCE DEPARTMENT

FORMAL SEALED BID TABULATION

Date of Bid Opening:	5/27/25	Time of Bid Opening:	1:30 PM	IFB-25-44

Solicitation Title: Trenching and Borning Services

This section is NOT included in total bid price

				Bidders:	Calcon, Inc.				Onpoint Excavation, LLC.			
Line Item	**Item Description**	**Estimated Quantity (A)**	**Unit**		**Price Per Unit**		**Extended Price (auto calculates)**		**Price Per Unit**		**Extended Price (auto calculates)**	
					Dirt	**Rock**	**Dirt**	**Rock**	**Dirt**	**Rock**	**Dirt**	**Rock**
Bore Pit (per vertical FT)												
1	Depth more than 8'	1	Vertical Foot		$2,500.00	$5,000.00	$2,500.00	$5,000.00	$100.00	$150.00	$100.00	$150.00
Miscellaneous												
2	2-Man Crew Labor	10	per hour		$400.00	$400.00	$4,000.00	$4,000.00	$150.00	$185.00	$1,500.00	$1,850.00
3	Placing SWGR Vaults	10	Each		$6,500.00	$8,500.00	$65,000.00	$85,000.00	$2,200.00	$5,000.00	$22,000.00	$50,000.00
4	Placing Comcast (fiberglass) JB	10	Each		$800.00	$1,000.00	$8,000.00	$10,000.00	$350.00	$450.00	$3,500.00	$4,500.00
5	Placing Single Phase Transformer Pads	10	Each		$550.00	$550.00	$5,500.00	$5,500.00	$75.00	$80.00	$750.00	$800.00
6	Placing Secondary Pedestals	10	Each		$450.00	$450.00	$4,500.00	$4,500.00	$100.00	$125.00	$1,000.00	$1,250.00
7	8" Direction Bore	10	LF		$200.00	$350.00	$2,000.00	$3,500.00	$50.00	$50.00	$500.00	$500.00
8	Mule Tape (only in bore pipe/upon request)	10	LF		$3.50	$3.00	$35.00	$30.00	$0.30	$0.30	$3.00	$3.00
9	Sawcut, Remove/Replace Concrete (4"-6")	10	SF		$42.50	$42.50	$425.00	$425.00	$225.00	$275.00	$2,250.00	$2,750.00
10	Sawcut, Remove/Replace Asphalt (2"-3")	10	SF		$42.50	$42.50	$425.00	$425.00	$200.00	$250.00	$2,000.00	$2,500.00

11	Place Fiber Optic Handhole 30"x48"36"	10	Each	$700.00	$850.00	$7,000.00	$8,500.00	$525.00	$575.00	$5,250.00	$5,750.00
12	Place Fiber Optic Handhole 30"x48"24"	10	Each	$625.00	$750.00	$6,250.00	$7,500.00	$225.00	$275.00	$2,250.00	$2,750.00
13	Place Passive Cabinet Base	10	Each	$650.00	$800.00	$6,500.00	$8,000.00	$75.00	$100.00	$750.00	$1,000.00
14	Pour Active Cabinet Concrete Base	10	Each	$2,850.00	$3,500.00	$28,500.00	$35,000.00	$1,200.00	$1,500.00	$12,000.00	$15,000.00
15	Place Maxcell (For fiber installs only)	10	LF	$10.00	$10.00	$100.00	$100.00	$10.00	$12.00	$100.00	$120.00
16	Place Tracer Wire (For fi	10	LF	$4.50	$4.50	$45.00	$45.00	$0.40	$0.40	$4.00	$4.00

TOTAL BID PRICE CALCULATION SECTION

				Bidders:	**Calcon, Inc.**			**Onpoint Excavation, LLC.**			
Line Item	**Item Description**	**Estimated Quantity (A)**	**Unit**	**Price Per Unit**		**Extended Price (auto calculates)**		**Price Per Unit**		**Extended Price (auto calculates)**	
				Dirt	**Rock**	**Dirt**	**Rock**	**Dirt**	**Rock**	**Dirt**	**Rock**
Trenching (per Linear FT)											
2	2"	10	LF	$29.00	$39.00	$290.00	$390.00	$10.50	$15.60	$105.00	$156.00
3	3"	10	LF	$35.00	$45.00	$350.00	$450.00	$11.75	$17.00	$117.50	$170.00
4	4"	10	LF	$40.00	$50.00	$400.00	$500.00	$12.25	$18.00	$122.50	$180.00
5	5"	10	LF	$40.00	$50.00	$400.00	$500.00	$15.50	$22.00	$155.00	$220.00
6	6"	10	LF	$55.00	$65.00	$550.00	$650.00	$16.00	$22.50	$160.00	$225.00
Trenching Multiple Conduit Installation											
7	1.5" (Conductor In Conduit provided by BEUD)	10	LF	$10.00	$15.00	$100.00	$150.00	$9.00	$12.25	$90.00	$122.50
8	2"	10	LF	$15.00	$20.00	$150.00	$200.00	$8.00	$13.00	$80.00	$130.00
9	3"	10	LF	$18.00	$22.00	$180.00	$220.00	$9.00	$13.00	$90.00	$130.00

10	4"	10	LF	$20.00	$25.00	$200.00	$250.00	$9.00	$13.00	$90.00	$130.00
11	5"	10	LF	$20.00	$25.00	$200.00	$250.00	$12.00	$15.00	$120.00	$150.00
12	6"	10	LF	$29.00	$34.00	$290.00	$340.00	$13.00	$15.00	$130.00	$150.00
Trenching (w/o Conduit Installation) (per linear FT)											
13	18"x30"	10	LF	$12.00	$22.00	$120.00	$220.00	$7.00	$10.00	$70.00	$100.00
14	18"x52"	10	LF	$16.00	$28.00	$160.00	$280.00	$8.00	$12.00	$80.00	$120.00
Directional Boring (per linear FT)											
15	1.5" CIC (Conductor In Conduit provided by BEUD)	10	LF	$45.00	$55.00	$450.00	$550.00	$12.50	$16.00	$125.00	$160.00
16	2"	10	LF	$55.00	$65.00	$550.00	$650.00	$12.50	$16.00	$125.00	$160.00
17	3"	10	LF	$55.00	$65.00	$550.00	$650.00	$12.50	$16.00	$125.00	$160.00
18	4"	10	LF	$60.00	$70.00	$600.00	$700.00	$12.75	$16.75	$127.50	$167.50
19	5"	10	LF	$60.00	$70.00	$600.00	$700.00	$17.50	$22.00	$175.00	$220.00
20	6"	10	LF	$75.00	$95.00	$750.00	$950.00	$19.00	$24.00	$190.00	$240.00
Water Main (per linear FT)											
21	16" (.219 Wall Thickness)	10	LF	$190.00	$280.00	$1,900.00	$2,800.00	$290.40	$390.40	$2,904.00	$3,904.00
22	20" (.281 Wall Thickness)	10	LF	$210.00	$310.00	$2,100.00	$3,100.00	$392.40	$492.40	$3,924.00	$4,924.00
23	24" (.344 Wall Thickness)	10	LF	$220.00	$320.00	$2,200.00	$3,200.00	$714.00	$814.00	$7,140.00	$8,140.00
24	30" (.406 Wall Thickness)	10	LF	$230.00	$330.00	$2,300.00	$3,300.00	$1,292.00	$1,392.00	$12,920.00	$13,920.00

25	36" (.50 Wall Thickness)	10	LF	$240.00	$340.00	$2,400.00	$3,400.00	$2,054.00	$2,154.00	$20,540.00	$21,540.00
Sewer Main (per linear FT)											
26	16" (.219 Wall Thickness)	10	LF	$210.00	$310.00	$2,100.00	$3,100.00	$290.40	$390.40	$2,904.00	$3,904.00
27	20" (.281 Wall Thickness)	10	LF	$230.00	$330.00	$2,300.00	$3,300.00	$392.40	$492.40	$3,924.00	$4,924.00
28	24" (.344 Wall Thickness)	10	LF	$240.00	$340.00	$2,400.00	$3,400.00	$714.00	$814.00	$7,140.00	$8,140.00
29	30" (.406 Wall Thickness)	10	LF	$250.00	$350.00	$2,500.00	$3,500.00	$1,292.00	$1,392.00	$12,920.00	$13,920.00
30	36" (.50 Wall Thickness)	10	LF	$260.00	$360.00	$2,600.00	$3,600.00	$2,054.00	$2,154.00	$20,540.00	$21,540.00
TOTAL BID PRICE CALCULATION											
						DIRT - Subtotal of Extended Prices (Auto Calculates)	**$ 29,690.00**			**$**	**97,133.50**
						ROCK - Subtotal of Extended Prices (Auto Calculates	**$ 41,300.00**			**$**	**107,947.00**
						TOTAL BID PRICE (in numbers-Auto Calculates):	**$ 70,990.00**			**$**	**205,080.50**
TABULATION VERIFICATION											

X [redacted]

Purchasing and Compliance Specialist

X [redacted]

Kelsi Frederick
Purchasing and Compliance Manager

City of Bentonville, Arkansas Agenda Item Form

Item Details

Council Meeting Date:	6/10/2025	**Submitted By:**	Donald Schmidt
Phone:	(479) 271-3140	**For Department(s):**	Water Utilities - Water
Email:	dschmidt@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 Amending IFB-24-70 - IDIQ Water Service Line Replacement Agreement
Action Recommendation & Justification:	A Resolution amending the 2025 budget and authorizing the Mayor and City Clerk to amend the IDIQ contract for Calcon, Inc, increasing the amount by $500,000.00. A budget adjustment is needed.
Additional Comments for Consideration (Optional):	This was not budgeted for 2025 but was identified as a need late 2024 due to the increased failure rate of water service lines exceeding our existing staff and current Water/Sewer IDIQ contractor's ability to meet demand. The original contract was approved by City Council on 11/12/2024 and was previously amended on 1/14/2025 and 4/22/2025. The contractor exceeds production expectations and is helping to reduce water loss with every service line that is replaced.
Amount for Approval:	**$** 500,000.00

Budget Impact

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

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

		$ 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
Account Number (ORG-OBJECT)	Account Description		

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

Budget Impact Notes for Consideration (Optional):

This contract amendment will be funded by Utility Fund Reserves.

CITY OF BENTONVILLE, ARKANSAS

Purchasing Department – 1000 SW 14th Street, Bentonville Arkansas 72712

City Hall – 305 SW A Street Bentonville, Arkansas 72712

AMENDMENT TO INVITATION FOR BID CONTRACT

This amendment (the "Amendment"), dated _____ is made by the City of Bentonville, Arkansas ("City") and Calcon, Inc. ("Contractor"), parties to the Invitation for Bid (IFB)-24-70 with Bentonville Water Department, for Indefinite Delivery – Indefinite Quantity (IDIQ) Water Service Line Replacement, dated November 20, 2024 (the "Agreement").

1. The Original Agreement that was approved by City Council on November 12, 2024, in an amount not to exceed $500,000 per year for each contract awarded.
2. The First Contract Amendment was approved by City Council on January 14, 2025, in an amount not to exceed $1,000,000.00 per year for each contract awarded.
3. The Second Contract Amendment was approved by City Council on April 22, 2025, in an amount not to exceed $1,500,000.00 per year for each contract awarded.

4. The Agreement is Amended as follows:

5. The estimated total of payments for the contract is estimated to be $2,000,000.00 per contract term.

6. This Amendment shall be effective immediately when fully executed.

7. Except as set forth in this Amendment, the Agreement is unaffected and shall continue in full force and effect in accordance with its terms. If there is conflict between this Amendment and the Agreement, or any earlier Amendment, the terms of this Amendment shall prevail.

THE CITY OF BENTONVILLE, ARKANSAS

BY:_____
Stephanie Orman, Mayor

DATE:_____

Company Name:_____

BY:_____

Name(printed):_____

DATE:_____

City of Bentonville, Arkansas Agenda Item Form

Item Details

Council Meeting Date:	6/10/2025	**Submitted By:**	Beau Thompson
Phone:	(479)271-3140	**For Department(s):**	Water Utilities (Water)
Email:	bthompson@bentonvillear.com		

Item Type (Check all that apply)

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

☐ Ordinance ☑ Resolution ☐ Informational

Title, Recommendation & Justification

Title:	Resolution for Amendment 1 - WMP Project 1 - I St. 48" Water Main Ext., Environmental Assessment
Action Recommendation & Justification:	A Resolution authorizing the Mayor and City Clerk to enter into an amended agreement with Freese and Nichols, in the amount of $40,000.00, for an Environmental Assessment associated with WMP Project 1 - I Street 48" Water Main Extension. The original contract with Water Utilities for the 48" Water Main Extension is valued at $1,145,670.00. Amendment #1 increases that contract amount to $1,185,670.00. A budget adjustment is needed.
Additional Comments for Consideration (Optional):	The Environmental Assessment is being conducted in preparation for Arkansas Natural Resources Division funding options. The funding source was unknown at the time of the original contract. Freese and Nichols was selected following the City's Purchasing Policy for professional services.
Amount for Approval:	$ 40,000.00

Budget Impact

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

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

503020-47320	Improvs Other - Water Improv	$ 40,000.00	$
Account Number (ORG-OBJECT)	Account Description	Expense	Revenue
		$	$
Account Number (ORG-OBJECT)	Account Description	Expense	Revenue
		$	$
Account Number (ORG-OBJECT)	Account Description	Expense	Revenue
		$	$
Account Number (ORG-OBJECT)	Account Description	Expense	Revenue

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

Budget Impact Notes for Consideration (Optional):

CITY OF BENTONVILLE, ARKANSAS

Purchasing and Compliance Department – 1000 SW 14th Street, Bentonville Arkansas 72712

City Hall – 305 SW A Street Bentonville, Arkansas 72712

AMENDMENT TO PROFESSIONAL SERVICE AGREEMENT

This amendment (the "Amendment"), dated May 23, 2025, is made by the City of Bentonville, Arkansas ("City") and Freese and Nichols, Inc. ("Professional Consultant"), parties to the Statement of Qualifications with Bentonville Water Utility Department, for Professional Civil Engineering Services for the 48-Inch Supply Transmission Main Extension Project, dated March 28, 2024 (the "Agreement").

1. In accordance with Article IV (Additional Services), any service outside of the work described herein or included by reference hereto must be pre-approved by the City and executed as an amendment.

2. The Agreement is Amended as follows:

3. The Parties have mutually agreed to increase the total amount of the Agreement by $40,000.00 due to an Environmental Assessment associated with WMP Project 1 - I Street 48" Water Main Extension.

4. The estimated total of payments for the agreement is not to exceed $1,185,670.00.

5. This Amendment shall be effective immediately when fully executed.

6. Except as set forth in this Amendment, the Agreement is unaffected and shall continue in full force and effect in accordance with its terms. If there is conflict between this Amendment and the Agreement, or any earlier Amendment, the terms of this Amendment shall prevail.

THE CITY OF BENTONVILLE, ARKANSAS

BY:_____
Stephanie Orman, Mayor

DATE:_____

Company Name:_____

BY:_____

Name(printed):_____

DATE:_____

903 N. 47th Street, Suite 250 + Rogers, Arkansas 72756 + 479-434-1160 + FAX 817-735-7491 www.freese.com

May 23, 2025

City of Bentonville Water Utility Department
3200 SW Municipal Drive
Bentonville, AR 72712

Re: Professional Services Amendment for the 48-inch Supply Transmission Main Extension Project for City of Bentonville, Water Utility Department (BWU)

Dear Beau Thompson,

Freese and Nichols, Inc. (FNI) is pleased to submit this proposal for providing professional services to City of Bentonville Water Utility Department (BWU) for the completion of Arkansas Natural Resources Commission (ANRC) funding application and requisite environmental work for application for Arkansas Clean Water State Revolving Loan Funds.

PROJECT UNDERSTANDING
It is our understanding of the scope of work under this amendment is to provide additional environmental services such that the environmental study is sufficient for the Arkansas Clean Water State Revolving Loan Funds program.

SCOPE OF SERVICES
Freese and Nichols, Inc. (FNI) will render the following professional services in connection with the development of the Project, Professional Civil Engineering Services for the 48-inch Supply Transmission Main Extension Project for City of Bentonville Water Utility Department (BWU).

Environmental Assistance (in support of funding applications):
In conjunction with design work FNI shall render the following Environmental Services to aid BWU with application(s) for Arkansas Clean Water State Revolving Loan Funds.

It is FNI's understanding that the Natural Resources Division (NRD) of the Arkansas Department of Agriculture (ADA) requires either a Categorical Exclusion (CE) or an Environmental Assessment (EA) to authorize projects receiving funding through the Clean Water State Revolving Fund (CWSRF) loan program. FNI shall provide the following services as part of the NRD/ADA environmental review process:

1) Meeting with NRD/ADA – FNI will meet virtually with the environmental reviewer for the Natural Resources Division to present the proposed project and to determine if a Categorical Exclusion (CE) or an Environmental Assessment (EA) is required. Since the proposed project includes new water lines and is not a functional replacement of an existing line, FNI assumes preparation and submittal of an Environmental Information Document (EID) will be required.
2) Gather and Review Existing Information – FNI will assemble and review data such as aerial photographs, USGS topographic maps, National Wetlands Inventory (NWI) maps, the USGS National Hydrography Dataset (NHD), City and County GIS data, preliminary engineering reports, and soils data

within the area of the proposed project area. FNI will review environmental risk database reports to assess the potential for hazardous materials contamination on property to be acquired or constructed upon as part of the project.

3) Preparation of draft EID – FNI will prepare a draft EID following the "Arkansas Department of Agriculture, Natural Resources Division, Environmental Checklist and Information Document."
4) Agency Coordination – FNI will submit coordination/notification letters and/or the draft EID to local, state, and federal agencies, as directed by the NDR/ADA environmental reviewer. Agencies likely to be contacted include:

   - U.S. Army Corps of Engineers (USACE),
   - U.S. Fish and Wildlife Service (USFWS),
   - Federal Emergency Management Agency (FEMA),
   - Arkansas Historic Preservation Program (AHPP),
   - State Historic Preservation Officer (SHPO),
   - Other local, regional and State agencies that may have jurisdiction,
   - Initial tribal coordination will include preparation of a draft letter to be submitted to the tribes based on NRD/ADA direction.

   Comments received from the agencies (and/or Tribes) will be incorporated into the final EID. If necessary, FNI shall work with BWU to prepare and submit written responses to address comments. FNI assumes this project shall be non-controversial and comments minimal. If an unusual level of agency comments may cause FNI's budget to be exceeded, FNI will notify BWU Project Manager for written authorization before proceeding.

5) Cultural Resources – A cultural resources review of the Project may be required under Section 106 of the National Historic Preservation Act (NHPA). FNI shall provide the following cultural resources services:

   a) Review desktop-level datasets to assess project's potential for affecting significant archaeological resources. The results of the background review and interpretation will be summarized in a technical memorandum that can be submitted to the NRD/ADA and/or the SHPO.
   b) If an archeological survey is required to assess project-related impacts to significant resources, right-of-entry will be provided by BWU.
   c) Prepare a report after field survey summarizing the results of the investigations and making management recommendations.
   d) FNI assumes the following work associated with cultural resources:

      - All proposed work is subject to Section 106.
      - One round of comments for each document. Further rounds of edits are deemed to be out of scope and shall require supplemental fee.
      - Right of entry agreements will be available at the time of field survey and access will be coordinated and obtained by BWU.
      - One field mobilization to conduct the survey. Repeated field visits caused by partial right of entry may be considered supplemental to the scope.
      - Backhoe trenching will not be required as part of this survey.
      - This scope and cost estimate does not include NRHP/DOE eligibility testing, mitigation, or data recovery.
      - No built environment resources will be recorded.
      - No archaeological sites or cultural resources will be documented outside of the project

boundaries.
- Survey will be conducted along transects spaced 65 ft apart with subsurface tests excavated at a rate of 1 test per 65 ft.
- No more than two archeological sites within the project location would be documented.
- This scope and fee do not include permanent curation of artifacts or project records. Should artifacts be encountered, they will be documented and reburied in situ.

6) Public Meeting – FNI will assist BWU Project Manager with one (1) Public Meeting, held at a physical location determined by BWU, by preparing a public notice for BWU to submit to local newspaper(s) and social media sites. FNI will participate in the public meeting and summarize the results of the meeting into the EID. BWU will be responsible for having the public notice published (according to NRD/ADA guidance it must be published 10 days before the public meeting) and all costs associated with the publication.
7) Preparation of Final EID – FNI will incorporate comments into the draft EID. After agency coordination is concluded, the draft EID will be finalized by incorporating required changes or comments received into the final document. The final EID will be submitted to the NRD/ADA for approval.

ESTIMATED SCHEDULE

FNI assumes the EID process (including a potential archeological survey) is typically a three to eight month process, depending on comments or requirements. Schedule assumptions are detailed as follows:

- Initial Coordination with NRD/ADA environmental review – 10 days following notice to proceed (NTP)
- Draft EID and draft Agency Coordination Letters for BWU review – 30 days following NTP
- Agency Coordination – 10 days following BWU approval of Agency Coordination Letters
- Conclude Agency Coordination – Approximately 120 days following submittal of Agency Coordination Letters
- Public Meeting – Approximately 30 days after Draft EID is approved by BWU
- Final EID submitted for City review – 15 days following receipt of all agency concurrences

Additional Services, added by Amendment as needed

1) Preparation of a permit application or pre-construction notification under Section 404 of the Clean Water Act.
2) Request of an Approved Jurisdictional Determination from the USACE.
3) Presence/absence surveys for federally listed threatened/endangered species.
4) Phase I/II Environmental Site Assessment.
5) Identification of tree species and/or preparation of a tree mitigation plan required due to tree ordinance compliance.
6) Preparation of a Storm Water Pollution Prevention Plan (SWPPP).
7) Other environmental services not specifically defined in this scope of services.

PROJECT SCHEDULE

FNI will commence work upon receipt and execution of contract or task order and agrees to complete the services per the schedule.

COMPENSATION
FNI proposes to provide services as described herein for the lump sum fee of Forty Thousand Dollars ($40,000.00).

We appreciate this opportunity to submit this proposal. If additional information or clarification is desired, please do not hesitate to contact us. If you agree with the services described above and wish for us to proceed with this assignment, please initiate contract proceedings.

Sincerely,
FREESE AND NICHOLS, INC.

[redacted]

Principal/Vice President

City of Bentonville, Arkansas Agenda Item Form

Item Details

Council Meeting Date:	6/10/2025	**Submitted By:**	Beau Thompson
Phone:	(479)271-3140	**For Department(s):**	Water Utilities (Water)
Email:	bthompson@bentonvillear.com		

Item Type (Check all that apply)

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

Title, Recommendation & Justification

Title:	Ordinance Waiving Competitive Bidding to Purchase an Additional 48" Transmission Main Valve
Action Recommendation & Justification:	Waiving the requirement for competitive bidding for purchase and delivery of one (1) additional 48" Transmission Main Valve, from DeZurik Inc., in the amount of $60,692.00, for Project 1- I street Extension. This Waiver of Bid for one valve is needed due to the extended lead time associated with 48" butterfly valves and the need to tie the extension during a period of low demand early 2026. No budget adjustment is needed.
Additional Comments for Consideration (Optional):	A bid was accepted for the same valves on May 13, 2025 and Dezurik was awarded that bid for fourteen valves associated with ARDOT project 090512. Water Utilities requires an identical valve for a separate project and is requesting a waiver of bid due to the similarity and timing of the two purchases. Dezurik has matched the price provided in the previous bid.
Amount for Approval:	**$** 60,692.00

Budget Impact

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

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

503020-47320	Improvs Other - Water Improv	$ 60,692.00	$
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):

MEMORANDUM

PURCHASING AND COMPLIANCE DEPARTMENT

TO: ADMINISTRATION

FROM: Kelsi Frederick, Purchasing and Compliance Manager

DATE: June 10, 2025

SUBJECT: The purchase of one 48-Inch Transmission Main Valve

The Purchasing and Compliance Department recommends that the City Council approve a bid waiver for the purchase of an additional 48-inch butterfly valve from DeZurik Inc. for the ARDOT Project 090512 – Highway 112 Relocation.

The valve being requested for purchase is the same model and specification as shown in the previously awarded bid, IFB-25-11 RE-BID, by City Council on May 13, 2025. DeZurik Inc. was the second lowest bidder for the one-time purchase and delivery of fourteen (14) 48-inch butterfly valves for this project, with lowest bid being rejected due to not meeting ARDOT requirements for Build America Buy America (BABA).

It is not practical nor feasible to solicit bids for the purchase of one valve due to extended lead times associated with the procurement of this item. To keep the project on schedule and meet all deadlines the purchase for the valve as a waiver of bid has been recommended by Purchasing and Compliance for approval.

This Waiver of Bid has been reviewed and is in compliance with Section 4.4 of the Purchasing and Compliance Policy.

Please feel free to contact me with any questions.

Kelsi Frederick

(479) 271-3115

kfrederick@bentonvillear.com

DeZURIK QUOTATION

To: Accounts Payable
CITY OF BENTONVILLE
1000 SW 14TH ST
Bentonville AR 72712
United States
Purchasing
(479) 271-3115
purchasing@bentonvillear.com

Invoice Terms: Net 30

Days Valid: 30 day(s)

Delivery Terms: FFA, Prepaid and Allow

Date of Quote: 05/27/2025

Quote Number: QUO230183

Project Name: Bentonville 48" BAW

I.D. (Rep. Use):

Line of Business: 4960 Underground Water Distribution

Make Order To: DeZURIK, INC.
C/O JACK TYLER ENGINEERING INC
6301 S UNIVERSITY AVE
LITTLE ROCK AR 72209
United States
Charlotte Hayes
Tel/Direct:501.562.2296
chayes@jteng.com

Currency and Values expressed in USD ($)

ANY PURCHASE ORDER ISSUED AS A RESULT OF THIS QUOTATION IS SUBJECT TO ALL OF THE MANUFACTURER'S CONDITIONS SET FORTH IN THIS DOCUMENT HEREOF, REASONABLE CONTRACT LANGUAGE NEGOTIATIONS AND FINAL ACCEPTANCE BY DEZURIK AT SARTELL, MN USA. UNLESS OTHERWISE NOTED, QUOTATIONS ARE VALID FOR 30 DAYS. UNTIL ACCEPTANCE OF ORDER, QUOTED PRICES AND DELIVERY ARE SUBJECT TO CHANGE. UNLESS OTHERWISE NOTED, PRICES ARE FIRM FOR SHIPMENT OF GOODS WITHIN 12 MONTHS FROM THE RELEVANT QUOTATION DATE. OUR PRICES ARE BASED ON CURRENT PRICES FOR MATERIAL. IF A SIGNIFICANT MATERIAL PRICE INCREASE OCCURS BETWEEN ORDER ACCEPTANCE AND SHIPMENT DATE, GOODS SCHEDULED TO SHIP BEYOND 12 MONTHS OF THE QUOTATION DATE ARE SUBJECT TO A PRICE ADJUSTMENT BY THE AMOUNT NECESSARY TO COVER SUCH AN INCREASE.

Line#	Cust. Line #	Qty	Order Code	Unit Price	Total Price
2		1	9749250 BAW,48,F1,DI,EPDN-EPDM,250B,DI-S5,L41LR1*X,SB16*LPZ033 Lead Time Requested Style: BAW - DeZURIK AWWA C504 3-72"; C516 78" and larger Rubber Seated Butterfly Valve (BAW) Size: 48 - 48 Inch (1200mm) End Connection: F1 - Flanged Drilling; ASME Class 125/150 Body Material: DI - Ductile Iron Packing: EPDN - EPDM; Self Adjusting; -20 to 290° F. (-29 to 143° C.) Seat Material: EPDM - Terpolymer of Ethylene Propylene & A Diene (EPDM); Temperature -20 to 290° F. (-29 to 143° C.) Service Class: 250B - AWWA Class 250B Disc Material: DI - Ductile Iron with 316 Stainless Steel Edge Shaft Material: S5 - 17-4PH Stainless Steel Coating: L41LR1 - 12 mils minimum of Blue Fusion Bonded Epoxy on Interior and Exterior with SP5 Surface Prep Actuator: X - Enter your modification here Stainless Steel Bolting & Tubing: SB16 - 316 Stainless Steel Bolting Weight (Approx): 5750 lbs/ 2609 kgs Min Valve Temperature: -20 Degrees F. Max Temperature: 290 Degrees F.	$60,692.00	$60,692.00

DeZURIK QUOTATION

Line#	Cust. Line #	Qty	Order Code	Unit Price	Total Price
			Modification: LPZ033 - FLANGE HOLES TO BE DRILLED 1/16" OVERSIZED FOR INSULATING SLEEVES., LOCKING DEVICE FOR OPEN AND CLOSED POSITION. TO BE MOUNTED BETWEEN ACTUATOR AND VALVE., WEDGEROCK RW18-22.8 RP6-3-3.29 WITH 2IN NUT FOR BURIED SERVICE PER QUOTE 5372-1 IN MFILES, DOUBLE OFFSET DISC ON BUTTERFLY VALVE., COMPLIES WITH BUILD AMERICA BUY AMERICA (BABA) ACT 2 CFR 184 AS DERIVED FROM THE ENVIRONMENTAL PROTECTION AGENCY'S: BUILD AMERICA, BUY AMERICA ACT IMPLEMENTATION PROCEDURES FOR EPA OFFICE OF WATER FEDERAL FINANCIAL ASSISTANCE PROGRAMS (NOV. 2022).		
Total					**$60,692.00**

*Estimated manufacturing lead times included in this quotation are defined as "after release of order to production" (ARO) and are subject to change based upon availability of parts and manufacturing capacity at the time the goods are released to production. Production orders are considered released to production upon receipt. Manufacturing lead times do not include transit lead times. Estimated lead times are based upon the items and quantities listed on the quotation. Any changes to order codes and/or quantities may result in changes to manufacturing lead times.

MANUFACTURER'S CONDITIONS

These conditions apply to all quotations, orders and contracts for DeZURIK, Inc. ("we," "us" or "our")

1. CONSTRUCTION AND LEGAL EFFECT: Our sale to you (defined as the purchaser of goods from us), is limited to and expressly made conditional on your assent to these typed and printed terms and conditions of sale, the face and reverse side hereof ('These Terms"), all of which form a part of the agreement to sell and which supersede and reject all prior writings (including your order), representations, negotiations with respect hereto and any conflicting terms and conditions of yours, any statement therein to the contrary notwithstanding. The sending of the purchase order for the goods referred to herein, whether or not signed by you, or your acceptance of the goods or payment operates as acceptance by you of These Terms. In case of conflict between These Terms and the terms of your purchase order or acceptance, These Terms govern; any different or conflicting terms submitted by you in any purchase order or acceptance shall be deemed objected to by us and shall be of no effect unless specifically agreed to by us in writing. We will furnish only the quantities and goods specifically listed on the face hereof or the pages attached hereto., or any updates or modifications to the same purchase order. We assume no responsibility for other terms or conditions or for furnishing other equipment or material shown in any plans and/or specifications for a project to which the goods quoted or ordered herein pertain or refer. Our published or quoted terms and conditions are subject to change without notice prior to acceptance of order.

2. PRICES: Unless otherwise noted on the face hereof, quotations are valid for 30 days, prices are net, FCA Incoterms 2020 our factory. Stenographic, clerical, and mathematical errors are subject to correction. Until acceptance of order on These Terms, quoted prices and delivery are subject to change. Thereafter, unless otherwise noted, prices are firm for shipment of goods within 12 months from the relevant quotation date. Our prices are based on current prices for material. We will endeavor to obtain the lowest pricing on materials from our suppliers, but if a significant material price increase occurs between order acceptance and shipment date, goods scheduled to ship beyond 12 months of the quotation date are subject to a price adjustment by the amount necessary to cover such increase.

3. DELIVERY: Dates for the furnishing of services and/or delivery or shipment of goods are approximate only and are subject to change. Quoted lead times are figured from the later of date of acceptance of order on These Terms or from the date of receipt of complete technical data and approved drawings as such may be necessary. We shall not be liable, directly or indirectly, for any delay in or failure to perform caused by carriers or suppliers or delays from labor difficulties, shortages, strikes or stoppages of any sort, failure or delay in obtaining materials, customer requested order changes, fires, floods, storms, accidents, government restrictions, epidemics, pandemics, causes designated acts of God or force majeure by any statute or court of law or other causes beyond our reasonable control.

4. SHORTAGE, DAMAGE, ERRORS IN SHIPMENT: Our responsibility ceases upon delivery to carrier. Risk of loss, injury or destruction of property, shall be borne by you from and after our delivery to carrier, and such loss, injury or destruction shall not release you from the obligation to pay the purchase price. You shall note receipt for goods that are not in accordance with bill of lading or express receipt and you shall make claim against such carrier for any shortage, damage or discrepancy in the shipment per the ICC Code for Freight Claims promptly. You shall inspect and examine all items and goods covered by the order when unpacking crated or boxed goods, and if damage is discovered, leave as is until the carrier's agent makes examination and notation on freight or express bill of concealed damage. We will render reasonable assistance to help trace and recover lost goods and collect just claims as a business courtesy, but without obligation. We do not guarantee safe delivery.

5. TAXES: Our prices do not include sales, use, excise, occupation, processing, transportation or other similar taxes which we may be required to pay or collect with respect to any of the materials covered hereby under existing or future law. Consequently, in addition to the price specified herein, such taxes shall be paid by you, or you shall provide us with a tax exemption certificate acceptable to the appropriate taxing authorities. You shall also assume and pay any import or export duties and taxes, with respect to the materials covered by the order, and shall hold harmless and reimburse us therefrom.

6. CREDIT AND PAYMENT: Unless otherwise noted on the face hereof, payment of goods shall be 100% thirty (30) days net in US dollars. Payment shall be made: (a) in full without set-off, counterclaim, or withholding of any kind; and (b) not contingent on payment from or approval of any third party. Prorated payments shall become due with partial shipments. We reserve the right at any time to suspend credit or to change credit terms provided herein, when, in our sole opinion, your willingness or ability to pay your obligations to us is in doubt. Failure to pay invoices at maturity date, at our election, makes all subsequent invoices immediately due and payable irrespective of terms, and we may withhold all subsequent deliveries until the full account is settled and we shall not, in such event, be liable for non-performance of contract in whole or in part. You agree to pay, without formal notice, 1.5% per month of the amount not paid when due, provided that, if such rate is in excess of applicable governing law, you agree to pay the maximum permitted rate.

7. CANCELLATIONS AND CHANGES: Orders which have been accepted by us are not subject to your cancellation or changes in specifications, except upon our written consent, and we may require, as a condition of such consent, appropriate modification charges and adjustments in price, delivery schedule and other relevant terms, and in the case of cancellation, cancellation charges. In the event we accept your cancellation, you shall be liable for a cancellation charge equal to the higher of (i) 25% of the purchase price of the item(s), or (ii) any loss or cost incurred by us, including, but not limited to, cost of materials, labor, engineering, reconditioning and reasonable overhead.

8. DEFERRED SHIPMENT: If shipment is deferred at your request, payment of the contract price shall become due when you are notified that the equipment is ready for shipment. If you fail to make payment and/or furnish shipping instructions, we may either extend time for so doing or cancel the contract. In case of deferred shipment at your request, storage and other reasonable expenses attributable to such delay shall be payable by you.

9. LIMITED WARRANTY: Products, auxiliaries and parts thereof that we manufacture for a period of twenty-four (24) months from the date of shipment from our factory, are warranted to the original purchaser only against defective workmanship and material, but only if properly stored, installed, operated, and serviced in accordance with our recommendations and instructions. For items proven to be defective within the warranty period, your exclusive remedy under this limited warranty is repair or replacement of the defective item, at our option, FCA Incoterms 2020 our facility with removal, transportation, and installation at your cost. Products or parts manufactured by others but furnished by us are not covered under this limited warranty. We may provide repair or replacement for other's products or parts only to the extent provided in and honored by the original manufacturers' warranty to us, in each case subject to the limitations contained in the original manufacturer's warranty. No claim for transportation, labor, or special or consequential damages or any other loss, cost or damage is being provided in this limited warranty. You shall be solely responsible for determining suitability for use and in no event shall we be liable in this respect. This limited warranty does not warrant that any product or part we manufacture is resistant to corrosion, erosion, abrasion or other sources of failure, nor do we warrant a minimum length of service. Your failure to give written notice to us of any alleged defect under this warranty within twenty (20) days of its discovery, or attempts by someone other than us or our authorized representatives to remedy the alleged defects therein, or failure to return product or parts for repair or replacement as herein provided, or failure to store, install, or operate said products and parts according to the recommendations and instructions furnished by us shall be a waiver by you of all rights under this limited warranty. This limited warranty is voided by any misuse, modification, abuse or alteration of our product or part, accident, fire, flood or other Act of God, or your failure to pay entire contract price when due. The foregoing limited warranty shall be null and void if, after shipment from our factory, the item is modified in any way or a component of another manufacturer, such as but not limited to; an actuator is attached to the item by anyone other than our factory authorized service personnel. All orders accepted shall be deemed accepted subject to this limited warranty, which shall be exclusive of any other or previous warranty, and this shall be the only effective guarantee or warranty binding on us, despite anything to the contrary contained in the purchase order or represented by any agent or employee of ours in writing or otherwise, notwithstanding, including but not limited to implied warranties.

THE FOREGOING REPAIR AND REPLACEMENT LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, OBLIGATIONS AND LIABILITIES, INCLUDING, BUT NOT LIMITED TO, ALL WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY OR OTHERWISE, EXPRESSED OR IMPLIED IN FACT OR BY LAW, AND STATE OUR ENTIRE AND EXCLUSIVE LIABILITY AND YOUR EXCLUSIVE REMEDY FOR ANY CLAIM IN CONNECTION WITH THE SALE AND FURNISHING OF SERVICES, GOODS OR PARTS, THEIR DESIGN, SUITABILITY FOR USE, INSTALLATION OR OPERATIONS. NEITHER ANY PERFORMANCE OR OTHER CONDUCT, NOR ANY ORAL OR WRITTEN INFORMATION, STATEMENT OR ADVICE PROVIDED BY US OR ANY OF OUR EMPLOYEES OR AGENTS WILL CREATE A WARRANTY, OR IN ANY WAY INCREASE THE SCOPE OR DURATION OF THIS LIMITED WARRANTY.

10. INTELLECTUAL PROPERTY. We shall indemnify and hold you harmless from any amount that you are required to pay to a third-party pursuant to final, non-appealable court order as a result of such third- party's claim that a product sold hereunder infringes any United States patent or copyright of such third party; provided that our obligation of indemnification is contingent upon (a) your notifying us in writing of any such claim within 20 days of receipt thereof, (b) your providing us with exclusive control of the defense and/or settlement thereof, and (c) your cooperating with us in such defense and/or settlement. In the event of such a successful infringement claim by the third party, at our option, we shall either (i) modify the product sold hereunder so that it performs comparable functions without infringement, (ii) obtain a royalty-free license for you to continue using the infringing product or (iii) refund to you the then-depreciated fair market value of the infringing component. We shall have no obligation under this Section to the extent a claim is based upon (a) the combination, operation or use of the product with equipment, products, hardware, software, systems or data that was not provided by us, if such infringement would have been avoided in the absence of such combination, operation or use, or (b) your use of the product in any manner inconsistent with our written materials regarding the use of such product. This Section states our entire liability and your exclusive remedy with respect to any alleged infringement arising from the use of the products sold hereunder or any part thereof and is subject to the other limitations contained in These Terms.

11. LIMITATION OF LIABILITY: IN NO EVENT SHALL WE BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGE TO OR LOSS OF OTHER PROPERTY OR EQUIPMENT, BUSINESS INTERRUPTION, COST OF SUBSTITUTE PRODUCTS, LOSS OF TIME, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, LOSS OF USE, OR DIMINUTION IN VALUE) WHATSOEVER, AND OUR LIABILITY, UNDER NO CIRCUMSTANCES, WILL EXCEED THE CONTRACT PRICE FOR THE GOODS AND/OR SERVICES FOR WHICH LIABILITY IS CLAIMED. ANY ACTION FOR BREACH OF CONTRACT BY YOU, OTHER THAN RIGHTS RESPECTING OUR LIMITED WARRANTY DESCRIBED IN SECTION 9 ABOVE, MUST BE COMMENCED WITHIN 12 MONTHS AFTER THE DATE OF SALE.

12. EXPORT CONTROL COMPLIANCE: You agree and acknowledge that the products are sold in accordance with U.S. export control and sanctions laws, regulations and orders, as they may be amended from time to time. You agree to ascertain and comply with all applicable export and re-export obligations and restrictions, including without limitation, U.S. export and re-export controls under the Export Administration Regulations ("EAR"), International Traffic in Arms Regulations ("ITAR"), and all regulations and orders administered by the U.S. Department of Treasury, Office of Foreign Assets Control (collectively, "U.S. Export Control Laws"). If you are conducting the export from the United States or the re- export from a country outside the United States, you shall comply with such U.S. Export Control Laws and obtain any license or other authorization required to export or re-export the products and related technology. We shall reasonably cooperate and exercise reasonable efforts, at your expense, to support you in obtaining any necessary licenses or authorizations. You shall not export or re-export the products and/or related technology to any country or entity to which such export or re-export is prohibited, including, but not limited to any country or entity under sanction or embargoes administered by the United States. Any diversion contrary to the law of the United States is prohibited. You will not take, and will not solicit us to take, any action that would violate any anti-boycott or any export or import statutes or regulations of the United States or other governmental authorities, and shall defend and indemnify us for any loss or damage arising out of or related to such actions.

13. GENERAL COMPLIANCE WITH LAWS. In addition to your obligations under Section 12 above, you represent and warrant that, in performing your duties under this Agreement, you will comply with, at your sole expense, all applicable laws and regulations of any governmental authority, including, but not limited to your duties involving any required registrations, requirements as to product contents, packaging and labeling, restraint of trade, consumer laws, data privacy, export regulations, and environmental laws. You agree and acknowledge you have had an opportunity to obtain legal advice regarding, and currently comply with, all applicable legal requirements that prohibit unfair, fraudulent or corrupt business practices, including, but not limited to the U.S. Foreign Corrupt Practices Act (FCPA) as well as U.S. and other legal requirements that are designed to combat terrorism and terrorist activities. In addition, neither you nor any of your equity interest owners, officers or directors are named as a "specially designated national' or "blocked person" as designated by the United States Department of the Treasury's Office of Foreign Assets Control under the U.S. PATRIOT Act.

14. INDEMNIFICATION BY YOU. You will indemnify, defend and hold us and our corporate parents and other affiliates and their respective officers, directors, stockholders, members, insurers, attorneys, employees, agents, successors, predecessors, assigns, heirs and personal representatives harmless against any and all liability, claims, suits, actions, losses, liabilities, damages, costs and legal fees arising out of or related to: (i) any conduct of you or any related party as described in Sections 12 or 13 above; or

(ii) your breach of any other provision herein.

15. PROPRIETARY INFORMATION: All specifications, drawings, data, manuals, designs, information, ideas, methods, patterns and inventions made, conceived, developed or generated by us incident to the procurement or performance of this order ("Work Product") will vest in, inure to and be the sole property of us. You will not copy, publish or otherwise disclose, in whole or in part, to others such Work Product without the express prior written permission of us. You will not use information furnished hereunder for any purpose other than for operation and maintenance of the goods and services or for any purpose other than as explicitly intended by us. The rights and obligations in this Section 15 will survive termination or expiration of this order. .

16. ARBITRATION: Any controversy or claim arising out of or relating to this Agreement or the breach thereof shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The venue for such proceedings shall be St. Cloud, MN.

17. **TEXAS WAIVER OF CONSUMER RIGHTS: If you are entitled to its protection, you hereby agree to waive your rights under the Deceptive Trade Practices-Consumer Protection Act, Section 17.41 et seq., Business & Commerce Code, a law that gives consumers special rights and protections. You warrant that, after consultation with an attorney of your own selection, you voluntarily consent to this waiver.**

18. APPLICABLE LAW: The rights and duties of the parties shall be governed by the laws and exclusive jurisdiction of the State of Minnesota without regard to the conflict of law principles thereof. You agree the United Nations Convention on Contracts for the International Sale of Goods or any subsequently enacted treaty or convention shall not apply to These Terms.

19. NO OTHER CONTRACT PROVISIONS; OTHER: These Terms reflect the entire agreement with respect to the products. Terms and conditions of your order shall be without force and effect, except to the extent identical herewith. No dealer, broker, branch manager, agent, employee or representative of ours has any power of authority except to take orders for our products and to submit the same to us, at our factory, for our approval and acceptance on the terms herein or rejection. There are no representations, agreements, obligations, or conditions, expressed or implied, statutory or otherwise, relating to the subject matter hereof, other than herein contained. DeZURIK, Inc. and related terms (we, us and our) shall refer to DeZURIK, Inc. and its affiliates. If any provision hereof is invalid or not enforceable under applicable law, the remaining provisions shall remain in full force and effect. Any assignment of your rights hereunder without our consent (which shall not be unreasonably withheld) shall be void. These Terms shall be binding on your successors and assigns. Our failure to require your performance of any of These Terms shall not serve as a waiver of or diminish our rights to require strict performance of such provision or These Terms.