



BENTONVILLE CITY COUNCIL AGENDA

**Committee of the Whole
Community Development
Planning Commission Meeting Room**

**Tuesday, March 13, 2018 6:00 p.m.
305 SW "A" Street**

**Regular City Council Meeting
Community Development
Planning Commission Meeting Room**

**Tuesday, March 13, 2018 6:00 p.m.
305 SW "A" Street**

**Public Comments on Tonight's Agenda Items (Limited Public Forum)
Questions, Comments and Discussion from City Council Members on Tonight's Agenda
Call to Order
Pledge of Allegiance
Moment of Silence – For our Military Forces
Roll Call
Approval of Minutes: February 27, 2018**

AGENDA

1. Request that the City Council approves a formal resolution to recognize, commend and congratulate Operations Captain Mike Smith upon his March 2018 retirement. This resolution recognizes more than 30 years of law enforcement service, including more than 27 years of decorated service with the Bentonville Police Department. This resolution also wishes Mike Smith much health, happiness, and continued success in all of his future endeavors. See attached resolution. **(Pages 5-6)**
2. Adoption of an ordinance proposing the simultaneous detachment and annexation into the City of Bentonville of territory currently within the city limits of the City of Cave Springs, and making that territory a part of the City of Bentonville and assigning it to a ward in the event it is released by the City of Cave Springs. **(Pages 7-17)**
3. Planning:
 - 3a. **Lot Split: Lots 21 & 22 of Hardcastle Estates, Harry Green, 709 SW O Street, R-E, Residential Estate.** **(Pages 20-22)**
The Planning Commission voted 6-0, recommending approval.

The applicant has submitted a lot split for an approximately 9.66 acre area, splitting Tract 8 of Hardcastle Estates and creating Lots 21 and 22 of Hardcastle Estates. Per the City's GIS website, public water and sewer are not currently available to the two lots created by this subdivision. The plat dedicates right-of-way along SW O Street; a shared access easement; a sewer easement and multiple utility easements of varying widths.

3b. **Property Line Adjustment: Lots 1 & 2 of New Alliance Subdivision, Bentonville Schools , 1602 SE J Street, C-2, General Commercial.**

(Pages 23-24)

The Planning Commission voted 6-0, recommending approval.

The applicant has submitted a property line adjustment moving the common lot line between Tract D-2A-1 and an adjacent parcel, creating Lots 1 (+/- 2.71 acres) & 2 (+/- 1.06 acres) of New Alliance Subdivision. The new lots have access to a public street and public utilities. The plat dedicates right-of way along SE J Street; a 10 ft. general utility easement along the western property line; and a 20 ft. general utility easement along SE J Street.

3c. **General Plan Amendment: Calcon, Inc., West Highway 72, From Residential Estates to Low Density Residential.**

(Pages 25-28)

The Planning Commission voted 6-0, recommending approval.

The Future Land Use Plan depicts this property as Residential Estates (RE). The applicant is requesting to amend the Land Use Plan so that the site is depicted as Low-Density Residential.

4. City Council approval of an ordinance adopting the 2017 National Electric Code, as adopted by the Arkansas Board of Electrical Examiners with one exception, and local amendments. The Arkansas Board of Electrical Examiner's exception specifically provides that "Notwithstanding the provisions of the 2017 National Electrical Code, arc fault circuit interrupters shall not be required in kitchens and laundry rooms."
(Pages 29-31)

5. City Council approval of an ordinance adopting the 2014 Arkansas Energy Code, as adopted by the Arkansas Economic Development Commission - Energy Office. The city has been operating under this code since it was adopted at the state level several years ago. The Energy Office was considering making amendments, however, those never transpired. The regulations stay the same as they have been enforced for the last several years. Staff anticipates no impact to current construction and development practices.
(Pages 32-33)

6. Request City Council approves the correction to the record for leadership classes provided by the Strategic Leadership Development Group (SLDG, LLC). During 2015, 2016, and 2017, Ten (10) City employees participated in two (2) different leadership training modules. The employees were from the following departments: Street, Parks Maintenance, Parks & Recreation, Fire, Police, Wastewater, Water, Utility Billing, and Community development. All the costs for this training were included in the respective budgets for each year. However, since the invoices were processed by the individual departments, the

total being over \$20,000.00 was not brought to City Council for approval and this does require council approval. Expenses paid for 2015/2016 were \$70,000.00 and for 2017 were \$29,645.00. **(Page 34)**

7. Fire Department Staff recommends Council allow the Mayor and City Clerk to enter into a contract with Jackson Brown Palculict (JBP) Architects, Inc. to design Station 7. **(Pages 35-57)**
8. Fire Department Staff recommends Council allow the Mayor and City Clerk to enter into a contract with CEI Engineering for all civil engineering work on Station 7. **(Pages 58-68)**
9. Fire Department Staff recommends Council allow the Mayor and City Clerk to enter into a contract with Clinard Construction for Pre-construction, Phase I Construction, and Construction of Station 7. **(Pages 69-90)**
10. Staff requests City Council approval to grant a waiver of competitive bidding requirement for the rebuilding of the JWC Muffin Monster Grinder and Bar Screen assembly at the McKissic Lift Station. This is a sole source item manufactured by JWC. We routinely purchase parts from this company. No parts in this rebuild are more than \$20,000.00 individually. **(Pages 91-100)**
11. Staff recommends City Council approval of a resolution authorizing the Mayor and City Clerk to enter into an amended agreement with Mitchell Williams Selig Gates and Woodruff PLLC for legal services associated with establishing a nutrient water quality trading regulation through the Arkansas Pollution Control and Ecology Commission as pursued by the Northwest Arkansas Nutrient Trading Research and Advisory Group (NANTRAG). Total cost of the amendment shall not exceed \$60,000.00 with total cost of services not to exceed \$140,000.00. Total costs are split equally amongst the four members of NANTRAG (Bentonville, Rogers, Fayetteville, Springdale). Bentonville's share of \$15,000.00 will come from the \$40,000.00 budgeted for regional water quality efforts. NANTRAG unanimously approved the amendment. **(Pages 101-111)**
12. Staff recommends City Council approves awarding Bid No. 2018-02 to Luttrell Enterprises for Removal and Disposal of Litter and Mowing and Trimming of State Highway Rights-of-Ways within the City of Bentonville City Limits in an amount not to exceed \$150,000.00. This is a budgeted item. This agreement may be extended up to 3 years upon mutual agreement of both parties. **(Pages 112-128)**
13. Staff recommends City Council approves awarding Bid No. 2018-006 to Williams Tractor of Fayetteville, AR for 4x4 Cab Tractor for City brush hog mowing in an amount of \$9,950.00 plus tax per year. This lease replaces an expired lease for the same purpose. This lease is for 2 years with the option to extend for 2 additional 1-year terms provided budget is allocated and both parties agree. This is a budgeted item for 2018. **(Pages 129-131)**
14. Staff recommends that the City Council approves a reconciliation change order for Elm Tree & HWY 72 W Intersection Improvements. The final contract amount is \$107,518.51 less than the currently contracted amount of \$976,633.75. J. Johnson Construction also finished more than 50 days ahead

of schedule and per the contract will receive the maximum incentive of \$40,000.00. The final contract amount including incentive pay is \$909,115.25.

(Pages 132-136)

15. Approve an ordinance authorizing the Mayor and Clerk to enter into an agreement with Harness Roofing Inc., for certain repairs to City Hall, waiving the requirement of competitive bidding and declaring an emergency. We have been experiencing roof leaks at City Hall for several weeks. A temporary fix has been made but an immediate, permanent repair is recommended to stop water intrusion. In addition to this repair, the building will be evaluated by a professional for any environmental concerns related to the water damage.

(Pages 137-144)



CHECK ALL THAT APPLY		
	Bid Award	Bid #
	Budget Adjustment	
	Change Order	
	Informational	
	Ordinance	
x	Resolution	
	Other	

AGENDA FORM

CITY COUNCIL MEETING OF:

March 13, 2018

Submitted by:

Jon Simpson

Department

Police

Phone

271-3172

ACTION REQUIRED:

Request that the City Council approves a formal resolution to recognize, commend and congratulate Operations Captain Mike Smith upon his March 2018 retirement. This resolution recognizes more than 30 years of law enforcement service, including more than 27 years of decorated service with the Bentonville Police Department. This resolution also wishes Mike Smith much health, happiness, and continued success in all of his future endeavors. See attached resolution.

COST TO CITY:

Cost of this Request: \$0

Additional Budget Amount

☐ One time amount

☐ Continuing O and M

Previously Budgeted	\$
Funds Expended to Date	
Remaining Budget	-
Budget Adjustment	-
Remaining After Adjustment	\$ -

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712
www.bentonvillear.com



PLEASE RECYCLE





RESOLUTION

CAPTAIN

Michael A. Smith

WAS BORN IN TULSA, OKLAHOMA AND GRADUATED FROM SPRINGDALE HIGH SCHOOL IN SPRINGDALE, ARKANSAS IN MAY 1981, AND ATTENDED NORTHWESTERN STATE UNIVERSITY IN FORT POLK, LOUISIANA FROM 1987-1989, AND LATER THE NORTHWEST ARKANSAS COMMUNITY COLLEGE IN 1992 AND 1996; AND

WHEREAS, MICHAEL A. SMITH JOINED 9 BATTERY 1ST BATTALION 142ND FIELD ARTILLERY BRIGADE, ARKANSAS ARMY NATIONAL GUARD AS A 155 CANNON CREWMEMBER AND SERVED FROM SEPTEMBER 23, 1985 UNTIL SEPTEMBER 25, 1986, AND SERVED ACTIVE DUTY IN THE UNITED STATES ARMY FROM NOVEMBER 4, 1986 UNTIL NOVEMBER 3, 1989 IN FORT POLK, LOUISIANA AS PART OF HEADQUARTERS AND HEADQUARTERS BATTERY, 4TH BATTALION 1ST FIELD ARTILLERY REGIMENT, 5TH INFANTRY DIVISION; AND

WHEREAS, MICHAEL A. SMITH BEGAN HIS 30 YEAR LAW ENFORCEMENT CAREER IN MAY 1988 AS A PART-TIME PATROLMAN WITH THE LEEVILLE POLICE DEPARTMENT IN LEEVILLE, LOUISIANA AND THEN AS A FULL-TIME PATROLMAN AND EMT WITH THE LEEVILLE POLICE DEPARTMENT FROM FEBRUARY 1990 TO AUGUST 1990; AND

WHEREAS, MICHAEL A. SMITH JOINED THE BENTON COUNTY SHERIFF'S DEPARTMENT IN NOVEMBER 1990 AND WORKED AS A DETENTION DEPUTY UNTIL FEBRUARY 1991; AND

WHEREAS, MICHAEL A. SMITH JOINED THE BENTONVILLE POLICE DEPARTMENT ON MARCH 1, 1991 AS A PATROL OFFICER, AND HIS LEADERSHIP QUALITIES WERE QUICKLY RECOGNIZED WITH HIS FIRST PROMOTION TO SHIFT SUPERVISOR ON JULY 13, 1994; A POSITION OF SUPERVISION HE HELD IN BOTH THE PATROL DIVISION AND THE CRIMINAL INVESTIGATIONS DIVISION; AND

WHEREAS, MICHAEL A. SMITH WAS PROMOTED TO SHIFT COMMANDER ON MAY 22, 2000, AND IN THIS CAPACITY, WORKED TO IMPROVE OUR POLICE DEPARTMENT WITH THE INTRODUCTION OF A SPECIAL WEAPONS AND TACTICS TEAM, AND THE IMPLEMENTATION OF NEW TECHNOLOGIES AND NEW TRAINING METHODS RELATED TO TRUTH VERIFICATION AND DRUG RECOGNITION; AND

WHEREAS, MICHAEL A. SMITH, IN HIS CAPACITY AS SHIFT COMMANDER TOOK AN ASSIGNMENT ON JANUARY 12, 2004, SUPERVISING A GROUP OF "OPERATIONS" OFFICERS THAT PERFORMED TASKS RELATED TO SCHOOL SECURITY, WARRANTS, TRAINING, AND OTHER ACTIVITIES NECESSITATED BY THE EXPANDING DUTIES OF OUR POLICE DEPARTMENT; AND

WHEREAS, MICHAEL A. SMITH, WAS PROMOTED TO A MEMBER OF THE COMMAND STAFF ON APRIL 3, 2006, AND IN THIS CAPACITY, HE PROVIDED SUPPORT AND SUPERVISION FOR THREE SHIFTS OF PATROL OFFICERS AS WELL AS THE GROUP INFORMALLY KNOWN AS "OPERATIONS"; AND

WHEREAS, MICHAEL A. SMITH, ON OCTOBER 30, 2017, TOOK THE OPPORTUNITY TO BEGIN HIS CURRENT ASSIGNMENT AS THE COMMANDER OF THE OPERATIONS DIVISION, A DIVISION THAT HE FOUNDED MORE THAN 14 YEARS EARLIER WITH THE CLEAR VISION OF PROVIDING BETTER SERVICES TO OUR GROWING COMMUNITY; AND

WHEREAS, MICHAEL A. SMITH, AS THE FIRST COMMANDER OF THE OPERATIONS DIVISION OF THE BENTONVILLE POLICE DEPARTMENT IN OUR HISTORY, HAS CONTINUED TO FAITHFULLY SERVE, WITH THE PRESENT RANK OF CAPTAIN, UNTIL HIS RETIREMENT; AND

WHEREAS, MICHAEL A. SMITH, THROUGH HIS COUNTLESS DUTIES, ACCOMPLISHMENTS, AND INNOVATIVE IDEAS, HAS DELIVERED TO THE BENTONVILLE POLICE DEPARTMENT AND THE CITIZENS OF BENTONVILLE AN UNPARALLELED LEVEL OF PROFESSIONALISM AND SERVICE; AND

NOW THEREFORE, BE IT RESOLVED THAT BY THE ADOPTION OF THIS RESOLUTION, THE CITY COUNCIL OF BENTONVILLE, HEREBY COMMENDS AND CONGRATULATES CAPTAIN MICHAEL A. SMITH FOR HIS 30 YEARS OF DEDICATED LAW ENFORCEMENT SERVICE, TO INCLUDE HIS 27 YEARS OF SERVICE TO THE BENTONVILLE POLICE DEPARTMENT AND THE CITIZENS OF BENTONVILLE, AND WISHES HIM HEALTH, HAPPINESS, AND CONTINUED SUCCESS IN ALL HIS FUTURE ENDEAVORS.



GIVEN THIS day 13th day of March, 2018, in Bentonville, in the Great State of Arkansas



CHECK ALL THAT APPLY		
	Bid Award	Bid #
	Budget Adjustment	
	Change Order	
	Informational	
X	Ordinance	
	Resolution	
	Other	

AGENDA FORM

CITY COUNCIL MEETING OF:

March 13, 2018

Submitted by:

George Spence

Department

City Attorney

Phone

273-2777

ACTION REQUIRED:

Adoption of an ordinance proposing the simultaneous detachment and annexation into the City of Bentonville of territory currently within the city limits of the City of Cave Springs, and making that territory a part of the City of Bentonville and assigning it to a ward in the event it is released by the City of Cave Springs.

COST TO CITY:

Cost of this Request: Minimal*

Additional Budget Amount: None

☒ One time amount

☐ Continuing O and M

Previously Budgeted	\$
Funds Expended to Date	
Remaining Budget	-
Budget Adjustment	None
Remaining After Adjustment	\$ -

* There are some minor costs to this - attorney fees and a publication cost, both of which will be paid out of the budget for professional fees.

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712

www.bentonvillear.com



PLEASE RECYCLE



MEMORANDUM

TO: City Council
FROM: George Spence, City Attorney
CC: Mayor McCaslin, Linda Spence, City Clerk
DATE: February 27, 2018
RE: Sewell Family Development property

On or about July 26, 2016, the City passed an ordinance annexing property owned by Sewell Development, LLC. The annexation was unusual as the property in question was part of the City of Cave Springs. The property owners had followed a procedure provided for in the law which allows property to be detached from one city and annexed to another when one city cannot provide certain services to the property owner but another can. In this case, the service in question was sewer services. The City of Cave Springs had no reasonable likelihood of providing sewer to the property in the foreseeable future. On the other hand, sewer for the City of Bentonville was available immediately adjacent to the property. Bentonville's Council approved the annexation over the objection of the Mayor of Cave Springs, who attended our meeting and spoke against the annexation.

After the adoption of the ordinance and within the time frame allowed under the law, the City of Cave Springs brought suit against the City of Bentonville and the property owner seeking to stop the annexation. After several months, Cave Springs dismissed its case.

Thereafter, the annexation was allowed to go forward. However, when the annexation documents were submitted to the Secretary of State's office, we were notified that the annexation had a technical deficiency in that it created an island of the City of Cave Springs. The island in question is property which is right of way owned by the City of Bentonville which is part of Highway 112. We appealed to the good common sense of the Secretary of State's Office. They took a strict position (which they are certainly entitled to do) based in part on the failure to have the legal approved in advance by the State GIS office, which was a relatively new requirement.

The method by which the property owner had pursued the original annexation is a little time consuming. It requires that formal notice be given to the City more or less demanding services and that a substantial period of time pass before the property owner can ask the neighboring City to annex his property. Because of the time involved, the property owner was reluctant to go through that process again

and through his lawyer, he then proposed to both the attorney representing Cave Springs and me that the annexation be done as a simultaneous process, which is allowed under another section of the annexation statutes. Our understanding is that the City Council for Cave Springs has indicated it would approve the proposed simultaneous detachment-annexation. Accordingly, that is what is being placed before you.

The area proposed to be annexed (see map) now includes both the Sewell Development property and the right of way owned by the City of Bentonville. We have received the required advance approval for the legal description from the State GIS Department. If you approve the ordinance before you tonight, the next step in the process is to forward our ordinance to the City of Cave Springs. They are required to hold a public hearing before doing so, but if they approve an ordinance allowing the annexation to move forward, it would be returned to us and after thirty days, the annexation would become final.



ARKANSAS GIS OFFICE

February 13, 2018

Mr. Jim Wheelless
GIS Coordinator – City of Bentonville
305 SW A Street
Bentonville, AR 72712

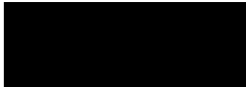
RE: City of Bentonville Annexation Coordination Requirement

Mr. Wheelless,

Thank you for coordinating with our office as you seek to annex property into the City of Bentonville, AR described as the "Sewell Annexation". Per your information, this area is currently in the process of being de-annexed from the City of Cave Springs and may subsequently be annexed into the City of Bentonville. This letter represents confirmation that you have properly coordinated with our office (Arkansas GIS Office) as specified in §14-40-101 (Act 914 of 2015) of the 90th General Assembly.

Our office will wait completion of any additional steps necessary for the proposed boundary change, which normally comes from the Arkansas Secretary of State Elections Division after any appropriate filing by your County Clerk.

Thank you,

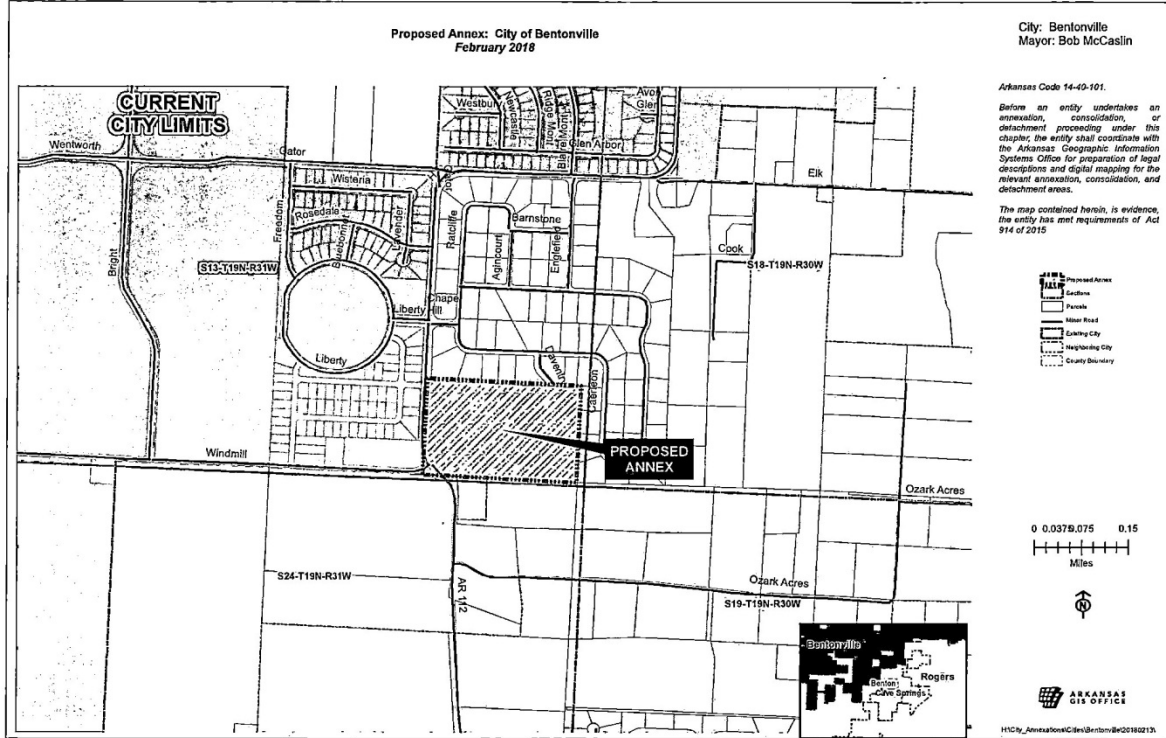


Jennifer Wheeler, GIS Analyst
/jjw

Attachments:
GIS Office Map of Proposed Annexation
Secretary of State Municipal Change Checklist

H:\City_Annexations\Cities\Bentonville\20180213\Doc\20180213_Bentonville_Annexation_Coordination_Letter.docx

ARKANSAS GIS OFFICE · 1 CAPITOL MALL SUITE 6D · LITTLE ROCK · ARKANSAS · 72201
PHONE (501) 682-2767 · www.gis.arkansas.gov · FAX (501) 682-6077





Arkansas Secretary of State

Mark Martin Arkansas Secretary of State, 500 Woodlane Ave, Little Rock, AR 72201-1094

Municipal Boundary Change Checklist

County: _____ City/Town: _____

City Ordinance/Resolution No: _____ Date approved: _____

County Court Case No: _____ Date Order Filed: _____

Type: _____

(Choose from the list of Arkansas Code Sections located on the back)

Date Change Effective: _____ Set by: ☐ Municipal Ordinance ☐ Emergency Clause ☐ Court ☐ Default
(Required by Act 655 of 2017)

For Circuit Court Challenge: Date Order Filed: _____ ☐ Upheld ☐ Overturned ☐ Other (attach explanation)

Initiating party:

☐ All Landowners ☐ Majority Landowners ☐ Municipal Governing Body ☐ State ☐ Other _____

Supporting Documentation attached (check all that apply):

- ☐ File marked copy of City Ordinance/Resolution (required)
- ☐ File marked copy of County Court Order (required except for island annexation and annexation approved by election)
- ☐ Copy of Arkansas GIS approved printed map and certification letter (required)
- ☐ Proof of Publication for all Legal Notices (include Hearing, Election, and City Ordinance/Resolution notices)
- ☐ File marked copy of Petition Part or File marked copy of the certified special election results (if applicable)
- ☐ File marked copy of Complaint and final Circuit Court Order (Court Challenge only)

Municipal Contact:

Name: _____ Title: _____

Street Address: _____

City: _____ St: _____ Zip code: _____

Complete one form per ordinance/resolution, attach it as a cover page to the supporting document set and submit to the County Clerk's Office within 45 days of the Effective Date as required by Act 655 of 2017

County Official:

Signature: _____ Title: _____

Date: _____

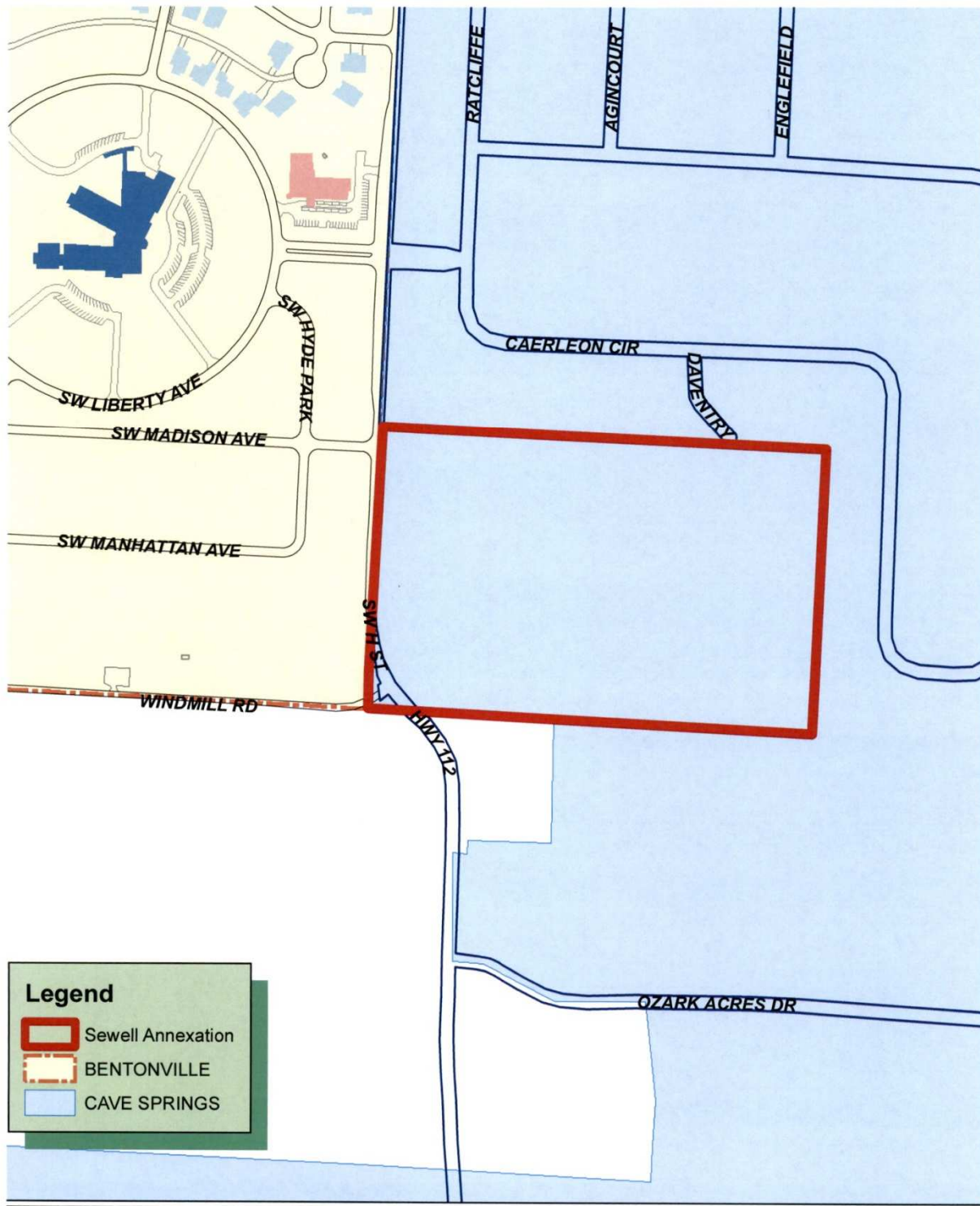
Pursuant to Act 655 of 2017, County Officials must submit a file-marked copy of municipal boundary change documents within 30 days of receipt to: Arkansas Secretary of State, Attn: Municipal Boundary Filing, 500 Woodlane Ave Suite 256, Little Rock, AR 72201-1094

Office of the Arkansas Secretary of State use only

Received by: _____

Municipal Annexation, Detachment, and Incorporation Reference

- Annexation of Territories Contiguous to County Seat A.C.A. §14-40-201
- Annexation of Territories in another Judicial District (multiple county seats) A.C.A. §14-40-202
 - Annexation of City Park or Airport (automatic) A.C.A. §14-40-204
- Annexation of building on boundary of two municipalities (written notice) A.C.A. §14-40-207
 - Annexation by Election (contiguous land) A.C.A. §14-40-302
 - Annexation of land in adjoining County A.C.A. §14-40-401
- Annexation of surrounded unincorporated area (island/doughnut holes) by ordinance A.C.A. §14-40-501
 - Annexation by Petition of majority of Landowners A.C.A. §14-40-602
 - Annexation by Petition of all Landowners A.C.A. §14-40-609
 - Consolidation of two municipalities by Election A.C.A. §14-40-1201
- Annexation with Detachment from another municipality at landowner request A.C.A. §14-40-2001
 - Annexation with Detachment from adjoining city at city request A.C.A. §14-40-2101
 - Detachment of Land annexed by petition under §14-40-601 A.C.A. §14-40-608
 - Detachment of municipal lands back to County by election A.C.A. §14-40-1801
 - Detachment of unsuitable land by municipal resolution A.C.A. §14-40-1901
 - Incorporation by direct petition of landowners A.C.A. §14-38-101
 - Incorporation by petition for special election A.C.A. §14-38-115
- Surrender of Charter (Disincorporation) by second class city A.C.A. §14-39-101



Sewell Annexation



ORDINANCE NO. _____

AN ORDINANCE PROPOSING THE SIMULTANEOUS DETACHMENT AND ANNEXATION INTO THE CITY OF BENTONVILLE OF TERRITORY CURRENTLY WITHIN THE CITY LIMITS OF THE CITY OF CAVE SPRINGS, AND MAKING THAT TERRITORY A PART OF THE CITY OF BENTONVILLE AND ASSIGNING IT TO A WARD IN THE EVENT IT IS RELEASED BY THE CITY OF CAVE SPRINGS

WHEREAS, Sewell Development, LLC and the City of Bentonville are the owners of certain territory in the City of Cave Springs, Benton County, Arkansas, described as follows:

Part of the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 13, Township 19N, Range 31W, and more particularly described as follows.

Beginning at the SW Corner of said SE $\frac{1}{4}$ of the SE $\frac{1}{4}$.

Thence N 2° 43' 50" E, 825.69';
Thence S 87° 15' 34" E, 1314.27';
Thence S 2° 49' 42" W, 834.18';
Thence N 86° 53' 20" W, 1312.87' to the point of beginning.

AND

Part of the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 13, Township 19N, Range 31W, and more particularly described as follows.

Beginning at the SW Corner of said SE $\frac{1}{4}$ of the SE $\frac{1}{4}$.

Thence N 2° 42' 49" E, 92.42';
Thence N 54° 28' 37" E, 26.49';
Thence S 33° 38' 09" E, 90.05';
Thence S 54° 28' 37" W, 53.89';
Thence S 55° 08' 58" W, 5.17';
Thence N 86° 51' 48" W, 27.76' to the point of beginning.

WHEREAS, a map of the described territory is on file with the City Clerk, and

WHEREAS, Sewell Development, LLC desires to initiate plans to develop the portion of the described property owned by it and desires sewer service to the property, and

WHEREAS, the City of Cave Springs is unable to provide sewer service to the portion of the described property owned by Sewell Development, LLC currently and has no fixed plans to provide such service to that property at any time in the near future, and

WHEREAS, the City of Bentonville would be able to provide sewer services to the portion of the described property owned by Sewell Development, LLC, as it currently has sewer service on immediately adjacent property, and

WHEREAS, the portion of the property described above owned by the City of Bentonville is a small portion of the property, all of which is right-of-way for Highway 112 and is included in this proposed detachment and annexation in order to avoid creating an enclave,

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

Section 1. That the City Council of the City of Bentonville calls for simultaneous detachment of the property described above from the City of Cave Springs to be annexed to the City of Bentonville.

Section 2. That a copy of this ordinance and the map showing the property shall be sent to the City Council of the City of Cave Springs requesting it hold a public hearing on the issue of simultaneous detachment and annexation of the described property within sixty days of the adoption of this ordinance by the City of Bentonville, that it coordinate with the City of Bentonville to have the City of Bentonville publish a required notice of that public hearing at least fifteen days before it is conducted, and that at the next regular meeting after the public hearing that it vote on the proposal, all as provided for in § 14-40-2101 of the Arkansas Code.

Section 3. That in the event the detachment and annexation is approved by the City of Cave Springs, the described territory shall be zoned A-1, to be used in accordance with City zoning laws and the laws of the State of Arkansas and shall become part of Ward 4.

Section 4: That the annexation contemplated by this ordinance shall become effective thirty days after the City of Cave Springs adopting an ordinance concurring in the detachment and annexation of the described property.

PASSED AND APPROVED THIS _____ **DAY OF** _____, 2018.

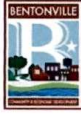
APPROVED: _____

HON. BOB McCASLIN, Mayor

ATTEST:

HON. LINDA SPENCE, City Clerk

PROPOSED



City Council Agenda Items
For City Council Meeting of March 13, 2018
from the March 6, 2018 Planning Commission Meeting

Lot Split: Lots 21 & 22 of Hardcastle Estates, Harry Green, 709 SW O Street, R-E, Residential Estate.

The Planning Commission voted 6-0, recommending approval.

The applicant has submitted a lot split for an approximately 9.66 acre area, splitting Tract 8 of Hardcastle Estates and creating Lots 21 and 22 of Hardcastle Estates. Per the City's GIS website, public water and sewer are not currently available to the two lots created by this subdivision. The plat dedicates right-of-way along SW O Street; a shared access easement; a sewer easement and multiple utility easements of varying widths.

Property Line Adjustment: Lots 1 & 2 of New Alliance Subdivision, Bentonville Schools , 1602 SE J Street, C-2, General Commercial.

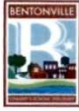
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General Plan Amendment: Calcon, Inc., West Highway 72, From Residential Estates to Low Density Residential.

The Planning Commission voted 6-0, recommending approval.

The Future Land Use Plan depicts this property as Residential Estates (RE). The applicant is requesting to amend the Land Use Plan so that the site is depicted as Low-Density Residential.



Consent Agenda Items

For Planning Commission meeting of March 6, 2018

Reviewer: Tyler Overstreet, Planner

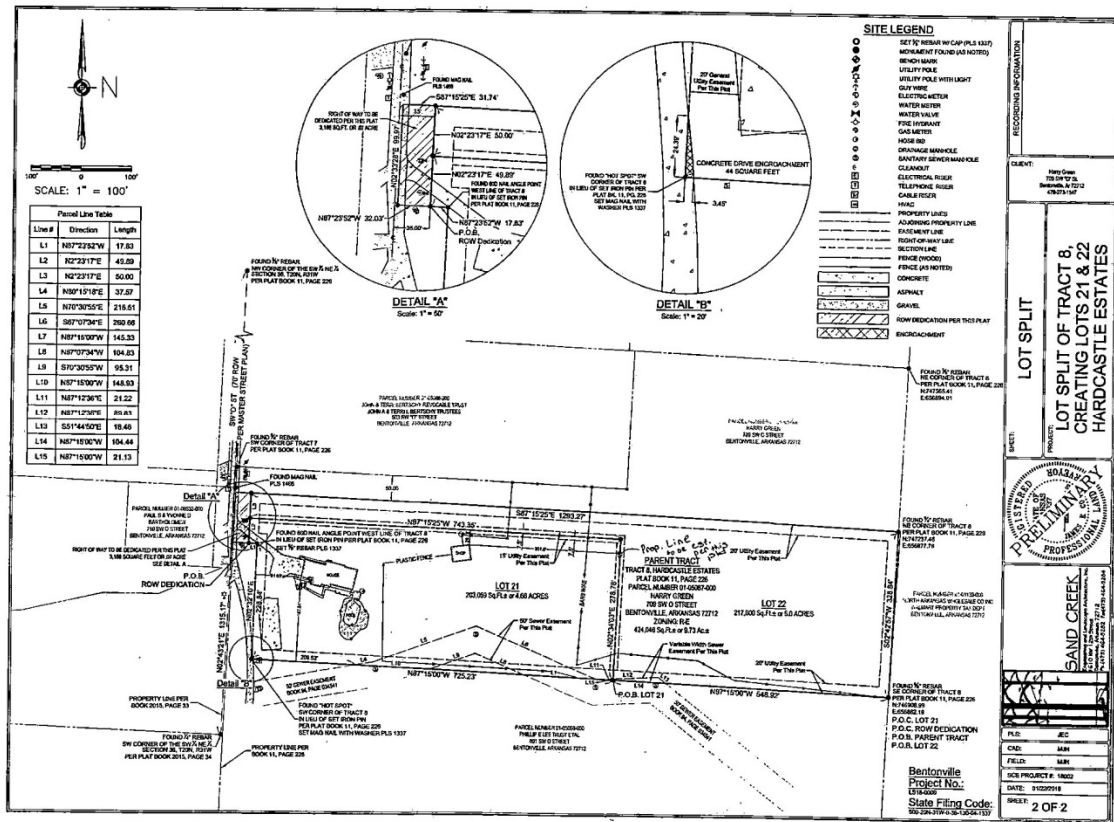
- ❖ At the Technical Review meeting held on February 27, 2018 the Planning Commission requested these items be placed on the Consent agenda. The descriptions below shall serve as the staff report for each of the consent agenda items.

Lot Split: Lots 21 & 22 Hardcastle Estates, Harry Green, 709 SW O Street, R-E, Residential Estate

The applicant has submitted a lot split for an approximately 9.66 acre area, splitting Tract 8 of Hardcastle Estates and creating Lots 21 and 22 of Hardcastle Estates. Per the City's GIS website, public water and sewer are not currently available to the two lots created by this subdivision. Multiple utility easements of varying widths and a sewer easement will be dedicated per this plat. Right-of-way will be dedicated per this plat along SW O Street. A shared access easement shall be dedicated per this plat. *(Please click on this link to access the vicinity map for this item: <http://geo.bentonvillear.com/mgweb/PZpending/>)*

Property Line Adjustment: Lots 1 & 2 New Alliance Subdivision, Bentonville Schools, 1602 SE J Street, C-2, General Commercial

The applicant has submitted a property line adjustment moving the common lot line between Tract D-2A-1 and an adjacent parcel, creating Lots 1 (+/- 2.71 acres) & 2 (+/- 1.06 acres) of New Alliance Subdivision. The new lots have access to a public street and public utilities. Right-of way along SE J Street will be dedicated per the plat. A 10 ft. general utility easement along the western property line will be dedicated per the plat. A 20 ft. general utility easement along SE J Street will be dedicated per the plat. *(Please click on this link to access the vicinity map for this item: <http://geo.bentonvillear.com/mgweb/PZpending/>)*



ORDINANCE NO. _____

**AN ORDINANCE ACCEPTING A LOT SPLIT OF LOTS 21 & 22 OF
HARDCASTLE ESTATES TO THE CITY OF BENTONVILLE, ARKANSAS.**

WHEREAS, pursuant to the provisions of Title 15 of the Bentonville Municipal Code, the lot split of Lots 21 & 22 of Hardcastle Estates, Benton County, Arkansas, was submitted to the Bentonville Planning Commission on March 6, 2018; and,

WHEREAS, said lot split is attached hereto as Exhibit "A"; and,

WHEREAS, the Bentonville Planning Commission considered said lot split on the date stated, and at other times, and voted to recommend the approval of said lot split to the City Council; and,

WHEREAS, the lot split of real property as described herein has been submitted to the City Council of the City of Bentonville and, after consideration and deliberation, said Council is of the opinion that said lot split should be approved.

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

Section 1: That the lot split of Lots 21 & 22 of Hardcastle Estates to the City of Bentonville, Arkansas, should be and the same is hereby accepted and approved for all purposes.

Section 2: That the Mayor and City Clerk be and are hereby authorized and directed to evidence the acceptance of said lot split by certifying said acceptance on the approved lot split.

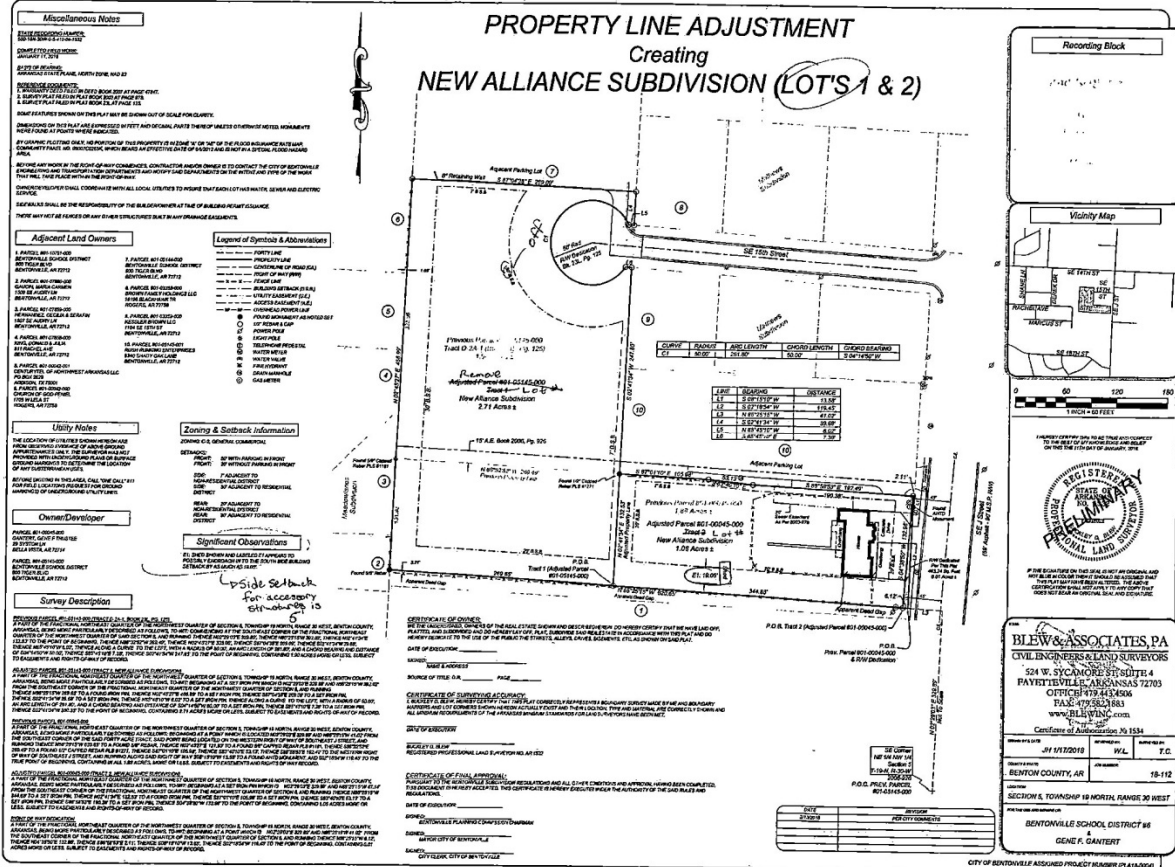
PASSED AND APPROVED this _____ day of _____, 2018.

APPROVED:

MAYOR

ATTEST:

CITY CLERK



ORDINANCE NO. _____

**AN ORDINANCE ACCEPTING A PROPERTY LINE ADJUSTMENT OF LOTS 1
& 2 OF NEW ALLIANCE SUBDIVISION TO THE CITY OF BENTONVILLE,
ARKANSAS.**

WHEREAS, pursuant to the provisions of Title 15 of the Bentonville Municipal Code, the property line adjustment of Lots 1 & 2 of New Alliance Subdivision of the City of Bentonville, Benton County, Arkansas was submitted to the Bentonville Planning Commission on March 6, 2018; and,

WHEREAS, said property line adjustment is attached hereto as Exhibit "A"; and,

WHEREAS, the Bentonville Planning Commission considered said property line adjustment on the date stated and at other times, and voted to recommend the approval of said property line adjustment to the City Council; and,

WHEREAS, the property line adjustment of real property as described herein has been submitted to the City Council for the City of Bentonville, and after consideration and deliberation, said Council is of the opinion that said property line adjustment should be approved.

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

Section 1: That the property line adjustment of Lots 1 & 2 of New Alliance Subdivision to the City of Bentonville, Arkansas, should be and the same is hereby accepted and approved for all purposes.

Section 2: That the Mayor and City Clerk be and are hereby authorized and directed to evidence the acceptance of said property line adjustment by certifying said acceptance on the approved property line adjustment.

PASSED AND APPROVED this _____ day of _____, 2018.

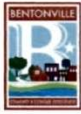
APPROVED:

ATTEST:

MAYOR

CITY CLERK

GENERAL PLAN AMENDMENT STAFF REPORT



Calcon, Inc.

W Highway 72

PC Date: 3/6/2018

Reviewer: Tyler Overstreet, Planner

Project Number	GPA18-0003
Applicant/ Current Owner	Calcon, Inc. 10636 Highway 72, Suite 501 Bentonville, AR 72701
Site Area	+/- 29.92 acres
Current Zoning	A-1, Agricultural
Current Future Land Use Map Designation	Residential Estates (RE)
Requested Future Land Use Map Designation	Low Density Residential (LDR)

<http://geo.bentonvillear.com/mgweb/PZpending/>

Location Map



Property Description

The property is located with frontage onto W Highway 72 and Town Vu Road. Adjacent zonings are A-1 to the east and west, Centerton to the north, and R-1 to the south.

Projected Traffic Impact

The proposed land use designation will not adversely impact traffic in the area.

Utility Infrastructure

According to the City of Bentonville GIS website, water and sewer are not currently available to the site.

Relationship to the General Plan

The Future Land Use Plan depicts this property as Residential Estates (RE). The applicant is requesting to amend the Land Use Plan so that the site is depicted as Low-Density Residential.

Analysis

The requested Future Land Use Map designation of Low Density Residential (LDR) is compatible with existing and adjacent land uses.



**Bates &
Associates, Inc.**
Civil Engineering · Land Surveying · Landscape Architecture

7230 S. Pleasant Ridge Dr. / Fayetteville, AR 72704

PH: 479-442-9350 * FAX: 479-521-9350

www.batesnwa.com

**Planning Commission
City of Bentonville
305 S.W. A Street**

RE: Calcon, Inc. Map Amendment

The Subject Property is currently in a designated zoning district of R-E. This property does not have sanitary sewer available, therefore the owner is willing to install a sewer lift station so the property will be able to be developed.

The properties to the south are zoned R-2. The remaining adjacent properties are in Benton County and Bella Vista and are zoned A-1. This Map amendment will allow the property to be consistent with other developments in the area.

This development will not have a detrimental affect but would rather increase the area's home values by drawing more residents to the local area.

If the amendment is not approved the property will most likely remain undeveloped.

The owner proposes to rezone the property to allow for a density similar to the surrounding area.

No other alternatives have been discussed. The cost of infrastructure for R-E zoning would not allow for this property to viable.

RESOLUTION NO. _____

**AN RESOLUTION ADOPTING REVISIONS TO THE FUTURE LAND
USE MAP OF THE CITY OF BENTONVILLE TO CHANGE REAL
ESTATE FROM ITS PRESENT LAND USE CLASSIFICATION OF
RESIDENTIAL ESTATES TO LOW DENSITY RESIDENTIAL.**

WHEREAS, Calcon, Inc. duly filed a petition with the Planning Commission requesting that the hereinafter described property situated in Benton County, Arkansas, be changed from its present land use classification of Residential Estates to Low Density Residential on the City of Bentonville Future Land Use Map, which property is described as follows:

A PART OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER, AND A PART OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, TOWNSHIP 20 NORTH, RANGE 31 WEST, BENTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT AN EXISTING AXLE MARKING THE NORTHWEST CORNER OF SAID NORTHWEST QUARTER OF THE NORTHEAST QUARTER AND RUNNING THENCE ALONG THE NORTH LINE THEREOF S87°25'34"E 655.74' TO THE INTERSECTION OF SAID NORTH LINE AND THE WEST RIGHT-OF-WAY OF HIGHWAY #72 WEST, THENCE ALONG SAID RIGHT-O-FWAY THE FOLLOWING: S27°09'45"E 357.06', S00°55'57"E 179.70', S09°13'22"W 119.14', S35°40'31"E 63.48', THENCE LEAVING SAID RIGHT-OF-WAY N87°12'57"W 432.98' TO AN EXISTING REBAR, THENCE S02°55'14"W 663.86' TO AN EXISTING RAIL SPIKE, THENCE S87°27'36"E 87.34', THENCE S02°54'46"W 410.56', THENCE S81°47'06"W 160.00', THENCE S02°54'46"W 589.50', THENCE S81°47'06"W 24.46', THENCE S02°54'46"W 76.00', THENCE S81°57'38"W 124.12', THENCE S83°57'46"W 34.53', THENCE N03°08'50"W 149.73' TO AN EXISTING REBAR, THENCE N86°51'57"E 4.94' TO AN EXISTING REBAR, THENCE N03°08'31"W 50.25' TO AN EXISTING REBAR, THENCE S86°55'50"W 178.04' TO AN EXISTING REBAR, THENCE N02°58'54"E 2276.49' TO THE POINT OF BEGINNING, CONTAINING 29.10 ACRES, MORE OR LESS. SUBJECT TO THAT PORTION IN TOWN VU ROAD RIGHT-OF-WAY ON THE SOUTH SIDE OF HEREIN DESCRIBED TRACT AND SUBJECT TO ALL OTHER EASEMENTS AND RIGHTS-OF-WAY OF RECORD.; and,

WHEREAS, the Planning Commission duly met and considered the application and duly set the petition for public hearing to be held March 6, 2018 in the Council Chambers of the City of Bentonville; and,

WHEREAS, public notice of said hearing having been published in the Benton County Daily Record for the time and in the manner required by law; and,

WHEREAS, the Planning Commission voted to recommend to the City Council that the petition be approved and that said future land use classification as presented on the property be changed.

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

Section 1: That the above described real property is hereby changed from its present land use classification of Residential Estates to Low Density Residential on the Future Land Use Map.

Section 2: That this resolution shall be in full force and effect from and after the date of its passage.

PASSED AND APPROVED this _____ day of _____, 2018.

APPROVED:

Bob McCaslin, Mayor

ATTEST:

City Clerk



CHECK ALL THAT APPLY		
	Bid Award	Bid #
	Budget Adjustment	
	Change Order	
	Informational	
X	Ordinance	
	Resolution	
	Other	

AGENDA FORM

CITY COUNCIL MEETING OF:

March 13, 2018

Submitted by:

Lance Blasi

Department

Building Inspection

Phone

271-6882

ACTION REQUIRED:

City Council approval of an ordinance adopting the 2017 National Electric Code, as adopted by the Arkansas Board of Electrical Examiners with one exception, and local amendments. The Arkansas Board of Electrical Examiner's exception specifically provides that "Notwithstanding the provisions of the 2017 National Electrical Code, arc fault circuit interrupters shall not be required in kitchens and laundry rooms."

COST TO CITY:

Cost of this Request: \$0

Additional Budget Amount

☐ One time amount

☐ Continuing O and M

Previously Budgeted	\$
Funds Expended to Date	
Remaining Budget	-
Budget Adjustment	-
Remaining After Adjustment	\$ -

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712

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PLEASE RECYCLE



ORDINANCE NO. _____

**AN ORDINANCE ADOPTING THE 2017 NATIONAL ELECTRIC CODE,
OR LATEST EDITION, AND LOCAL AMENDMENTS.**

WHEREAS, Arkansas Board of Electrical Examiners has adopted the 2017 National Electric Code with one exception. The Board's rule specifically provides that "Notwithstanding the provisions of the 2017 National Electric Code, arc fault circuit interrupters shall not be required in kitchens and laundry rooms;"

WHEREAS, the City of Bentonville intends to adopt the 2017 National Electric Code along with the Arkansas Board of Electrical Examiners exception regarding arc fault circuit interrupters in kitchens and laundry rooms;

WHEREAS, all electric installations shall conform to the 2017 National Electric Code, or latest edition;

WHEREAS, cities may add regulations in addition to the regulations of the latest edition of the National Electric Code; and

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

Section 1. That all electrical installations shall conform to the 2017 National Electric Code, or latest edition, three copies of which are on file with the City Clerk, which is hereby adopted by reference as though it were copied herein fully.

Section 2. That the City of Bentonville shall hereby adopt and enforce the Arkansas Board of Electrical Examiners exception to the 2017 National Electric Code regarding arc fault circuit interrupters in kitchens and laundry rooms.

Section 3. That the City of Bentonville hereby adopts the following local amendments to the 2017 National Electric Code, or the latest edition:

1. The installing electrician shall provide a meter loop.
2. Any person doing electrical work in the City of Bentonville will be required to have or obtain an Arkansas State Masters Electrical License or be employed by a holder of such license.
3. All type NM-B Cable shall be properly supported and shall enter the outlet or lighting box no more than 2 cables per opening of such box and shall be secured by plastic or nylon staples, located 12 inches from the box and every 4 ½ feet thereafter.
4. EMT shall be properly supported by approved straps at no more than 18 inches from the box and every 5 feet there after.
5. EMT or metal boxes shall not be substituted for a grounded conductor. A ground wire shall be required for each circuit.
6. In kitchens, refrigerators shall be on a circuit by itself. This circuit shall have no other openings.
7. All persons desiring new temporary electric service shall contact the Bentonville Electric Department to determine the location of the electrical service before the installation.

8. No electrical work is to be covered without first being inspected and approved by the Building Inspection Department.
9. All underground secondary electric lines shall be a minimum of 24 inches deep from the City connection to the structure, which it serves. No direct burial cable is allowed.
10. All underground electric lines shall be in conduit and in a ditch by itself. No other utility is permitted in the same ditch with the underground electric.
11. #14 NMB shall not be used in residential applications.
12. Any single-phase account taken or served from a 120-208 3-phase bank will require a (5) five-socket meter base.
13. Electrical secondary conduit sizing: 200 – 320 amp, 3". 320 – 400 amp 4". Any service larger than 400 amp, consult with BEUD for conduit sizing requirements.
14. Where possible, all risers shall extend through the roof. The Building Inspector or the City Electric Department shall determine this.
15. All interior metal piping shall be bonded.
16. All residential structures shall have at least one (1) carbon monoxide detector per level, hard-wired with battery back-up. Also, every sleeping room containing a gas appliance shall have a carbon monoxide detector.
17. Electric services shall be grounded by two (2) ground rods driven a minimum of six (6) feet apart.
18. Electric service ground wire shall be protected by PVC schedule 80 conduit. PVC grounding conduit shall terminate into meter base.
19. Sheetrock to be installed before permanent electric service is connected.
20. Permanent power requires at least two (1) dedicated circuit in main panel (refrigerator, washing machine, furnace).
21. Pool grounding requires #8 solid bare copper ground wire.
22. No back-feeding house panels from temporary services.
23. All electrical installations shall comply with the Bentonville Electric Utility Department Construction Specifications.

Section 4. This Ordinance shall be in full force and effect 30 days from the date of its passage and approval.

PASSED and APPROVED this ____ day of _____, 2018.

APPROVED:

Mayor Bob McCaslin

ATTEST:

City Clerk



CHECK ALL THAT APPLY		
	Bid Award	Bid #
	Budget Adjustment	
	Change Order	
	Informational	
X	Ordinance	
	Resolution	
	Other	

AGENDA FORM

CITY COUNCIL MEETING OF:

March 13, 2018

Submitted by:

Lance Blasi

Department

Building Inspection

Phone

271-6882

ACTION REQUIRED:

City Council approval of an ordinance adopting the 2014 Arkansas Energy Code, as adopted by the Arkansas Economic Development Commission - Energy Office. The city has been operating under this code since it was adopted at the state level several years ago. The Energy Office was considering making amendments, however, those never transpired. The regulations stay the same as they have been enforced for the last several years. Staff anticipates no impact to current construction and development practices.

COST TO CITY:

Cost of this Request: \$0

Additional Budget Amount

☐ One time amount

☐ Continuing O and M

Previously Budgeted	\$
Funds Expended to Date	
Remaining Budget	-
Budget Adjustment	-
Remaining After Adjustment	\$ -

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712
www.bentonvillear.com



PLEASE RECYCLE



ORDINANCE NO. _____

**AN ORDINANCE ADOPTING THE 2014 ARKANSAS ENERGY CODE,
OR LATEST EDITION.**

WHEREAS, the Arkansas Economic Development Commission - Energy Office has adopted the 2014 Arkansas Energy Code for residential and commercial buildings throughout the State of Arkansas; and,

WHEREAS, the City of Bentonville intends to adopt the 2014 Arkansas Energy Code as adopted by the Arkansas Economic Development Commission - Energy Office.

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

Section 1. That the Arkansas Energy Code – 2014 Edition, three copies of which are on file with the City Clerk, is hereby adopted by reference as though it were copied herein fully.

Section 2. That any matters in said codes which are contrary to existing ordinances of the City of Bentonville, Arkansas shall prevail, and that any ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 3. That within said codes, when reference is made to the duties of a certain official named therein, that designated official of the City of Bentonville who has duties corresponding to those of the named official in said code shall be deemed to be the responsible official insofar as enforcing the provisions of said code are concerned.

Section 4: This Ordinance shall be in full force and effect 30 days from the date of its passage and approval.

PASSED and APPROVED this ____ day of _____, 2018.

APPROVED:

Mayor Bob McCaslin

ATTEST:

City Clerk



CHECK ALL THAT APPLY		
Bid Award	Bid #	
Budget Adjustment		
Change Order		
Informational		
Ordinance		
Resolution		
Other		

AGENDA FORM

CITY COUNCIL MEETING OF:

February 13, 2018

Submitted by:

Ed Wheeler

Department

Administration

Phone

271-3191

ACTION REQUIRED:

Request City Council approves the correction to the record for leadership classes provided by the Strategic Leadership Development Group (SLDG, LLC). During 2015, 2016, and 2017, Ten (10) City employees participated in two (2) different leadership training modules. The employees were from the following departments: Street, Parks Maintenance, Parks & Recreation, Fire, Police, Wastewater, Water, Utility Billing, and Community development. All the costs for this training were included in the respective budgets for each year. However, since the invoices were processed by the individual departments, the total being over \$20,000.00 was not brought to City Council for approval and this does require council approval. Expenses paid for 2015/2016 were \$70,000.00 and for 2017 were \$29,645.00.

COST TO CITY:

Cost of this Request: \$0

Additional Budget Amount \$0

☐ One time amount

☐ Continuing O and M

Previously Budgeted	\$
Funds Expended to Date	
Remaining Budget	-
Budget Adjustment	-
Remaining After Adjustment	\$ -

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712

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PLEASE RECYCLE





CHECK ALL THAT APPLY		
	Bid Award	Bid #
	Budget Adjustment	
	Change Order	
	Informational	
	Ordinance	
X	Resolution	
	Other	

AGENDA FORM

CITY COUNCIL MEETING OF:

March 13, 2018

Submitted by:

Brent Boydston

Department

Fire

Phone

271-5927

ACTION REQUIRED:

Fire Department Staff recommends Council allow the Mayor and City Clerk to enter into a contract with Jackson Brown Palcult (JBP) Architects, Inc. to design Station Seven.

COST TO CITY:

Cost of this Request: \$108,450

Additional Budget Amount

☐ One time amount

☐ Continuing O and M

Previously Budgeted	\$	350,000
Funds Expended to Date		
Remaining Budget		350,000
Budget Adjustment		-
Remaining After Adjustment	\$	350,000

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712

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PLEASE RECYCLE





Inter-office Memorandum

To: Mayor McCaslin and City Council
From: Brent Boydston, Fire Chief
CC: Camille Thompson, Staff Attorney, Denise Land, Finance Director, Stephanie Creed, Purchasing Agent
Date: March 13, 2018
Re: Station # 7 – Jackson Brown Palculict Architect Contract

The Fire Department is asking for Council approval for the Mayor and City Clerk to enter into a contract with Jackson Brown Palculict (JBP) Architects to design station # 7.

JBP designed Station # 6, and offered the City discounts on future stations with the same design. JBP has negotiated this design at 3.738% of total cost of construction.

Rough estimate of construction is \$2,500,000.00; this puts the Architectural fees at \$93,450.00 and \$15,000.00 for reimbursable/hourly rate for any changes for a total of \$108,450.00.

AIA® Document B101™ – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Twenty Third day of February in the year Two Thousand Eighteen
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

City of Bentonville
117 West Central
Bentonville, AR 72712
Telephone Number: (479) 271-5966
Fax Number: (479) 271-3105

and the Architect:
(Name, legal status, address and other information)

Jackson Brown Palculict Architects, Inc.
12921 Cantrell Road, Suite 201
Little Rock, AR 72223
Telephone Number: (501) 664-8700
Fax Number: (501) 664-5189

for the following Project:
(Name, location and detailed description)

Fire Station No. 7

A new substation for the Bentonville Fire Department.

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.

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TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)

N/A

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1 Commencement of construction date:

To be determined

.2 Substantial Completion date:

To be determined

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

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§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

- .1 General Liability
\$1,000,000 per incident
\$2,000,000 aggregate
- .2 Automobile Liability
\$1,000,000
- .3 Workers' Compensation
\$100,000 per accident
\$100,000 per disease
\$500,000 policy limit
- .4 Professional Liability
\$1,000,000 per claim
\$2,000,000 aggregate

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by

Init.

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3

the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents

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4

including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

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5

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by

1. procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
2. organizing and participating in selection interviews with prospective contractors; and
3. participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201-2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor. Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

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6

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests

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7

for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming		
§ 4.1.2 Multiple preliminary designs		
§ 4.1.3 Measured drawings		
§ 4.1.4 Existing facilities surveys		

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8

§ 4.1.5	Site Evaluation and Planning (B203™-2007)		
§ 4.1.6	Building information modeling		
§ 4.1.7	Civil engineering	Owner	
§ 4.1.7.1	Site Survey	Owner	
§ 4.1.8	Landscape design	Owner	
§ 4.1.9	Architectural Interior Design (B252™-2007)		
§ 4.1.10	Value Analysis (B204™-2007)		
§ 4.1.11	Detailed cost estimating		
§ 4.1.12	On-site project representation		
§ 4.1.13	Conformed construction documents		
§ 4.1.14	As-Designed Record drawings		
§ 4.1.15	As-Constructed Record drawings		
§ 4.1.16	Post occupancy evaluation		
§ 4.1.17	Facility Support Services (B210™-2007)		
§ 4.1.18	Tenant-related services		
§ 4.1.19	Coordination of Owner's consultants		
§ 4.1.20	Telecommunications/data design		
§ 4.1.21	Security Evaluation and Planning (B206™-2007)		
§ 4.1.22	Commissioning (B211™-2007)		
§ 4.1.23	Extensive environmentally responsible design		
§ 4.1.24	LEED® Certification (B214™-2007)		
§ 4.1.25	Fast-track design services		
§ 4.1.26	Historic Preservation (B205™-2007)		
§ 4.1.27	Furniture, Furnishings, and Equipment Design (B253™-2007)		
§ 4.1.28	Geotechnical Investigation (Soils Analysis)	Owner	

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

1. Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
2. Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
3. Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
4. Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
5. Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
6. Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
7. Preparation for, and attendance at, a public presentation, meeting or hearing;

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9

- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 One (1) review of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 One (1) visit per month to the site by the Architect over the duration of the Project during construction
- .3 One (1) inspection for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 One (1) inspection for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within Sixteen (16) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

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10

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

(Paragraph deleted)

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

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11

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising

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12

from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

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13

- ☒ [X] Arbitration pursuant to Section 8.3 of this Agreement
- ☐ [] Litigation in a court of competent jurisdiction
- ☐ [] Other (Specify)

§ 8.3 ARBITRATION

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 CONSOLIDATION OR JOINDER

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the

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14

interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner or the Architect may terminate this Agreement upon not less than seven days' written notice for convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

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15

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Compensation for Architect's basic services will be based on our original Agreement with the City of Bentonville for a New Sub-Station, dated 31 May 2013, Exhibit "A" for first re-use stating a base fee of 3.738% plus an hourly rate for any modifications to the Construction Documents.

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Additional services will be billed in accordance with the Architect's hourly fee schedule attached to and made a part of this agreement.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Additional services will be billed in accordance with the Architect's hourly fee schedule attached to and made a part of this agreement.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Twenty percent (20.00 %), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	Twenty	percent (	20	%)
Design Development Phase	Twenty-five	percent (	25	%)
Construction Documents Phase	Forty	percent (	40	%)
Bidding or Negotiation Phase	Five	percent (	5	%)
Construction Phase	Ten	percent (	10	%)
Total Basic Compensation	one hundred	percent (	100	%)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

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16

Employee or Category	Hourly Rate
Principal/Owner	\$195
Director	\$185
Principal	\$180
Associate	\$165
Architect	\$150
Intern Architect	\$125
Interior Designer	\$130
Construction Analyst	\$120
Administrative Assistant/Clerical	\$95

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Twenty percent (20.00 %) of the expenses incurred.

§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

N/A

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of Zero Dollars and Zero Cents (\$ 0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Sixty (60) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

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17

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

N/A

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:

N/A

- .3 Other documents:
(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

Exhibit "A" from original Agreement

This Agreement entered into as of the day and year first written above.

OWNER

(Signature)

(Printed name and title)

(Signature)

H.F. Brown, IV, AIA, LEED AP - President

(Printed name and title)

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18

EXHIBIT "A"
25 June 2013

The following is made a part of the Agreement between the City of Bentonville, Arkansas (Owner) and Jackson Brown Palculict Architects (Architect), dated May 31, 2013.

The Architect agrees to the reuse of the documents prepared for Fire Station No. 6 by the City of Bentonville, Arkansas as follows:

1. JBP will be retained for professional services, should the Owner desire to reuse the author's documents on future substations.
2. JBP copyright will be honored as author of the contract documents and JBP will be the Architect of Record.
3. Should the Owner desire to construct new substations utilizing the JBP documents the following reduction in fees is agreed:
 - a. First Reuse: Design and documents which includes Schematic Design phase, Design Development Phase and Construction Documents Phase will be reduced by 50% of those phases of work from the original agreement. Bidding/Negotiations and Observation Phase will remain the same.

$$20\% \text{ (SD)} + 25\% \text{ (DD)} + 40\% \text{ (CD)} = 85\% \text{ (Documents Phases)}$$

$$85\% \times 50\% \text{ (reduction)} = 42.5\%$$

$$5\% \text{ (B/N)} + 10\% \text{ (CP)} = 15\%$$

$$42.5\% + 15\% = 57.5\%$$

$$57.5\% \times 6.5\% \text{ (first fee)} = 3.738\% \text{ (2nd Building Fee)}$$

- b. Second Reuse: Design and documents phases listed above will be reduced by 60% of the original fee.

$$20\% \text{ (SD)} + 25\% \text{ (DD)} + 40\% \text{ (CD)} = 85\% \text{ (Documents Phases)}$$

$$85\% \times 60\% \text{ (reduction)} = 34\%$$

$$5\% \text{ (B/N)} + 10\% \text{ (CP)} = 15\%$$

$$34\% + 15\% = 49\%$$

$$49\% \times 6.5\% \text{ (first fee)} = 3.185\% \text{ (3rd Building Fee)}$$

- c. Third Reuse: Design and documents phases listed above will be reduced by 70% of the original fee.

$$20\% \text{ (SD)} + 25\% \text{ (DD)} + 40\% \text{ (CD)} = 85\% \text{ (Documents Phases)}$$

$$85\% \times 70\% \text{ (reduction)} = 25.5\%$$

$$5\% \text{ (B/N)} + 10\% \text{ (CP)} = 15\%$$

$$25.5\% + 15\% = 40.5\%$$

$$40.5\% \times 6.5\% \text{ (first fee)} = 2.632\% \text{ (4th Building Fee)}$$

- d. Further reuse will be negotiated at the time of desired reuse along with insurance carrier who prohibits reduction below specified levels.

For work modifying the documents in any manner, an hourly rate will be charged by the Architect applicable at the time of services. Reimbursable expenses will remain as stated in the original Agreement.

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE MAYOR AND
CLERK TO ENTER INTO AN AGREEMENT WITH
JACKSON BROWN PALCULICT (JBP) ARCHITECTS,
INC.**

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE
CITY OF BENTONVILLE, ARKANSAS.**

Section 1: That the Mayor and Clerk be and are hereby authorized to enter into an Agreement with Jackson Brown Palculict (JBP) Architects to design Bentonville Fire Station 7 as set forth in the agreement attached hereto as Exhibit "A".

Section 2: This resolution shall be in full force and effect from and after the date of its passage.

PASSED and APPROVED this _____ day of _____, 2018.

APPROVED:

MAYOR

ATTEST:

CITY CLERK



CHECK ALL THAT APPLY		
	Bid Award	Bid #
	Budget Adjustment	
	Change Order	
	Informational	
	Ordinance	
X	Resolution	
	Other	

AGENDA FORM

CITY COUNCIL MEETING OF:

March 13, 2018

Submitted by:

Brent Boydston

Department

Fire

Phone

271-5927

ACTION REQUIRED:

Fire Department Staff recommends Council allow the Mayor and City Clerk to enter into a contract with CEI Engineering for all civil engineering work on Station 7.

COST TO CITY:

Cost of this Request: \$30,800

Additional Budget Amount

☐ One time amount

☐ Continuing O and M

Previously Budgeted	\$	350,000
Funds Expended to Date		
Remaining Budget		350,000
Budget Adjustment		-
Remaining After Adjustment	\$	350,000

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712
www.bentonvillear.com



PLEASE RECYCLE





Inter-office Memorandum

To: Mayor McCaslin and City Council
From: Brent Boydston, Fire Chief
CC: Camille Thompson, Staff Attorney, Denise Land, Finance Director, Stephanie Creed, Purchasing Agent
Date: March 13, 2018
Re: Station # 7 – CEI Engineering Contract

The Fire Department is asking for Council approval for the Mayor and City Clerk to enter into a contract with CEI Engineering for the civil engineering design on Station # 7.

CEI Engineering's work will be for multiple services outlined in their contract. The amount of the contract is \$30,800.00.

CEI will perform the following services:

Topographic Boundary Survey	\$3,500.00
Phase I, Mass Grading/Erosion Control Plan	\$2,000.00
Large Scale Development	
Drainage Report	
Storm Water Pollution Prevention Plan	\$12,800.00
Permitting and Coordination	\$4,000.00
Record Survey	\$2,000.00
Record Drawings	\$1,500.00
Construction Administration	Est. \$3,700.00
Reimbursable Expenses	\$1,300.00



City of Bentonville
Bentonville Fire Station #7
Bentonville, Arkansas
Proposal for Engineering Services
01-15-2018 CEI # 93000

3108 SW Regency Parkway, Suite 2, Bentonville, AR 72712 (479) 273-9472 / CEI Contact: Jacob Shy

I. PROJECT DESCRIPTION

Thank you for the opportunity to represent your interests regarding the development of your new fire station in southwest Bentonville. Having prepared civil drawings for Bentonville Fire Station #6, CEI is grateful for the opportunity to continue working in this area as well as for the City of Bentonville on this project. We understand that the City is phasing design and construction of this facility. Project scope for this design is to include engineering, design, and permitting services for a new 9,000± SF single story fire station facility in southwest Bentonville, Arkansas. CEI will use the Boundary / Topo survey completed by our survey team to coordinate and prepare design plans for the City of Bentonville, and provide limited construction observation as required by city code and state requirements.

II. SCOPE OF BASIC SERVICES

A. Topographic Boundary Survey

CEI shall provide a topographic boundary survey of the physical features as found on the 2.0+ acre subject property to include but not limited to natural ground, buildings, driveways, parking areas, visible utilities and underground utilities as marked by a utility locate service and other visible items at the time of the field work. This survey shall also include 1-foot contour intervals, 20' overlap on sides, and survey information to the centerline of roadways adjacent to the property. CEI will collect field data after notice to proceed and locate or set pins for property corners.

Fees..... \$ 3,600.00

One-Call and miscellaneous reimbursable expenses are estimated at \$500. Services as detailed in this section shall not proceed until written notification to proceed is received from Client.

B. Phase I, Mass Grading/Erosion Control Plan

CEI shall provide a phase I grading and erosion control plans that will be coordinated with the Owner and Contractor. Phase I, mass grading and erosion control plans will enable a grading contractor to prepare the parking and building areas to subgrade elevations in advance of full site development and completion of surface improvements; a SWPPP and NOI, as required, will be prepared and submitted with this item.

Fees..... \$ 2,000.00

C. Large Scale Development

CEI shall provide large scale development documentation as prescribed by city code from a conceptual plan prepared by project Architect and approved by the Owner. This includes collaboration with governmental authorities and project team consultants for the development of a 9,000± SF fire station building on 2.0+ acres, civil design as prescribed by city code as well as documentation necessary for city planning submission. This includes comments associated with review by the City of Bentonville. Copying, review fees, mileage and postage/shipping charges will be billed as reimbursable expenses.

Drainage Report

CEI shall prepare a stormwater drainage letter for the project based on the City of Bentonville requirements for development of property. Based on our understanding of the proposed improvements, an increase in stormwater runoff will be generated from this site which must be conveyed to the existing regional stormwater detention facility and to the north. Through preliminary research efforts, it is our understanding that only half of the proposed site location can be conveyed to the regional detention pond. The other half of the stormwater runoff will need to be detained on site until it can be released.

Storm Water Pollution Prevention Plan

CEI shall prepare a Storm Water Pollution Prevention Plan (SWPPP) to assure protection of surface waters and in conformance with the Arkansas Department of Environmental Quality and City of Bentonville requirements. Permit application documents (Notice of Intent), as required, and related submittals shall be prepared for contractor's submittal.

Fees..... \$ 12,800.00

Miscellaneous expenses are estimated at \$225.00. This total is included in the Reimbursable Expenses item below. Services as detailed in this section shall not proceed until written notification to proceed is received from Client.

D. Permitting and Coordination

CEI will coordinate the plans, as developed, with the Owner, architect, city, utilities staff, Arkansas Department of Health, and others as necessary.

The permitting process generally consists of the following:

- Prepare and submit permit application to jurisdictional authorities
- Represent the Client and Owner for presentation of the project to the City Planning Commission
- Address review comments and make final submittals to the jurisdictional authorities.

Fees..... \$ 4,000.00

Large Scale Development fee is \$275.00. This total is included in the Reimbursable Expenses item below. Services as detailed in this section shall not proceed until written notification to proceed is received from Client.

E. Record Survey

Per City of Bentonville requirements, CEI is required to provide record drawings for all projects that are permitting through the Large Scale Development Process. Following completion of the project, CEI will travel to the site to gather "As-Built" elevations of drainage items per City of Bentonville standards.

Fees..... \$ 2,000.00

Miscellaneous reimbursable expenses are estimated at \$200. Services as detailed in this section shall not proceed until written notification to proceed is received from Client

F. Record Drawings

Per City of Bentonville Requirements, CEI Design team shall gather information collected by CEI Survey team, analyze the data, and provide Record Drawings. CEI shall also analyze this data and provide an Engineer's Certification, per City requirement.

Fees..... \$ 1,500.00

Miscellaneous reimbursable expenses are estimated at \$100. Services as detailed in this section shall not proceed until written notification to proceed is received from Client.

G. Construction Administration

CEI is required to attend any public utility installation and testing, and a final walkthrough with the City of Bentonville Planning Staff after project completion in order to create a final checklist and receive Certificate of Occupancy. This estimation includes 10 site visits and report preparation throughout the duration of the project by the CEI Construction Observer, and 10 hours of coordination by the Project Manager and/or Project Engineer and a 2 hour final walkthrough and coordination with the City of Bentonville. Should the City of Bentonville require more testing or require more than one site visit a week, this estimated fee will be discussed with the Client and billed per CEI schedule of Charges below.

Fees..... \$ Hourly

Construction Administration fees are estimated to be \$3,700. Services as detailed in this section shall not proceed until written notification to proceed is received from Client.

H. Reimbursable Expenses

The scope of services listed above is intended as fee only and does not include reimbursable expenses. See Section V Below for an explanation of additional reimbursable expenses that may be incurred during production of project documents and permitting approval.

Estimated Fees \$ 1,300.00

Total Fees (including estimated and reimbursables) \$ 30,800.00

III. RESPONSIBILITY OF CLIENT

Client shall provide to CEI, the following items:

A. Lien Releases

If the Client requests lien releases, the Client shall be responsible for the administrative costs, associated with processing lien releases at a rate of \$100.00 per release.

B. Engineer's Consent to Assign Documents

If the Client or the Client's financial institution requests an Engineer's Consent to Assign Document (or similar), the Client shall be responsible for the administrative costs associated with the processing and the added risk to CEI or the inability to control such risk imposed by non-contractual financial entity's consignment documentation, at a cost of \$1,000.00 per consent document. Execution of this agreement does not limit CEI's right to negotiate an assignment that is fair and reasonable for itself and the Client, nor does it guarantee agreement to all assignment terms.

IV. SERVICES NOT INCLUDED/ADDITIONAL SERVICES

In addition to the services described above, CEI is capable and available to provide the following services on an "as requested" basis. An Extra Work Authorization (EWA) form or contract amendment will be issued for any services outside the scope of this proposal. All EWA's or contract amendments will be approved and signed by the Client identified herein prior to beginning work. All additional services will be performed on an hourly basis per the current Schedule of Charges.

- Feasibility study, including physical, political, and/or financial opportunities or constraints
- Contract management and coordination of subconsultants including, but not limited to, the following services:
 - Geotechnical investigation/report
 - Environmental studies/report (e.g. Phase I & II ESAs)
 - Traffic study/report
 - Water flow test/distribution report
 - Historical and archeological studies
 - Ecological studies (e.g. wetland and threatened & endangered species)
- Preparation of perspectives, renderings, and models
- Attendance/presentation at public meetings (e.g. Planning Commission, City Council, Zoning Board of Appeals, Board of Adjustments, etc.)
- Preparation/presentation of conditional or special use permit applications
- Obtaining new or updated title policies
- Platting/replatting
- Preparation of easement and right of way documents, including new and vacations/abandonments
- Preparation of covenant and development agreements
- Preparation of a drainage study/report
- Design and plan preparation for major stormwater drainage improvements or relocations (e.g. box culverts, large ditches, and storm sewers greater than 4-foot in diameter)
- Preparations of flood studies, elevation certificates, FEMA or Corp of Engineer applications or permits
- Preparation of documentation, applications or permits for stormwater pollution prevention plans, NOIs, etc.
- Design and plan preparation for offsite utility extensions other than those immediately adjacent to the project site

- Design and plan preparation for offsite street improvements such as road widenings, acceleration/deceleration lanes, and medians (*design/plans for both curb cuts and municipal sidewalks along the site frontage will be included in the basic services for design projects*)
- Preparation of retaining wall design/plans
- Photometric design/preparation of site lighting plans
- Preparation of opinions of probable construction costs (OPCs)
- Bidding assistance and construction contract negotiations
- Construction contract administration, management, and observation services (e.g. reviewing contractor requests for payment, answering RFI's, reviewing shop submittals, etc.) Other than those specifically required by Arkansas Department of Health and Human Services.
- Construction staking

V. **SCHEDULE OF CHARGES**

Charges for our services are divided into three categories: Labor, Consultants, and Reimbursable Expenses.

LABOR: For fees billed on an hourly basis, labor charges are billed by category as follows:

ARKANSAS (01-01-17)

Officer / Branch Manager	\$ 190.00
Department Manager	\$ 165.00
Program Manager	\$ 150.00
Project Manager	\$ 140.00
Assistant Project Manager	\$ 120.00
Senior Project Engineer	\$ 140.00
Project Engineer	\$ 125.00
Registered Landscape Architect	\$ 120.00
Registered Land Surveyor	\$ 120.00
Survey Project Manager	\$ 120.00
Assistant Survey Project Manager	\$ 105.00
Sr. Survey Party Chief	\$ 90.00
Survey Party Chief	\$ 80.00
Survey Technician	\$ 85.00
Field Specialist	\$ 60.00
Project Designer	\$ 95.00
CAD Designer	\$ 85.00
CAD Technician	\$ 75.00
Construction Observer	\$ 75.00
Office Administrative Manager	\$ 75.00
Program Assistant	\$ 65.00

SUB-CONSULTANT SERVICES: In cases where CEI retains another engineering consultant to provide services outside of our area of practice, cost of such services will be charged at actual invoice cost, subject to prior approval by client.

REIMBURSABLE EXPENSES: Outside services, and related materials, will be charged at the actual invoice cost. In addition, direct out-of-pocket costs such as postage, delivery services, travel (other than vehicle mileage), and subsistence expenses will be charged at actual costs. Vehicle mileage is billed at the applicable I.R.S. rate allowed per mile.

All impact, permitting, expediting, and review fees will be charged at 15% over the cost of the fee unless the client is willing to pay those fees directly to the service provider.

- V. **CREDIT POLICY:** Terms will be given only to clients with approved credit. Invoices will be rendered monthly, either as final or progress billing. CEI payment terms are net 30 days. Invoices past 30 days due will be subject to a monthly service charge, which will be assessed in compliance with state usury laws. Should the account be placed for collection with an outside collector, the cost of such collections will be added to the principal amount owed. CEI may stop work on any account that is 60 days delinquent.

In the event that CEI elects to stop work as provided herein, Client will be assessed a resumption of work charge equal to 20% of the total contract amount. Said resumption of work charge and all outstanding invoices must be paid in full by Client prior to the resumption of work on the project. Client agrees that the balance as stated on the invoice from CEI to Client is correct, conclusive, and binding on the Client unless Client within thirty (30) days from the date of the receipt of the invoice notifies CEI in writing of the particular item that is alleged to be incorrect.

Client's Initials _____

STANDARD TERMS AND CONDITIONS

Required for contract to be valid

STANDARD OF PRACTICE

Services performed by CEI under this Agreement will be conducted in a manner consistent with the level of care and skill ordinarily exercised by engineers currently practicing in the same locale under similar conditions. No other representation, expressed or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document, or otherwise. All other common law warranties are hereby expressly disclaimed.

Client agrees that payment of all CEI invoices under this Agreement is for services rendered on behalf of Client and payment is not conditioned on (1) the receipt of any municipal or governmental approvals, authorizations, permits, or licenses or any type; (2) the availability of any utility services; or (3) payment to Client by any third party.

OWNERSHIP OF DOCUMENTS

All documents including drawings and specifications prepared or furnished by CEI pursuant to this Agreement are instruments of service in respect to the project and CEI shall retain an ownership and property interest therein whether or not the project is completed. Client may make and retain copies for information and reference in connection with the use and occupancy of the project by Client or others.

RE-USE OF DOCUMENTS

Copies of all reports, drawings, specifications, field data, field notes, laboratory test data, calculations, estimates, and other documents provided to Client as instruments of service are for use on the project specifically described in this Agreement. Any re-use of these by the Client for any other project or extension of this project, without the express, written authorization, verification, or adaptation by CEI, will be at Client's sole risk and without liability or legal exposure to CEI or CEI's independent professional associates or consultants, and Client shall indemnify, hold harmless and defend CEI and CEI's independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom.

INSURANCE

CEI maintains the following insurances:

Worker's compensation of a form and in an amount as required by law and employer's liability insurance of \$1,000,000.

Comprehensive general liability with limits of \$4,000,000 (\$2,000,000 per occurrence), and automotive liability insurance with limits of \$1,000,000 combined single limit.

Excess liability umbrella insurance of \$5,000,000.

Professional liability insurance with a limit of \$2,000,000, per claim/annual aggregate.

Upon written request of Client, CEI will provide additional insurance, if available; including increased coverage and/or limits, and the Client will pay CEI an agreed amount for the increased coverage.

LIMITATION OF LIABILITY

The Client hereby agrees that, to the fullest extent permitted by law, CEI's total liability to Client for any and all injuries, claims, losses, expenses, or damages whatsoever arising including but not limited to CEI's negligence, errors, omissions, strict liability, breach of contract, or breach of warranty shall not exceed the total sum paid on behalf of or to CEI by CEI's insurance policies applicable thereto and CEI's deductible amounts (excluding fees, costs & expenses of investigation, claim adjustment, defense, and appeal)

Any service deleted from this offer by the client will become the responsibility of the client. If this proposal was written without the benefit of an on-site investigation, changes in the scope may be necessary. CEI shall be held harmless in the event that any unseen condition adversely affects the design or intended use of the property in any way.

INDEMNIFICATION

The Client will indemnify, hold harmless and defend CEI, its officers, directors, employees, agents, consultants, and subconsultants from and against any and all liabilities, damages, or expenses, including without limitations any and all legal costs and expenses; whatsoever in connection with any personal injury or property damage arising out of or in any way connected with the negligence, reckless, or intentional acts or omissions by Client, its officers, directors, shareholders, agents, employees, consultants, and subcontractors, whether said acts or omissions and negligent reckless intentional or unintentional. Nothing contained herein shall waive any governmental immunity Client may be entitled to by law.

CEI will indemnify and hold harmless the Client, its officers, directors, employees, agents, consultants, and subconsultants from and against any and all liabilities, damages, or expenses, including without limitations any and all legal costs and expenses; whatsoever in connection with any personal injury or property damage arising out of or in any way connected with the negligence, reckless, or intentional acts or omissions by CEI, its officers, directors, shareholders, agents, employees, consultants, and subcontractors, whether said acts or omissions and negligent reckless intentional or unintentional.

Further, the Client shall, to the fullest extent of the law, indemnify, defend and hold harmless CEI, its directors, officers, employees, agents and subcontractors from and against all claims or action, based on, or arising out of, damages or injuries to persons or property caused by, or arising out of, any hazardous, and/or toxic substances present at the site where CEI and/or its subcontractors have performed work. Nothing contained herein shall waive any governmental immunity Client may be entitled to by law.

In accordance with generally accepted construction practices, the Client and Client's contractors shall be solely and completely responsible for the conditions of the job site, including the health and safety of all persons and property during performance of the work. This requirement will apply continuously and not be limited to normal working hours. Any construction observation by the engineer of the contractor's performance is not intended to include review of the adequacy of the contractor's safety measures, in, on, or near the construction site.

DISPUTE RESOLUTION

Client and CEI agree to attempt to settle all claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement by direct discussions; however, absent resolution by direct discussions, they agree to attempt to settle disputes by formal mediation according to the Construction Industry Mediation Rules of the American Arbitration Association. Absent resolution by mediation they agree to binding arbitration under the Rules of the American Arbitration Association.

SEVERABILITY

Any element of this Agreement later held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force. However, the Client and CEI will in good faith attempt to replace an invalid or unenforceable provision with one that is valid and enforceable, and which comes as close as possible to expressing or achieving the intent of the original provision.

PROJECT PUBLICITY AND RECOGNITION

During development construction, or upon completion of the project, CEI's name will be included on any public recognition / project identification display indicating design team, owners, and / or financiers. CEI shall be allowed to place or hang a temporary banner on the site during construction of the project.

LIEN RIGHTS

Client agrees that CEI shall have a lien upon real property constituting the project site for all unpaid sums due pursuant to this agreement or any addendum hereto, and that CEI is authorized to perfect a lien, enforce the lien, and foreclose the lien in the manner prescribed under local statutes for the perfection, enforcement and foreclosure of a mechanic and material man's lien upon real property.

All provisions under the heading "STANDARD TERMS AND CONDITIONS" shall survive termination or completion of this agreement.

AMENDMENTS

The duties, responsibilities, and limitation of authority of the Client or CEI shall not be made or extended without a written, executed agreement between CEI Engineering Associates, Inc and the Client.

SUCCESSORS AND ASSIGNS

CEI Engineering Associates, Inc and the Client each bind themselves, their associates, directors, partners, successors, executors, administrators and assigns to the other party to this Agreement and to the associates, directors, partners, successors, executors and administrators and assigns to such other party, with the respect to all obligations contained in this Agreement. CEI Engineering Associates, Inc. may assign its rights and obligations under this Agreement at any time without the consent of the Client. However, the Client shall not assign its obligations under this Agreement or sublet as a whole, without the prior written approval by CEI Engineering Associates, Inc.'s of the successor or assignee and its ability to comply with the terms and conditions of this and/or subsequent written Agreement. All assignments made by Client without CEI Engineering Associates, Inc.'s consent shall be considered null and void.

TERMINATION

Either Party may terminate this Agreement in full or in part, in writing, if the other Party fails to fulfill its obligations under the Agreement through no fault of the other Party. In such event, one may declare the other in default by issuing a written Declaration of Default and terminate the Agreement for cause. Prior to, an opportunity to cure any default or breach shall be given by way of a written notice being delivered to the Breaching Party including a description of the conditions constituting default or breach of the Agreement and providing the Breaching Party a period of time of ten (10) days within which to correct such conditions. If defined default or breach is not corrected within allotted number of days, then the written Declaration of Default may be issued. Upon any termination or suspension of an Agreement, CEI Engineering Associates, Inc. shall be paid for all work performed up to the date of termination or suspension.

PROVIDED DATA

Any information or data provided by Owner or Owner's representatives or by a third party as directed by Owner or Owner's representative to CEI to be used as base or supplemental information or data to the scope shall be considered reliable and CEI shall be held harmless to any errors or omission due to its use.

SITE SAFETY OR CONTROL

In no form or fashion shall it be implied or assumed, unless expressly written into scope, that CEI has or will be responsible for an Owner's or Contractor's control of the site nor will CEI dictate the means and methods of the Owner, Contractor and Contractor's subcontracts regarding preparation of, conducting, and the completion and closeout of construction, safety, and control of site.

All provisions under the heading "STANDARD TERMS AND CONDITIONS" shall survive termination or completion of this agreement.

VI. APPROVAL SIGNATURE AND AUTHORIZATION TO PROCEED

Execution of this document in all required locations shall form the entire Professional Services Agreement between the Client and CEI. This Proposal and Agreement shall be executed by both parties, with both parties receiving a fully executed copy thereof. A copy of the executed Agreement shall be equally binding as the original.

In the event that the Client issues a notice to proceed to CEI prior to the execution of this contract, the Client acknowledges that the services rendered by CEI will be in accordance with the terms and conditions contained in this proposal.

In the event that the Client instructs services on the contract/agreement to be on hold for a period greater than forty-five days, Client acknowledges that CEI will not proceed until a new contract between CEI and the client can be executed.

This proposal shall become null and void if signatures have not been obtained within forty-five days of proposal date. If authorization to proceed is not given after the proposal has been executed said agreement will become null and void within forty-five days of the date of the Client's signature.

The following is the complete Contracting Entity (Client) name and address that is responsible for this contract, its terms and conditions, and for payment of CEI invoices:

Contracting Entity Name (Client) include its business structure of INC, LLC, LP, etc.
Responsible for contract terms, conditions, obligations and payment

Complete mailing address for invoicing and/or receiving notification (Street / PO Box/ Suite number, if required)

City / State / Zip

Complete Phone Number

Signature - legally authorized to bind Contracting Entity	Print Name	Title	Date
--	------------	-------	------

Signature, CEI Engineering Associates, Inc.	Print Name	Title	Date
---	------------	-------	------

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE MAYOR AND
CLERK TO ENTER INTO AN AGREEMENT WITH CEI
ENGINEERING FOR SERVICES RELATED TO FIRE
STATION 7**

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE
CITY OF BENTONVILLE, ARKANSAS.**

Section 1: That the Mayor and Clerk be and are hereby authorized to enter into an Agreement with CEI Engineering for civil engineering work associated with Bentonville Fire Station 7 as set forth in the agreement attached hereto as Exhibit "A".

Section 2: This resolution shall be in full force and effect from and after the date of its passage.

PASSED and APPROVED this ____ day of _____, 2018.

APPROVED:

MAYOR

ATTEST:

CITY CLERK



CHECK ALL THAT APPLY			
	Bid Award	Bid #	
	Budget Adjustment		
	Change Order		
	Informational		
	Ordinance		
X	Resolution		
	Other		

AGENDA FORM

CITY COUNCIL MEETING OF:

March 13, 2018

Submitted by:

Brent Boydston

Department

Fire

Phone

271-5927

ACTION REQUIRED:

Fire Department Staff recommends Council allow the Mayor and City Clerk to enter into a contract with Clinard Construction for Pre-construction, Phase I Construction, and Construction of Station 7.

COST TO CITY:

Cost of this Request: \$125,000

Additional Budget Amount

☐ One time amount

☐ Continuing O and M

Previously Budgeted	\$	350,000
Funds Expended to Date		
Remaining Budget		350,000
Budget Adjustment		-
Remaining After Adjustment	\$	350,000

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712
www.bentonvillear.com



PLEASE RECYCLE





Inter-office Memorandum

To: Mayor McCaslin and City Council
From: Brent Boydston, Fire Chief
CC: Camille Thompson, Staff Attorney, Denise Land, Finance Director, Stephanie Creed, Purchasing Agent
Date: March 13, 2018
Re: Station # 7 – Clinard Construction Contract

The Fire Department is asking for Council approval for the Mayor and City Clerk to enter into a contract with on Station # 7.

Clinard Construction will have three phases for the entire project of Station # 7.

Pre-construction Phase will be working with the architects for value engineering and design of the building. Cost of this phase will be \$37,500.00.

Phase I will be the oversight of the site work and putting together bid packages for the dirt work. Cost of this phase will be \$12,500.00.

Phase II will be for the construction of the building, and will be budgeted with the construction of the building. Cost of this phase will be \$75,000.00

AIA® Document A133™ – 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the Twenty Second day of February in the year Two Thousand and Eighteen
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status and address)

City of Bentonville
117 W. Central
Bentonville, Arkansas 72712
Telephone Number: (479) 271-3115
Fax Number: (479) 271-

and the Construction Manager:
(Name, legal status and address)

Clinard Construction Management, Inc.
615 N. Walton Blvd. Suite D
Bentonville, Arkansas 72712

mcclinard@clinardconstruction.com
Tel: 479-271-6212
Fax: 479-271-2490

for the following Project:
(Name and address or location)

City of Bentonville, Fire Station #7

The Architect:
(Name, legal status and address)

Jackson Brown Palculict
12921 Cantrell Road
Little Rock, Arkansas 72223
501-664-8700

The Owner's Designated Representative:
(Name, address and other information)

Chief Brent Boydston
117 W. Central
Bentonville, Arkansas 72712
479-271-5927

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

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User Notes: (1097149255)

1

The Construction Manager's Designated Representative:
(Name, address and other information)

J. Mark Clinard, President
615 N. Walton Blvd. Suite D
Bentonville, Arkansas 72712

The Architect's Designated Representative:
(Name, address and other information)

Bunny Brown, Architect
Jackson Brown Palculict
12921 Cantrell Road
Little Rock, Arkansas 72223

The Owner and Construction Manager agree as follows.

Init.

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User Notes: (1087149256)

2

TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	CONSTRUCTION MANAGER'S RESPONSIBILITIES
3	OWNER'S RESPONSIBILITIES
4	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
5	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
6	COST OF THE WORK FOR CONSTRUCTION PHASE
7	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
8	INSURANCE AND BONDS
9	DISPUTE RESOLUTION
10	TERMINATION OR SUSPENSION
11	MISCELLANEOUS PROVISIONS
12	SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.

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3

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the

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4

items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following

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5

acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201-2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. The portions of the Work that the Construction Manager performs with the Construction Manager's own personnel shall be limited to no more than 10% of the total cost of the Work unless authorized in writing by the Owner. In the event subcontractor bids for any portion of the Work are not received or are not acceptable, the Owner has the right to re-bid that portion of the Work or if acceptable to the Architect and Owner, allow the Construction Manager to complete that Work on a Time and Materials basis. Any Work completed under that provision shall be invoiced by the Construction Manager in sufficient detail with appropriate backup for a complete audit review by the Architect and Owner.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

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6

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.4 Professional Services

Section 3.12.10 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other

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7

information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private; above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B101™-2007, Standard Form of Agreement Between Owner and Architect, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

Pre-Construction Fee: \$37,500.00 payable over five (5) months (\$7,500.00 per month). In addition to the Pre-construction fee, other costs shall be reimbursed to the Construction Manager such as, but not limited to:

- 1) Printing and reproduction cost of all documents such as plans, specification books, reports and other documents necessary to evaluating the scope of work.

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- 2) Equipment Rental for any equipment used in testing of soils, discovery of on site existing utilities, clearing for survey and other discovery needed to assist consultants in obtaining site information. Any such costs shall be approved by the Architect, Civil Engineer or Owner prior to the Work being performed
- 3) Surveying and layout costs by CM personnel or other consultants. Any such costs shall be approved by the Architect, Civil Engineer or Owner prior to the Work being performed
- 4) Any other direct costs incurred required by the scope of work described in Article 2 directly related to the services conducted on behalf of the City of Bentonville.
- 5) On site supervision labor costs required to supervise any on site activity performed on behalf of the City of Bentonville.
- 6) Any prepaid permit fees, regulatory fees or other fees required by local, state or federal agencies related to the pre-construction activities.

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within five (5) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid sixty (60) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

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ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

Phase I Construction Fee: \$12,500.00 to be paid pro rata to percent completed during the Phase I construction . Phase II Construction Fee: \$75,000.00 to be paid pro rata to percent completed during the Phase 2 construction..

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

Changes in the work causing the overall project budget to decrease shall result in no change in the fee. Changes in the work causing the overall budget to increase shall result in an increase in the fee of 5% of the cost any such changes

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

A Subcontractor's overhead and profit for changes in the Work shall not exceed 15% of any such cost.

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed five percent (5 %) of the standard rate paid at the place of the Project.

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9

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
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§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.
(Insert specific provisions if the Construction Manager is to participate in any savings.)

All savings shall inure to the benefit of the Owner and shall not be shared with the Construction Manager.

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007 shall have the meanings assigned to them in AIA Document A201-2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

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10

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

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11

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

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12

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall

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13

preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the 1st day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the tenth day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than ten (10) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of five percent (5 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the

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14

same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

- .4 Subtract retainage of five percent (5 %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements. All Subcontracts shall contain specific language setting retainage on all payments to a minimum of five (5%) of from that portion of the Cost of Work invoiced by Subcontractor. Terms of payment of retainage shall be consistent with the terms of payment of retention under this Article 7.

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request

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15

mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance including Comprehensive General Liability and Property Damage Insurance, Workers Compensation and Automobile Coverage. Such insurance coverage shall be kept in full force and in effect until all Work has been satisfactorily completed and accepted. The Owner shall be added as an Additional Insured to these or project specific insurance policies. The Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007. Construction Manager shall provide a Performance and Payment Bond in the amount of 100% of the Guaranteed Maximum Price upon execution of the Guaranteed Maximum Price Amendment.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
See attached certificate	

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

☐ Arbitration pursuant to Section 15.4 of AIA Document A201-2007

☐ Litigation in a court of competent jurisdiction

☒ Other: *(Specify)*

Mediation Should Mediation fail to settle any dispute, the parties to this Agreement shall further engage Litigation in a court of competent jurisdiction.

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

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16

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201-2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201-2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

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17

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:
 - .4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
 - .5 Other documents:
(List other documents, if any, forming part of the Agreement.)

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18

This Agreement is entered into as of the day and year first written above.

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

Bob McCaslin Mayor
(Printed name and title)

J. Mark Clinard President
(Printed name and title)

Init.

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User Notes:
(1097149256)

19

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE MAYOR AND
CLERK TO ENTER INTO AN AGREEMENT WITH
CLINARD CONSTRUCTION MANAGEMENT FOR
SERVICES RELATED TO FIRE STATION 7**

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE
CITY OF BENTONVILLE, ARKANSAS.**

Section 1: That the Mayor and Clerk be and are hereby authorized to enter into an Agreement with Clinard Construction for Pre-construction, Phase 1 Construction and Construction services associated with Bentonville Fire Station 7 as set forth in the agreement attached hereto as Exhibit "A".

Section 2: This resolution shall be in full force and effect from and after the date of its passage.

PASSED and APPROVED this ____ day of _____, 2018.

APPROVED:

MAYOR

ATTEST:

CITY CLERK



CHECK ALL THAT APPLY		
	Bid Award	Bid #
	Budget Adjustment	
	Change Order	
	Informational	
X	Ordinance	
	Resolution	
	Other	

AGENDA FORM

CITY COUNCIL MEETING OF:

March 13, 2018

Submitted by:

Nancy Busen

Department

Wastewater

Phone

271-3161

ACTION REQUIRED:

Staff requests City Council approval to grant a waiver of competitive bidding requirement for the rebuilding of the JWC Muffin Monster Grinder and Bar Screen assembly at the McKissic Lift Station. This is a sole source item manufactured by JWC. We routinely purchase parts from this company. No parts in this rebuild are more than \$20,000.00 individually.

COST TO CITY:

Cost of this Request: \$75,684

Additional Budget Amount

☐ One time amount

☒ Continuing O and M

Previously Budgeted	\$	82,874
Funds Expended to Date		-
Remaining Budget		82,874
Budget Adjustment		-
Remaining After Adjustment	\$	82,874

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712
www.bentonvillear.com



PLEASE RECYCLE



REQUEST FOR WAIVER OF BID

Date	<u>3/13/2018</u>		
Requested by:	<u>Nancy Busen</u>		
Department:	<u>Wastewater Treatment Facility</u>		
DESCRIPTION OF REQUEST:			
Type of Equipment:	<u>Barscreen components</u>		
Year & Model:	<u>2005 JWC Muffin Monster Barscreen Rebuild</u>		
Serial #	<u>103439-1-1</u>		
To Be Purchased From:	<u>JWC Environmental</u>		
	<u>2600 S. Garnsey Street</u>		
	<u>Santa Ana, CA 92707</u>		
Amount:	Base Amount:	\$	<u>75,683.76</u>
	Tax:	\$	<u>7,189.96</u>
	*Other:		<u> </u>
	TOTAL	\$	<u>82,873.72</u>
* List all other costs:			
JUSTIFICATION FOR REQUEST FOR WAIVER OF BID:			
Staff requests a waiver of bidding process to rebuild the bar screen and grinder at McKissic Lift Station #1. All part are sole source JWC items. No individual part in this rebuild is more than \$20,000.00.			
<u>Department Head</u>		<u>Director of Finance & Administration</u>	
Revised 6-18-99			

Memo



To: City Council, Mayor McCaslin

From: Nancy Busen, Wastewater Utilities

CC: Mike Bender

Date: 3/13/2018

RE: Request a Waiver of Bid Process for ordinance purchase and installation of a barscreen and grinder for McKissic Lift Station #1.

Staff requests the Council and Mayor grant a waiver of competitive bidding requirement for rebuilding of the JWC Muffin Monster Grinder and Bar Screen assembly at the McKissic Lift Station and award the bid to the manufacturer, JWC. This is a sole source item; we routinely purchase parts from this company.

No parts in this rebuild are more than \$20,000.00 individually. A quote, requested from the Arkansas JWC sales representative at Jack Tyler Engineering for the same parts and installation, was \$21,916.24 higher than JWC and \$14,600.00 more than we budgeted for the job.

Thank you for your consideration of this request,



JWC
Environmental®

Tony
cell #
714-227-0072

Customer Service Center
2600 S. Gamsey Street
Santa Ana, CA 92707 USA
Phone: 949 833-3888
Toll Free: 800 331-2277
Fax: 714 549-4007

Customer: 6004991

Bentonville, City of
117 W. Central Avenue
Bentonville, AR 72712
US

479-271-3115

Quote Number: **40184**

Quote Date: **02/06/2018**

Terms: **NET 30 DAYS**

Pricing: **Valid 60 Days**

FOB: **Origin**

Lead Time: **4-6 WEEKS ARO**

Grinder Serial #: **103439-1-1**

Project: BENTONVILLE AR WWTP

THEY INSTALL PRICE

All orders will be billed the applicable sales tax, based on the "ship to address", unless a valid tax exemption certificate is provided prior to shipment.

Part Number	Description	Qty	Unit Price	Extended Price
MSS-REBUILD	MSS Rebuild Project	1	\$0.00	\$0.00
21044	FHCS M10-1.50 X 40MM 18-8SST F/T	10	\$2.49	\$24.89
21016-SS	WASHER, FLAT M10 18-8SST	36	\$0.22	\$7.94
21045	NUT, NYLOC HEX M10-1.50 18-8SST	36	\$1.71	\$61.61
MSC1047-2009	BEARING BALL, 4 BOLT FLANGE 70MM	2	\$159.60	\$319.20
MSC0011-9042-329.6 9-2.375	GEARBOX, HELICAL-B NORD 2.375B 140TC	1	\$5,844.00	\$5,844.00
30010-0437	2HP TEXP 230/460-190/380V 145TC 1.15SF	1	\$1,501.17	\$1,501.17
MCC0010-004-100793	GUIDE CHAIN 316SST	2	\$1,080.00	\$2,160.00
TSE696504A18-02-10 3439	PLATE, OUTER, COMB	7	\$223.68	\$1,565.76



Customer Service Center
2600 S. Garnsey Street
Santa Ana, CA 92707 USA
Phone: 949 833-3888
Toll Free: 800 331-2277
Fax: 714 549-4007

TSE696504A18-03-10 3439	PLATE, OUTER, COMB	7	\$223.68	\$1,565.76
TSE696504A18-04-10 3439	PLATE, INNER, COMB	35	\$223.68	\$7,828.80
TSE696504A18-05-10 3439	PLATE, INNER, COMB	7	\$223.68	\$1,565.76
TSE696504A18-07-10 3439	SHIM	14	\$45.00	\$630.00
TSE696504A18-08-10 3439	SHIM	14	\$45.00	\$630.00
TSE696504A18-06-10 3439	PLATE, WEAR	14	\$23.15	\$324.14
6965-04A-08-01-1134 39	RACK GRID PANEL, 27 BARS ?	2	\$11,012.11	\$22,024.22
6965-04A-08-02-1134 39	RACK GRID PANEL, 28 BARS ?	2	\$11,313.16	\$22,626.32
30578	HHCS M12 X 1.75 X 80MM 18-8SST P/T	16	\$5.85	\$93.58
30577	FHCS M12-1.75 X 80MM 18-8SST F/T	16	\$14.65	\$234.36
30382	WASHER, FLAT M12, 18-8SST	32	\$0.61	\$19.49
30534	NUT, NYLOX HEX M12-1.75, SST	32	\$2.93	\$93.74



Customer Service Center
2600 S. Garnsey Street
Santa Ana, CA 92707 USA
Phone: 949 833-3888
Toll Free: 800 331-2277
Fax: 714 549-4007

SD-0100	DISPOSABLE GLOVES, LARGE	2	\$0.00	\$0.00
SD-0101	ANTISEIZE LUBRICANT, 1LB CAN	1	\$0.00	\$0.00
21044	FHCS M10-1.50 X 40MM 18-8SST F/T	120	\$2.49	\$298.62
21045	NUT, NYLOC HEX M10-1.50 18-8SST	120	\$0.00	\$0.00
21016-SS	WASHER, FLAT M10 18-8SST	120	\$0.22	\$26.46
MCC0140-MCR-174	ROLLER CHAIN, 6in PITCH LINK MCR 6 strands @ 19 links 2 strands @ 13 links	140	\$83.48	\$11,686.50
MCC0141-MCR-174	CHAIN, 6in PITCH LINK CONN MCR	8	\$121.55	\$972.38
RL	Repair Labor	1	\$12,500.00	\$12,500.00
SHIPPING & HANDLING	S&H CHARGES	1	\$0.00	\$0.00
DISCOUNT	20% discount	1	(\$18,920.94)	(\$18,920.94)
6965-04A-15-04	WEAR FLAT	1	\$0.00	\$0.00
6965-04A-15-04	WEAR FLAT	2	\$0.00	\$0.00
21054	FHCS M10-1.50 X 25MM 18-8SST F/T	26	\$0.00	\$0.00

Please verify serial number is correct.

Sub Total **\$75,683.76**
Tax



Customer Service Center
2600 S. Garnsey Street
Santa Ana, CA 92707 USA
Phone: 949 833-3888
Toll Free: 800 331-2277
Fax: 714 549-4007

Total \$75,683.76

Notes:

1. Two Service Techs are needed to complete the rebuild.
2. Quote is based on the job, not time.
3. Lifting devices to be supplied by the customer.
4. Access to the channel is necessary.
5. one year warranty from time of rebuild on parts replaced and labor.
6. Any parts outside this quote will need to be purchased seperately.
7. Shipping is included in the package price.
8. Subject to attached JWC Environmental Standard Terms and Conditions of Sale.

Thank-You for your Business!

JWC Environmental LLC

Customer Service



JACK TYLER ENGINEERING, INCORPORATED

6112 PATTERSON AVENUE, LITTLE ROCK, ARKANSAS 72209
(501) 562-2296 FAX (501) 562-4273 WATTS 1-800-562-2296

QUOTATION NUMBER: SMJ22118A QUOTATION DATE: February 21, 2018 PAGE: 1 OF 2

TO: City of Bentonville
117 W. Central Avenue
Bentonville, AR 72712

COPIES: Sherman Eoff
Steve Cooper

Phone: 479-271-3115

ATTN: Robert Burkett

Email: rburkett@bentonvillear.com

ITEM 1: MSS Rebuild Project

Supply Parts and Labor to rebuild the JWC – MSS s/n 103439-1-1

2 – 6965-04A-08-01-1134 – Bar Sections (27 Bars)

2 – 6965-04A-08-02-1134 – Bar Sections (28 Bars)

7 – TSE696504A18-02-10 – Plate Outer Comb

7 – TSE696504A18-03-10 – Plate Outer Comb

35 – TSE696504A18-04-10 – Plate Inner Comb

7 – TSE696504A18-05-10 – Plate Inner Comb

140 – MCC0140-MCR-174 – Roller Chain, 6in Pitch Link MCR

8 – MCC0141-MCR-174 – Chain 6in Pitch Conn Link MCR

Notes:

Lifting devices to be supplied by Bentonville WWTP

Access to the Channel is necessary

Any parts outside of those listed above are not included and will need to be purchased separately.

PRICE EACH..... \$ 97,600

DELIVERY: 8-10 Weeks, ARO

FOB POINT: Standard Freight Included

*****NOTE: ANY APPLICABLE SALES TAXES ARE NOT INCLUDED IN QUOTED PRICE.**

Thank you for the opportunity to quote on your requirements. If we may be of further assistance, please do not hesitate to contact me at scott@jtenq.com or 479-806-8970.

Very truly yours,

JACK TYLER ENGINEERING, INCORPORATED

Scott Jones
Senior Sales Representative



JACK TYLER ENGINEERING, INCORPORATED

6112 PATTERSON AVENUE, LITTLE ROCK, ARKANSAS 72209
(501) 562-2296 FAX (501) 562-4273 WATTS 1-800-562-2296

QUOTATION NUMBER: SMJ22118A QUOTATION DATE: February 21, 2018 PAGE: 1 OF 2

TO: City of Bentonville
117 W. Central Avenue
Bentonville, AR 72712

COPIES: Sherman Eoff
Steve Cooper

ATTN: Robert Burkett

Phone: 479-271-3115
Email: rburkett@bentonvillear.com

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Thank you for the opportunity to quote on your requirements. If we may be of further assistance, please do not hesitate to contact me at scott@jteneng.com or 479-806-8970.

Very truly yours,

JACK TYLER ENGINEERING, INCORPORATED

Scott Jones
Senior Sales Representative

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE MAYOR AND THE CITY CLERK TO PURCHASE REPAIR COMPONENTS FOR THE AUTOMATIC BAR SCREEN FOR THE MCKISSIC CREEK WASTEWATER LIFT STATION AND WAIVING THE REQUIREMENT OF COMPETITIVE BIDDING.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF BENTONVILLE, ARKANSAS.

Section 1: That the Mayor and City Clerk be and are hereby authorized to purchase repair components for an automatic bar screen for the McKissic Creek Lift Station, in an amount not to exceed \$82,873.72 as per the Proposal attached hereto as Exhibit A.

Section 2: Because the McKissic Creek lift station requires this type of repair component, and because JWC Environmental is the exclusive regional distributor for this type of equipment, it would be neither practical nor feasible to advertise for competitive bidding, and that requirement is herein waived.

PASSED and APPROVED this _____ day of _____, 2018.

APPROVED:

MAYOR

ATTEST:

CITY CLERK



CHECK ALL THAT APPLY		
	Bid Award	Bid #
	Budget Adjustment	
	Change Order	
	Informational	
	Ordinance	
X	Resolution	
	Other	

AGENDA FORM

CITY COUNCIL MEETING OF:

March 13, 2018

Submitted by:

Mike Bender

Department

Public Works Director

Phone

271-6873

ACTION REQUIRED:

Staff recommends City Council approval of a resolution authorizing the Mayor and City Clerk to enter into an amended agreement with Mitchell Williams Selig Gates and Woodruff PLLC for legal services associated with establishing a nutrient water quality trading regulation through the Arkansas Pollution Control and Ecology Commission as pursued by the Northwest Arkansas Nutrient Trading Research and Advisory Group (NANTRAG). Total cost of the amendment shall not exceed \$60,000.00 with total cost of services not to exceed \$140,000.00. Total costs are split equally amongst the four members of NANTRAG (Bentonville, Rogers, Fayetteville, Springdale). Bentonville's share of \$15,000.00 will come from the \$40,000.00 budgeted for regional water quality efforts. NANTRAG unanimously approved the amendment.

COST TO CITY:

Cost of this Request: \$15,000

Additional Budget Amount

☐ One time amount

☐ Continuing O and M

Previously Budgeted	\$	40,000
Funds Expended to Date		-
Remaining Budget		40,000
Budget Adjustment		-
Remaining After Adjustment	\$	40,000

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712
www.bentonvillear.com



PLEASE RECYCLE



Memo



To: City Council, Mayor Bob McCaslin
From: Mike Bender
CC:
Date: March 5, 2018
Re: NANTRAG Mitchell Williams Amendment 1

Staff recommends approval of a resolution authorizing the Mayor to enter into an amended agreement with Mitchell Williams Selig Gates and Woodruff PLLC for legal services associated with establishing a nutrient water quality trading regulation through the Arkansas Pollution Control and Ecology Commission (ADPC&E) as pursued by the Northwest Arkansas Nutrient Trading Research and Advisory Group (NANTRAG). Total cost of the amendment shall not exceed \$60,000.00 with total cost of services not to exceed \$140,000.00. Total costs are split equally amongst the four members of NANTRAG (Bentonville, Rogers, Fayetteville, Springdale). Bentonville's share of \$15,000.00 will come from the \$40,000.00 budgeted for regional water quality efforts. NANTRAG unanimously approved the amendment at its March 2, 2018 special meeting. A copy of the original agreement for legal services is attached for your use.

In November 2015, City Council approved a resolution to join Rogers, Springdale, and Fayetteville as a group to research nutrient trading possibilities and thus NANTRAG was created.

Act 335 of 2015 authorizes the Arkansas Pollution Control and Ecology Commission to promulgate regulations establishing nutrient water quality trading programs, including the formation of water quality compliance associations. The timely development of these water quality trading programs may provide significant long-term savings and environmental benefits for the communities of Northwest Arkansas. There currently are not any entities or groups formed to undertake the effort to assist in developing draft regulations establishing nutrient water quality trading programs that would be necessary to benefit Northwest Arkansas communities. In the interest of economy and efficiency, a cooperative

regional approach to understanding the issues, the potential impact and effects, and collectively responding to proposed changes is desirable.

The efforts of the group to this point have resulted in a draft regulation being submitted to and approved by the Nutrient Water Quality Trading Advisory Panel appointed by the governor. Subsequently, the approved draft was submitted to ADPC&E for third party rulemaking. The rulemaking process began with the action of ADPC&E at its January meeting and will continue through public comment process with a final action in the fall of this year. The initial agreement for legal services was to not exceed \$80,000.00 total or \$20,000.00 for each City. After initiating the rulemaking and preparing a budget to see the draft regulation through to final action by ADPC&E, the total cost is estimated at \$140,000.00 which takes each party's share over \$20,000.00. The City's initial share was from the same account in 2017.

The effort outlined in the legal agreement only takes the efforts of nutrient trading through creation of a regulation that permits and governs nutrient trading. Efforts under this agreement do not create or determine values for any actual trades or programs. This only establishes the regulation which will be a voluntary tool that could be used to make a more significant environmental impact than standard plant upgrades or typical agricultural practices.

Thank you for consideration of this item.

Amendment to
Agreement for Legal Services

1. The Northwest Arkansas Nutrient Trading Research & Advisory Group (the “Group”) and Mitchell Williams Selig Gates & Woodyard PLLC (“Mitchell Williams”) entered into an Agreement for Legal Services effective March 30, 2017 (the “Agreement”). A true copy of the Agreement is attached as Exhibit 1 to this Amendment to Agreement for Legal Services.
2. Paragraph 5 of the Agreement is hereby amended to authorize an additional Sixty Thousand Dollars (\$60,000.00) in fees and costs to be incurred under the Agreement, as amended. Mitchell Williams shall submit a monthly budget report to the Group included with each invoice or 3 days prior to a Group meeting in case an invoice is not needed. Budget report shall include summary of all charges through most recent billing cycle, anticipated charges for current billing cycle, and an overall summary of budget status including any unforeseen issues or concerns.
3. Paragraph 5 is further amended to add the following language:

Mitchell Williams agrees that it will perform all legal services necessary to pursue adoption of the Group’s proposed nutrient water quality trading regulation, APCEC Docket No. 18-001-R, through a final vote on the merits by the Commission for fees and costs not to exceed the total amount authorized under this paragraph 5, as amended. No work under this Agreement beyond the final vote of the Commission shall be undertaken by Mitchell Williams unless expressly authorized in writing by the Group.

4. Paragraph 6 is amended to remove Marcella J. Taylor from the list of professionals with approved rates; and Jordan Wimpy is added to the list of professionals with an approved rate of \$295/hour.
5. Effective Date. When this Amendment is fully executed by authorized representatives of Mitchell Williams and each member of the Group, it shall be effective as of the Effective Date listed below.

EFFECTIVE DATE: _____, 2018.

Allan Gates
MITCHELL, WILLIAMS, SELIG,
GATES & WOODYARD, P.L.L.C.

REPRESENTATIVES
OF NANTRAG MEMBERS

Brad Stewart – Springdale Water Utilities
Chair

Honorable Greg Hines, Mayor, City of Rogers

Earl Rausch, Superintendent, Rogers Water Utilities
(Or his designee)

Honorable Bob McCaslin,
Mayor, City of Bentonville

Tim Nyander – City of Fayetteville

Page 3 of 3

6076780.3

AGREEMENT FOR LEGAL SERVICES

WHEREAS, the Northwest Arkansas Nutrient Trading Research and Advisory Group (the "Group") published a Request for Qualifications for Legal Counsel on September 4, 2016; and

WHEREAS, on September 30, 2016, Mitchell Williams Selig Gates & Woodyard PLLC ("Mitchell Williams") submitted a timely and complete Statement of Qualifications in response to the Group's Request; and

WHEREAS, on October 31, 2016, the Group interviewed representatives of law firms that had submitted Statements of Qualifications in response to the Group's Request; and

WHEREAS, on October 31, 2016, following the conclusion of the law firm interviews, the Group voted unanimously to engage Mitchell Williams to provide legal services to the Group;

NOW THEREFORE, in consideration of the above premises, the Group hereby retains Mitchell Williams to provide legal services as directed by the Group. The terms and conditions of Mitchell Williams' legal representation of the Group shall be as set forth below.

1. Term of the Engagement. This engagement shall be for an original term of two years starting on the Effective Date below, with an option to renew on a year-to-year basis for up to three additional one-year terms.
2. Early Termination. The Group may terminate representation under the Agreement at any time with or without cause by delivering written notice to Mitchell Williams. Mitchell Williams may terminate the representation under the Agreement only as

permitted by Arkansas Rule of Professional Conduct 1.16 and only after giving 30 days advance written notice to the Group.

3. Scope of Services. Mitchell Williams shall be authorized under this Agreement to provide legal services only with respect to those tasks or matters approved by unanimous agreement of all members of the Group.

4. Primary Contact. The parties' primary contacts under this Agreement will be:

For the Group: Brad Stewart, Chairman

For Mitchell Williams: Allan Gates

5. Identity of Client and Source of Payment: The client under this Agreement shall be the Group, and not the individual members of the Group. Nothing in this engagement shall authorize Mitchell Williams to act as counsel for an individual member of the Group. For purposes of payment, however, the Group has requested, and Mitchell Williams agrees, that it will look only to the individual members of the Group for payment of their pro rata share of the fees and expenses for services rendered to the Group. Total fees and costs under this engagement shall not exceed Eighty Thousand Dollars (\$80,000.00) without the prior express written authorization of each member of the Group.

6. Fees and Expenses. The Group agrees to pay Mitchell Williams fees for services under this Agreement on the basis of the following hourly rates plus reimbursement of actual expenses.

Allan Gates	\$400/hour
Walter Wright	\$325/hour
Marcella Taylor	\$300/hour
Paralegal Assistance	\$100/hour

The hourly rate for any other professional assistance under this Agreement shall be agreed in writing in advance. No expense item in excess of \$100 shall be reimbursable unless approved in advance by the Group.

7. Record Retention. Mitchell Williams agrees that it will maintain orderly records regarding the services rendered to the Group under this Agreement, and it will make those records available to any member of the Group upon request. Mitchell Williams will maintain a copy of its records regarding this engagement for a period of five years following the termination of the representation, after which Mitchell Williams may destroy the records in accordance with its customary record retention and destruction policy.
8. Client Confidentiality. Mitchell Williams will preserve the client confidences of the Group to the extent permitted by applicable law, but it will not keep information received from one Group member confidential as against another member of the Group. Each member of the Group agrees that any information it provides to Mitchell Williams in connection with this engagement may be disclosed by Mitchell Williams to other members of the Group.
9. Decision Making. Mitchell Williams shall be authorized to act under this engagement only by the unanimous agreement of the Group's members. In the event any disagreement arises among the members of the Group regarding questions related to the engagement, Mitchell Williams shall take no further action with respect to the unresolved question until the Group reaches unanimous agreement regarding the question's resolution.

10. Modification of Agreement. Any extension or modification of this Agreement shall be in writing signed by authorized representatives of Mitchell Williams and each member of the Group.

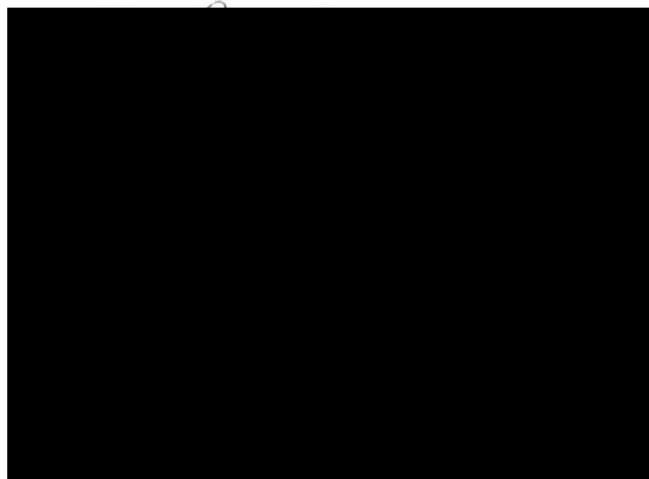
11. Effective Date. When this Agreement is fully executed by authorized representatives of Mitchell Williams and each member of the Group, it shall be effective as of the Effective Date listed below.

EFFECTIVE DATE: March 30, 2017.



Allan Gates
MITCHELL, WILLIAMS, SELIG,
GATES & WOODYARD, P.L.L.C.

REPRESENTATIVES
OF NANTRAG MEMBERS



RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE MAYOR TO
ENTER INTO AN AMENDED AGREEMENT WITH
MITCHELL WILLIAMS SELIG GATES AND
WOODRUFF FOR LEGAL SERVICES
ASSOCIATED WITH ESTABLISHING A NUTRIENT
WATER QUALITY TRADING REGULATION**

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE
CITY OF BENTONVILLE, ARKANSAS.**

Section 1: That the Mayor be and is hereby authorized to execute an amended agreement with Mitchell Williams Selig Gates and Woodruff PLLC for legal services associated with establishing a nutrient water quality trading regulation as set forth in the agreement attached hereto. Said regulation is generated by the Northwest Arkansas Nutrient Trading Research and Advisory Group of which Bentonville is a member.

Section 2: This resolution shall be in full force and effect from and after the date of its passage.

PASSED and APPROVED this _____ day of _____, 2018.

APPROVED:

MAYOR

ATTEST:

CITY CLERK



CHECK ALL THAT APPLY			
X	Bid Award	Bid #	2018-02
	Budget Adjustment		
	Change Order		
	Informational		
	Ordinance		
	Resolution		
	Other		

AGENDA FORM

CITY COUNCIL MEETING OF:

March 13, 2018

Submitted by:

Mike Bender

Department

Public Works Director

Phone

271-6873

ACTION REQUIRED:

Staff recommends City Council approves awarding Bid No. 2018-02 to Luttrell Enterprises for Removal and Disposal of Litter and Mowing and Trimming of State Highway Rights-of-Ways within the City of Bentonville City Limits in an amount not to exceed \$150,000.00. This is a budgeted item. This agreement may be extended up to 3 years upon mutual agreement of both parties.

COST TO CITY:

Cost of this Request: \$150,000

Additional Budget Amount

☐ One time amount

☐ Continuing O and M

Previously Budgeted	\$	150,000
Funds Expended to Date		-
Remaining Budget		150,000
Budget Adjustment		-
Remaining After Adjustment	\$	150,000

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712
www.bentonvillear.com



PLEASE RECYCLE



Memo



To: City Council, Mayor McCaslin

From: Mike Bender

CC:

Date: March 5, 2018

Re: Bid Award to Luttrell Enterprises for Litter Removal and Mowing State ROW's within Bentonville City Limits

Staff recommends City Council award Bid No. 2018-002 to Luttrell Enterprises for Removal and Disposal of Litter and Mowing and Trimming of State Highway Rights-of-Ways within the City of Bentonville City Limits in an amount not to exceed \$150,000.00. The City received two bids with Luttrell Enterprises providing the lowest, responsible bid. Bids are based on a cycle cost including a full cycle of mowing/trimming, litter collection/disposal, and edging.

The attached bid specifications include maps of the locations covered by this bid. In general, these locations are at the I-49 interchanges and along Hwy 12, Hwy 102, and Walton Blvd. corridors. This will help relieve City forces from additional mowing responsibilities, keeping staff headcount and fleet firm, and also address liability issues with mowing adjacent to high traffic areas. Last year was the first year the City bid this service to a third party contractor. For 2018, the City budgeted \$150,000.00 based on spending \$110,000.00 last year and adjusting mowing cycles and requirements to achieve the best service.

This contract may be renewed annually up to 3 consecutive years upon mutual agreement of both parties and Council allocating the funds.

Thank you for your consideration of this request.

SERVICES AGREEMENT

THIS AGREEMENT is made in Benton County, Arkansas, by and between the City of Bentonville, Arkansas, hereinafter "City," and Luttrell Enterprises, hereinafter "contractor" (collectively, the "Parties"). City is in need of certain services for removal and disposal of litter and mowing and trimming of state highway rights-of-ways within the city limits of Bentonville, AR, and contracts with contractor for services as described in **Exhibit A**.

1. **FEES, EXPENSES, AND SCHEDULE.** The City agrees to pay Contractor based upon per Unit cost as stated in Table A of the contractors bid submittal, **Exhibit B**, for each individual location ID (street name, starting point, ending point) for actual work performed during each cycle. Contractor agrees to only perform type of work (litter removal and/or mowing and trimming and/or edging) on each location ID that is pre-approved each cycle by the City.
2. **BILLING.** Contractor may bill City monthly or as agreed upon for all completed services and reimbursable expenses. The bill submitted by Contractor must itemize the services and reimbursable expenses for which payment is requested. City agrees to pay Contractor within thirty (30) days.
3. **ADDITIONAL SERVICES.** Additional services not defined in **Exhibit A** must be authorized by the city and in accordance with the City's Purchasing Policy.
4. **PAYMENT.** In the event City becomes credibly informed that any representations of Contractor provided in its billing are wholly or partially inaccurate, City may withhold payment of sums then or in the future otherwise due to Contractor until the inaccuracy and the cause thereof is corrected to City's reasonable satisfaction.
5. **TERMINATION FOR LACK OF FUNDS.** 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 Contractor under this Agreement, City may terminate or reduce the amount of services to be provided by Contractor under this Agreement. In such event, City will notify Contractor in writing at least thirty (30) days in advance of such termination or reduction of services for lack of funds.
6. **DISPUTE RESOLUTION.** City and Contractor agree that disputes relative to the Project will first be addressed by negotiations between the Parties. If direct negotiations fail to resolve the dispute, the Party initiating the claim that is the basis for the dispute may take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute, Contractor will proceed with the services as per this Agreement as if no dispute existed, and City will continue to make payment for Contractor's completed services; and provided further that no dispute will be submitted to arbitration without both Parties' express written consent.
7. **SUBCONTRACTING.** Contractor may not subcontract or assign any of the services to be performed under this Agreement without first obtaining the written approval of City. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge Contractor from any obligation under this Agreement. Any person or firm proposed for subcontracting services under this Agreement will maintain throughout the duration of the Agreement, insurance as provided in Section 8, herein, and will additionally maintain Professional Liability insurance in a minimum amount of \$1,000,000 and provide City with certification thereof.
8. **INSURANCE.** Contractor will maintain, throughout the duration of this Agreement, insurance as described under **Contractor Liability** in **Exhibit A**.
9. **INDEMNIFICATION AND HOLD HARMLESS.** For purposes of this Agreement, Contractor agrees to indemnify, defend and hold harmless City, its officers, appointees, employees, and agents from any

and all loss, damage, liability or expense, of any nature whatsoever caused or incurred as a result of the negligence or other actionable fault of Contractor, its affiliates, subsidiaries, employees, agents, assignees, and subcontractors and their respective employees and agents. Contractor is not required hereunder to defend City, its officers, appointees, employees, or agents from assertions that they were negligent, nor to indemnify and hold them harmless from liability based on City's negligence.

- 10. ENTIRE AGREEMENT.** This Agreement, including all documents and exhibits included by reference herein, constitutes the entire Agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both Parties to this Agreement.
- 11. NO THIRD PARTY BENEFICIARIES.** Nothing contained herein will create a contractual relationship with, or any rights in favor of, any Third Party.
- 12. INDEPENDENT CONTRACTOR.** Contractor is an independent contractor and is not an agent or employee of City.
- 13. COMPLIANCE WITH LAWS.** Contractor will abide by all applicable federal, state and local laws, ordinances and regulations applicable at the time the services are rendered.
- 14. APPLICABLE LAW, JURISDICTION, VENUE.** Interpretation of this Agreement and disputes arising out of or related to this Agreement will be subject to and governed by the laws of the State of Arkansas. Jurisdiction and venue for any suit arising out of or related to this Agreement will be in the District Court of Benton County, Arkansas.
- 15. SEVERABILITY.** If any provision of this Agreement is determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) will be null and void; provided, however, that the remaining provisions of this Agreement will be unaffected and will continue to be valid and enforceable.
- 16. AMBIGUITY.** If any ambiguity, inconsistency or conflict arises in the interpretation of this Agreement, the same will be resolved by reference first to the terms and conditions of this Agreement and then to Exhibit A.

[The remainder of this page is intentionally left blank.]

The Parties hereto have caused this Agreement to be executed this ____ day of _____ 201____.

CITY OF BENTONVILLE, ARKANSAS

By: _____
Bob McCaslin, Mayor

Luttrell Enterprises

By: _____

(Owner)

6866 West Wedington
Fayetteville, AR 72704

EXHIBIT A
City of Bentonville Solicitation

The City of Bentonville will receive sealed bids for the removal and disposal of litter and mowing and trimming of State highway rights-of-ways within the City of Bentonville city limits in accordance with the attached specifications for a period of one (1) year from the date of award with the option to adjust acreage and renew upon mutual agreement of the parties for up to three (3) consecutive years. Bidders shall also acknowledge current Arkansas Department of Transportation (ARDOT) specifications for removal and disposal of litter and mowing and trimming highway right-of-way for divided and non-divided highways. If the above referenced specifications disagree, the most stringent specification shall govern.

A **mandatory pre-bid meeting** will be conducted at **10:00 AM, Tuesday, February 6, 2018**, in the 2nd floor conference room of the Municipal Works Complex located at 3200 SW Municipal Drive, Bentonville. Sealed bids will be received until **2:00 PM, Thursday, February 15, 2018**, at the Purchasing Agent's Office on the first floor of City Hall located at the address below:

City of Bentonville
Purchasing Agent
117 West Central Avenue
Bentonville, Arkansas 72712

Bids shall be in a sealed envelope marked "Bid No. 2018-02 - Removal and Disposal of Litter and Mowing and Trimming of State Highway Rights-of-Ways within the City of Bentonville City Limits".

A bid bond in the amount of \$500.00 is required of all bidders at the time of bid opening or bid will be rejected. A cashier's check in the amount of \$500.00 is acceptable in lieu of a bid bond; however, personal and company checks are **NOT** acceptable as a bid bond. A performance bond in the amount of \$1,000.00 will be required of the successful bidder prior to providing services. Personal and company checks are **NOT** acceptable as performance bonds.

In compliance with the bid invitation and subject to all conditions thereof and the referenced specifications, the undersigned offers and agrees to furnish all items upon which prices are quoted, at the prices opposite each item.

Company Name: _____

Name (Type or Print): _____

Address: _____

Title: _____

Phone: _____

City: _____

E-mail: _____

State: _____ Zip: _____

Signature: _____

Federal Tax ID or SSN: _____

Signature must be legible, original (not copied) and in ink.

Unsigned bids will be rejected.

Project Location: The project generally follows the areas listed below

1. SW 14th Street – SE 14th Street (Hwy 102) from western city limit to eastern city limit.
2. SW Regional Airport Blvd. (Hwy 12) from SE Walton Blvd to Shell Road.
3. SW Rainbow Lane from S. Walton Blvd to SW Regional Airport Blvd. (Hwy 12).
4. S. Walton Blvd. – SE Walton Blvd. from W. Central Ave. to I-49.
5. N. Walton Blvd. from W. Central to NW 15th Street.
6. SW I Street (Hwy 112) from SW Regional Airport Blvd. to approximately 1,000 ft. south of SW 41st Street.
7. N. Water Tower Road from E. Battlefield north to end of road.
8. SE 28th Street and I-49 Interchange – slopes west of I-49 from road to toe of slopes.
9. E. Battlefield Blvd and I-49 – slopes adjacent to overpass.
10. SE Walton Blvd and I-49 Interchange all areas except median.
11. SE 14th Street (Hwy 102) and I-49 Interchange all areas except median.
12. E. Central Ave. (Hwy 72) and I-49 Interchange all areas except median.

Actual acreage may vary with each cycle dependent on construction activities, weather conditions, and specific site conditions within mowing areas, etc. Any change in mowing area will be agreed to in writing between parties prior to the adjusted mowing cycle.

Bids will be considered based on per cycle cost of litter removal plus mowing and trimming plus edging. Use Table A in the specifications to calculate total bid and enter totals from Table A in the appropriate space below.

Bid prices shall include all costs of performing this contract, but shall exclude taxes.

1. Removal and Disposal of Litter	Total Price \$ _____
2. Mowing and Trimming of Highway Right-of-Way	Total Price \$ _____
3. Edging Curb and Sidewalk	Total Price \$ _____
Grand Total \$ _____	

Description: This work shall consist of removal and disposal of litter and the mowing and trimming of the highway rights-of-ways within the City of Bentonville City limits for vegetation control. The Contractor shall provide all labor, equipment, and materials to accomplish the removal and disposal of litter and the mowing and trimming for one growing season of the designated areas in accordance with these specifications and as directed by the City of Bentonville (City). The primary contact for the City will be the Public Works Director or their authorized representative. A mowing cycle shall be the removal and disposal of litter and one complete mowing and trimming of the areas designated in Table A included at the end of these specifications. In addition, all sidewalks, trails, and curb and gutters within the areas identified for litter removal and mowing shall be edged two times during the growing season in conjunction with a mowing cycle.

Since work will take place within Arkansas Department of Transportation (ARDOT) right-of-way, the Contractor must meet current ARDOT specifications for such work. If ARDOT specifications conflict with the specifications included in this document, the most stringent specification shall govern.

Project Scope: The route(s) along which work is to be performed are presented in the attached Table A and associated exhibits. Generally, mowings shall consist of a swath fifteen (15) feet wide extending from the outside edge of the outermost paved street surface or back of curb to the right-of-way, or non-mowable area, permanent structure or obstruction, well established vegetation line or minimum of 5 feet beyond a sidewalk or trail.

Mowing widths will vary as necessary to accommodate the good neighbor policy of matching, as much as practical, vegetation height in the right-of-way to that on private properties immediately adjacent to rights-of-way. In addition, mowing widths will vary to accommodate fences, obstructions, drainage infrastructure, utilities, etc. All drainage within the right-of-way shall be mowed with each cycle unless indicated otherwise. Intersections will be mowed for sight distance on each mowing cycle. At a minimum, mowing shall extend to the end of radius on intersecting streets up to 50 feet away from main corridor. The mowing acreage for these areas will be reflected in the mowing widths shown in the attached Table A.

Exceptions, which are not to be mowed, may be designated by the City to accommodate construction projects, wildflower blooms, lack of growth, etc. The acreage for not mowing these areas will be deducted from the totals for payment. Additionally, the City may reduce mowing areas if growing conditions render a mowing unnecessary. If areas are designated to not be mowed or mowing is reduced, removal and disposal of litter may still be performed in those areas as determined by the City.

Equipment: The equipment to be used on this contract shall be in good working condition and suitable for safely mowing the rights-of-ways of the highway and for performing the work required under this contract. Any equipment determined by the City to be a hazard to the general public, highway users or unsuitable for operation on the highway right-of-way shall not be used in the work. Sufficient equipment and accessory items for efficient operation and completion of the cycle within the specified time period shall be provided. All rotary type mowers shall be equipped with skirt guards to restrict foreign objects from being thrown out of the cutting unit enclosures. Tractors shall be equipped to conform to prevailing Federal and State health and safety regulations and standards, including flashing amber lights and slow moving equipment emblems.

The use of batwing mowers shall be limited to areas of sufficient width to allow the operation of all sections of the mowers in the down position at all times. Where the width is restricted or narrow because of the location of signs or other obstructions, the use of batwing mowers is prohibited. Mowers shall not be operated with a portion of the mower deck extended into the driving lane. When a mower of any type is being moved from one site to another under its own power with the mower unit raised, the PTO shaft for the mower unit shall be disengaged.

Edging equipment shall be specifically made for pavement/walk edging. String weed eaters will not be acceptable for the two specific edging cycles. Weed eaters may be used as part of the mowing cycle and general trimming cycles.

All vehicles used on the project for litter pickup shall be equipped with at least one operational 6-inch diameter flashing amber light, visible from all directions. Any litter not bagged or subject to being blown from the vehicle shall be covered.

Removal and Disposal of Litter: Prior to each mowing cycle, the areas to be mowed shall be cleaned of litter and hazardous objects that might be thrown by the mowers. For the purpose of this contract, litter is defined as trash, garbage, debris and refuse of the following type: paper, plastic, bottles, cans, wood, tires, tire parts, metal scraps/products, etc. In addition, all litter revealed by the mowing operation, shall be picked up within 48 hours. Litter adjacent to mowing areas shall be collected as a good neighbor policy as this will also prevent litter from migrating to mowing areas.

Any litter placed in bags before or after mowing shall be removed from the right-of-way within 24 hours of bagging. Failure to remove litter in a timely manner, as stated above, may result in the City removing litter with City forces. Any costs the City incurs for litter removal as described will be deducted from monies due the Contractor. If litter remains beyond the specified time, the City will issue a written notice of noncompliance with the specifications. The Contractor will be in default if three letters are received in a mowing season thus forfeiting the contract.

All litter disposal shall be in accordance with all local, State and Federal regulations and in a permitted landfill or permitted disposal facility.

Mowing Procedures: Representatives of the City and the Contractor shall meet prior to beginning of the first mowing cycle and prior to others if necessary to review the work to be done. After the meeting, the Contractor's primary contact in all matters relating to the work will be the Public Works Maintenance Supervisor. The Public Works Maintenance Supervisor's office telephone number will be provided.

The Contractor shall perform mowing cycles as noted below with the first mowing commencing between April 1 and May 1 (inclusive of those days). Subsequent mowing cycles shall be completed before grass exceeds a height of 8 inches but no more than 21 days after the previous mowing unless agreed to in writing.

The Contractor shall begin work on the first mowing cycle within ten (10) working days of issuance of a Notice to Proceed, but no earlier than the specified beginning dates unless specifically approved by the City. The Contractor shall not begin subsequent mowing cycles until receiving approval from the City. Each mowing cycle shall be completed within five (5) working days of commencement of work, in a continuous operation. A mowing cycle is considered complete when all mowing, hand trimming and litter removal are complete to the satisfaction of the City. A mowing cycle also includes removal from streets, walks, trails, and driveways of all grass clippings, dirt and debris generated from mowing and trimming.

The Contractor shall perform two (2) scheduled edging cycles. One completed between April 20 and June 20, and the second to be completed between August 20 and September 20. Litter removal and disposal is not required with an edging cycle; however, all vegetative matter and associated dirt and debris shall be removed and properly disposed.

Before submitting an invoice and before moving mowers off the project or to the next route, the Contractor shall inspect the work for compliance, and then contact the Public Works Maintenance Supervisor for a final inspection. If the inspection is not performed by the Public Works Maintenance Supervisor within two (2) working days, the Contractor is relieved of performing any remedial work in the section not inspected. Saturdays, Sundays, and City holidays are not considered working days. Inspections will not be made on these days and will not count in the two (2) day time limit.

Time is of the essence in this Contract and it is important that the work be pressed vigorously to completion. Loss will accrue to the public due to delayed completion of the work. The City shall issue a notice of noncompliance with the specifications if undue delays occur. The Contractor will be in default if three noncompliance letters are received for delays and will thus forfeit the remaining contract.

Delays: Rain days are allowed as an extension to the completion date for any day that the contractor, because of excessive rain, is not able to employ 60% of his forces for 60% of the day, or on days he is instructed by the City not to mow because of wet conditions. The Contractor must contact the Public Works Maintenance Supervisor for determination of rain day status.

General Requirements: Mowing shall be performed only during daylight hours and in accordance with the City of Bentonville Noise Ordinance.

For all areas designated to be mowed, the mowed vegetation shall be uniform and 2.5 to 3 inches in height. The Contractor shall mow only those areas that are designated. The Contractor shall mow as close as practicable to all fixed objects and hand trim vegetation around all fixed objects to a 2.5 to 3 inch height. Trimming shall be performed concurrently with and consistent with the pace of the mowing operation.

The Contractor shall conduct his operations in such a manner that he does not damage the existing ground, trees, shrubs, guardrail, signs, utilities, delineators, or any other structures. The Contractor shall not mow in conditions so wet that turf damage or rut damage would occur. In the event damage occurs to City or State property as a result of mowing operations, the Contractor shall replace or repair the damaged areas or items at no cost to the City as directed by the City.

The operator shall straighten delineators and signs that are bent over during mowing at the time that they are damaged. Any cuttings that could restrict drainage flow shall be removed from culvert inlets at the time they are obstructed. If damaged property resulting from the Contractor's operations requires repair or replacement by the City, the cost of such work shall be deducted from monies due the Contractor. Mowing with rotary mowers shall be in such a manner that cuttings and debris are ejected away from the roadway. If debris is thrown or carried onto the paved surface by mowing or trimming operations, the Contractor shall immediately remove the debris from the roadway. If the Contractor fails to immediately remove debris, the City may have the debris removed by City forces and deduct the cost of the work from monies due the Contractor.

Extreme caution and appropriate safety measures shall be taken when it is necessary for the equipment to cross traffic lanes. Mowers shall cross any bridge in the same direction as traffic. An escort shall be provided.

When equipment is not in use, it shall be parked or stored off the pavement or shoulder of the highway in an inconspicuous location no less than 30 feet from the edge of pavement, or as directed by the City.

Should a Contractor choose to sublet a job or portion of a job to another Contractor, the City's approval, in writing, is required. The Contractor performing the work must have the required proof of liability insurance and workman's compensation insurance on file with the City. Such approved subletting of work does not alter the completion dates specified in the Contract.

Advance Warning Signs: The Contractor shall furnish portable signs in accordance with the Manual on Uniform Traffic Control Devices to notify the traveling public of mowing, trimming, edging and litter removal operations. The Contractor shall place these signs along the highway during any operation involving litter removal, mowing, trimming or edging and shall remove them immediately after the operation ceases.

The signs used shall be diamond shaped with black letters on an orange, reflective background with a black border. The Contractor's signs shall not be mounted to street signs, permanent traffic

signs, ARDOT signs, posts, power poles, or other infrastructure along the roadway.

Whenever mowers are operating, or trimming work is being done, the signs shall be a minimum size of 36" x 36", and the words on the signs shall be MOWERS WORKING AHEAD (W21-8) with a minimum letter size of five (5) inches.

When litter removal only is being done the signs used shall be a minimum size of 36" x 36", and the words on the signs shall be ROAD WORK AHEAD (W20-1) with a minimum letter size of five (5) inches. The Contractor may utilize a truck mounted flashing beacon in lieu of signs.

These signs shall be mounted on the shoulder at the beginning points of the operation for both directions of travel. Signs shall be mounted so that the bottom of the sign is not less than one (1) foot above the pavement edge. Higher mounting heights are desirable. Litter removal, mowing, and trimming operations shall not extend more than one (1) mile beyond the advance warning signs. As operations advance, the warning signs shall be advanced so as to maintain the operations within one (1) mile after the advance warning signs. Additional signs may be used to extend operations.

Advance warning signs will not be measured or paid for separately, but will be considered included in the unit prices bid per acre for Removal and Disposal of Litter and for Mowing and Trimming.

Safety Apparel for Workers: All workers shall be provided with high visibility safety apparel meeting the Performance Class 2 or 3 requirements of ANSI/ISEA 107-2004, "American National Standard for High-Visibility Safety Apparel and Headwear", in accordance with regulations for workers on Federal Aid Highways.

Failure to wear safety apparel while working on the right-of-way is considered a major safety violation and the contractor will be warned. A second major safety violation will result in suspension of work.

Contractor Liability: The Contractor must assume full liability (not just the deductible) for hazards to the general public and traffic that might be created by the mowing operation and save harmless the Arkansas Highway Commission and the ARDOT, the City of Bentonville and their employees in all respects.

The Contractor shall procure and maintain at its sole cost and expense, for the life of the Contract, Workman's Compensation Insurance and General Public Liability Insurance providing bodily injury, including death, personal injury, and property damage coverage with a minimum limit of at least \$1,000,000 per occurrence and a general aggregate limit of at least \$2,000,000. Valid certificate of insurance including name of insurance agent and agent's phone number must be furnished to the City's Purchasing office at time of bid submittal if not already on file. Failure to provide such certification at time of bid will result in void bid forfeiture of bid bond. Each policy or its declaration pages shall provide that the policy shall not be materially changed or canceled until the City has been given at least 30 days advance notice in writing. If any policy is canceled during the duration of the work, a satisfactory replacement policy shall be in force, with notice and evidence of insurance to the City, prior to the effective date of cancellation of the former policy.

Additionally, failure to furnish written notice, 30 days in advance, of cancellation or change in the policy, during any mowing cycle, will result in the termination of the Contract and the Contractor will be placed in default status.

The Contractor must furnish the City with the name, address, and phone number of the person to be contacted in case of damage to vehicles or other property caused by the Contractor's operations. This information and the Contractor's insurance agent may be provided to claimants who contact the City with an alleged claim.

Public Relations and Contractor's Responsibilities: Work on State highways and City streets may occasionally require contact with the traveling public, adjacent property owners, etc. Contractor shall have a representative on site that can converse with the traveling public, ARDOT and City personnel at all times work is being performed. It is required that such contacts be at all times courteous and professional. Rude, vulgar behavior and language by the Contractor, Contractor's employees and subcontractors toward these individuals and City employees shall not be tolerated and may result in termination of Contract.

Qualification Provision for Award: Contractors who are apparent low bidders will be notified and will be required to submit a list of available or planned mowing equipment and personnel for the City to determine if adequate resources are available to complete the Contract within the time periods specified. Equipment resources will be evaluated by the City prior to award. Equipment list shall identify the year, make, model, capacity (HP/cutting width), operating hours, and performance (acres/day).

Contract award will be based on the capacity of the contractor to perform the work within the time periods specified in the Contract. Projects not awarded to the apparent low bidders may be awarded to the next lowest bidder.

Default and Termination of Contract: The City may give written notice of delay, neglect, or default to both the Contractor and the Surety if the Contractor:

Fails to perform work according to these specifications, or

Fails to begin work at the appropriate time within the time period specified, or

Fails to perform the work with sufficient resources to assure timely
completion, or

Fails to perform the work in accordance with the Contract requirements or neglects or
refuses to correct rejected or unacceptable work, or

Discontinues the prosecution of the work, without authority, and/or fails to resume work that
has been discontinued within a reasonable time after notice to do so, or

For any other cause whatsoever does not carry on the work in an acceptable manner.

If a Contractor is defaulted or quits a contract, or has a principal who is also principal of any firm, partnership, or corporation which has defaulted on another Contract, the Contractor, principal or persons previously working with said principal or Contractor will not be allowed to bid on another City mowing project for a period of twelve months.

Method of Measurement: Quantities for Mowing and Trimming, Edging, and Removal and Disposal of Litter, as shown in the attached Table A, shall be considered as final quantities and no further measurements will be made unless modified by the City, as described above, or upon evidence furnished by the Contractor, substantial variations exist between quantities shown in the attached table and actual quantities. Each mowing cycle will be measured separately. Areas may be reduced or removed for any or all mowing cycles due to construction activities or site conditions. Mowing areas shall be confirmed before starting the mowing cycle to ensure agreement on work and quantities for each cycle.

Removal and Disposal of Litter quantities will be the same quantities in the attached Table A designated for Mowing and Trimming. Removal and Disposal of Litter shall include the removal of litter before each mowing cycle (and after as necessary) within the designated mowing areas and the approved disposal of the litter. Quantities for Removal and Disposal of Litter will be measured separately for each mowing cycle.

Basis of Payment: Work completed and accepted under this item and measured as provided above will be paid for at the Contract unit price bid per acre for Mowing and Trimming, Edging, and Removal and Disposal of Litter which shall be full compensation for mobilization, furnishing all labor, equipment, tools, materials, and incidentals necessary to complete the work. Payments shall be made upon completion of work but no more than twice per month.

Payment will be made under:

ITEM	PAY UNIT
Removal and Disposal of Litter	Acre
Mowing and Trimming	Acre
Edging	Linear Foot

EXHIBIT B

CITY OF BENTONVILLE BID NO. 2018-02

REMOVAL AND DISPOSAL OF LITTER
AND MOWING AND TRIMMING OF
STATE HIGHWAY RIGHTS-OF-WAYS
WITHIN THE CITY OF BENTONVILLE CITY LIMITS

The City of Bentonville will receive sealed bids for the removal and disposal of litter and mowing and trimming of State highway rights-of-ways within the City of Bentonville city limits in accordance with the attached specifications for a period of one (1) year from the date of award with the option to adjust acreage and renew upon mutual agreement of the parties for up to three (3) consecutive years. Bidders shall also acknowledge current Arkansas Department of Transportation (ARDOT) specifications for removal and disposal of litter and mowing and trimming highway right-of-way for divided and non-divided highways. If the above referenced specifications disagree, the most stringent specification shall govern.

A mandatory pre-bid meeting will be conducted at 10:00 AM, Tuesday, February 6, 2018, in the 2nd floor conference room of the Municipal Works Complex located at 3200 SW Municipal Drive, Bentonville. Sealed bids will be received until 2:00 PM, Thursday, February 15, 2018, at the Purchasing Agent's Office on the first floor of City Hall located at the address below:

City of Bentonville
Purchasing Agent
117 West Central Avenue
Bentonville, Arkansas 72712

Bids shall be in a sealed envelope marked "Bid No. 2018-02 - Removal and Disposal of Litter and Mowing and Trimming of State Highway Rights-of-Ways within the City of Bentonville City Limits".

A bid bond in the amount of \$500.00 is required of all bidders at the time of bid opening or bid will be rejected. A cashier's check in the amount of \$500.00 is acceptable in lieu of a bid bond; however, personal and company checks are NOT acceptable as a bid bond. A performance bond in the amount of \$1,000.00 will be required of the successful bidder prior to providing services. Personal and company checks are NOT acceptable as performance bonds.

in compliance with the bid invitation and subject to all conditions thereof and the referenced specifications, the undersigned offers and agrees to furnish all items upon which prices are quoted, at the prices opposite each item.

Company Name: Luttrell Enterprises Name (Type or Print): Bobby Luttrell
Address: 1810 W. Lexington Title: Owner
City: Fayetteville Phone: 479-841-0143
State: AR E-mail: luttrellent@gmail.com
Federal Tax ID or SSN: 431 17 2828 Sign: [Redacted]
copied) and in ink.

Unsigned bids will be rejected.

Project Location: The project generally follows the areas listed below

1. SW 14th Street – SE 14th Street (Hwy 102) from western city limit to eastern city limit.
2. SW Regional Airport Blvd. (Hwy 12) from SE Walton Blvd to Shell Road.
3. SW Rainbow Lane from S. Walton Blvd to SW Regional Airport Blvd. (Hwy 12).
4. S. Walton Blvd. – SE Walton Blvd. from W. Central Ave. to I-49.
5. N. Walton Blvd. from W. Central to NW 15th Street.
6. SW I Street (Hwy 112) from SW Regional Airport Blvd. to approximately 1,000 ft. south of SW 41st Street.
7. N. Water Tower Road from E. Battlefield north to end of road.
8. SE 28th Street and I-49 Interchange – slopes west of I-49 from road to toe of slopes.
9. E. Battlefield Blvd and I-49 – slopes adjacent to overpass.
10. SE Walton Blvd and I-49 Interchange all areas except median.
11. SE 14th Street (Hwy 102) and I-49 Interchange all areas except median.
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Actual acreage may vary with each cycle dependent on construction activities, weather conditions, and specific site conditions within mowing areas, etc. Any change in mowing area will be agreed to in writing between parties prior to the adjusted mowing cycle.

Bids will be considered based on per cycle cost of litter removal plus mowing and trimming plus edging. Use Table A in the specifications to calculate total bid and enter totals from Table A in the appropriate space below.

Bid prices shall include all costs of performing this contract, but shall exclude taxes.

1. Removal and Disposal of Litter	Total Price \$ <u>1440.00</u>
2. Mowing and Trimming of Highway Right-of-Way	Total Price \$ <u>8005.00</u>
3. Edging Curb and Sidewalk	Total Price \$ <u>16,367.75</u>
	Grand Total \$ <u>25,812.50</u>

Table A
City of Baltimore
Removal and Disposal of Lanes
Moving and Triangling, Edging of State Highway Right-of-Ways
Within the City of Baltimore, City Limits

ID	Street Name	Side	Starting Point	End Point	Linear Feet	Acres**	Edging			Moving			Triangling			Total
							Use Case	Use Case	Use Case	Use Case	Use Case	Use Case	Use Case	Use Case	Use Case	
1	SW 14th St - SE 14th St (May 12)	South	Greenhouse Road	VI Region Drive	24,000	0.5	15.2	1.2	10.1	1.1	24.6	1.1	1.0	1.0	2.0	2.0
		North	SW 14th St - SE 14th St (May 12)	VI Region Drive	24,000	0.5	15.2	1.2	10.1	1.1	24.6	1.1	1.0	1.0	2.0	2.0
2	SW Regional Airport Blvd (May 12)	South	SW Regional Airport Blvd (May 12)	SE Western Blvd	10,300	0.3	3.2	1.1	1.3	1.1	3.4	1.1	1.1	1.1	2.2	2.2
		North	SW Regional Airport Blvd (May 12)	SE Western Blvd	10,300	0.3	3.2	1.1	1.3	1.1	3.4	1.1	1.1	1.1	2.2	2.2
3	SW Regional Ave	West	SW Regional Ave	SW Regional Airport Blvd (May 12)	600	0.2	2.5	1.1	1.1	1.1	2.7	1.1	1.1	1.1	2.2	2.2
		East	SW Regional Ave	SW Regional Airport Blvd (May 12)	600	0.2	2.5	1.1	1.1	1.1	2.7	1.1	1.1	1.1	2.2	2.2
4	SE Western Blvd - SE Western Blvd	West	SW Regional Airport Blvd (May 12)	SW Regional Airport Blvd (May 12)	22,000	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
		East	SW Regional Airport Blvd (May 12)	SW Regional Airport Blvd (May 12)	22,000	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
5	N Western Blvd	West	SW Regional Airport Blvd (May 12)	SW Regional Airport Blvd (May 12)	6,300	0.3	2.1	1.1	1.1	1.1	2.3	1.1	1.1	1.1	2.3	2.3
		East	SW Regional Airport Blvd (May 12)	SW Regional Airport Blvd (May 12)	6,300	0.3	2.1	1.1	1.1	1.1	2.3	1.1	1.1	1.1	2.3	2.3
6	SW 14th St (May 12)	West	SW Regional Airport Blvd (May 12)	SW Regional Airport Blvd (May 12)	2,700	0.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
		East	SW Regional Airport Blvd (May 12)	SW Regional Airport Blvd (May 12)	2,700	0.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
7	N Western Blvd	West	SW Regional Airport Blvd (May 12)	SW Regional Airport Blvd (May 12)	6,300	0.3	2.1	1.1	1.1	1.1	2.3	1.1	1.1	1.1	2.3	2.3
		East	SW Regional Airport Blvd (May 12)	SW Regional Airport Blvd (May 12)	6,300	0.3	2.1	1.1	1.1	1.1	2.3	1.1	1.1	1.1	2.3	2.3
8	SE 20th Street and 14th	West	SW Regional Airport Blvd (May 12)	SW Regional Airport Blvd (May 12)	2,700	0.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
		East	SW Regional Airport Blvd (May 12)	SW Regional Airport Blvd (May 12)	2,700	0.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
9	SE Western Blvd (14th)	West	SW Regional Airport Blvd (May 12)	SW Regional Airport Blvd (May 12)	2,700	0.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
		East	SW Regional Airport Blvd (May 12)	SW Regional Airport Blvd (May 12)	2,700	0.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
10	SE Western Blvd (14th)	West	SW Regional Airport Blvd (May 12)	SW Regional Airport Blvd (May 12)	2,700	0.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
		East	SW Regional Airport Blvd (May 12)	SW Regional Airport Blvd (May 12)	2,700	0.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
11	SE 14th St (May 12) 14th Street	West	SW Regional Airport Blvd (May 12)	SW Regional Airport Blvd (May 12)	2,700	0.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
		East	SW Regional Airport Blvd (May 12)	SW Regional Airport Blvd (May 12)	2,700	0.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
12	East Conduit Ave (May 12) 14th Street	West	SW Regional Airport Blvd (May 12)	SW Regional Airport Blvd (May 12)	2,700	0.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
		East	SW Regional Airport Blvd (May 12)	SW Regional Airport Blvd (May 12)	2,700	0.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
Totals:							143,100	104.5	1,190	1,190	1,190	1,190	1,190	1,190	1,190	1,190

*Linear Feet for one side in one direction. Edging may require 3 passes on one side for curb and left side of sidewalk.
**Acres for linear moving areas is linear feet x 1/2 with. Columns, inch, offset, etc. have not been submitted.

Total Edging = Linear Removed Total + Moving Total + Edging Total = 2,772,720

Exhibit C



CERTIFICATE OF LIABILITY INSURANCE

LUTTENT-01

JCURTIS

 DATE (MM/DD/YYYY)
 02/26/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Stms & Renner Insurance 1200 East Stearns St. Suite 5 PO Box 9930 Fayetteville, AR 72703		CONTACT NAME: PHONE (A/C, No, Ext): (479) 684-4100 FAX (A/C, No): (479) 684-4111 E-MAIL ADDRESS:	
INSURED Luttrell Enterprises 6866 W. Wedington Dr. Fayetteville, AR 72704		INSURER(S) AFFORDING COVERAGE INSURER A: Foremost Insurance Co NAIC # 11185 INSURER B: Amtrust North America 19879 INSURER C: INSURER D: INSURER E: INSURER F:	

COVERAGES		CERTIFICATE NUMBER:		REVISION NUMBER:		
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
INSR LTR	TYPE OF INSURANCE	ADDITIONAL INSURER	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PROJECT ☐ LOC OTHER:		SCP03532647	04/04/2017	04/04/2018	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$ MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY ☐					COMBINED SINGLE LIMIT (Per accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB ☐ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☐ Y/N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	WWC3237983	12/04/2017	12/04/2018	PER STATUTE ☐ OTHER ☐ E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ 100,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER City of Bentonville 117 W Center Bentonville, AR 72712	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
---	--

ACORD 25 (2016/03)

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CHECK ALL THAT APPLY			
X	Bid Award	Bid #	2018-006
	Budget Adjustment		
	Change Order		
	Informational		
	Ordinance		
	Resolution		
	Other		

AGENDA FORM

CITY COUNCIL MEETING OF:

March 13, 2018

Submitted by:

Mike Bender

Department

Public Works Director

Phone

271-6873

ACTION REQUIRED:

Staff recommends City Council approves awarding Bid No. 2018-006 to Williams Tractor of Fayetteville, AR for 4x4 Cab Tractor for City brush hog mowing in an amount of \$9,950.00 plus tax per year. This lease replaces an expired lease for the same purpose. This lease is for 2 years with the option to extend for 2 additional 1-year terms provided budget is allocated and both parties agree. This is a budgeted item for 2018.

COST TO CITY:

Cost of this Request: \$10,895

Additional Budget Amount

☐ One time amount

☐ Continuing O and M

Previously Budgeted	\$	15,000
Funds Expended to Date		-
Remaining Budget		15,000
Budget Adjustment		-
Remaining After Adjustment	\$	15,000

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712
www.bentonvillear.com



PLEASE RECYCLE



Memo



To: City Council, Mayor McCaslin

From: Mike Bender

CC:

Date: March 5, 2018

Re: Bid Award to Williams Tractor of Fayetteville, AR for brush hog 4x4 tractor

Staff recommends City Council award Bid No. 2018-006 to Williams Tractor of Fayetteville, Arkansas for a 4x4 cab tractor for brush hog activities on City properties in an amount of \$9,950.00 plus tax per year for a period of 2 years. This agreement is renewable up to 2 additional 1-year terms provided both parties agree to the existing conditions of the lease. This lease replaces an expired lease for the same service. The cost of the lease is \$10,895.25 per year with a total of \$21,790.50 for the 2-year period provided Council allocates the funding for the second year of the lease. The City budgeted \$15,000.00 for this year.

Thank you for your consideration of this request.

EQUIPMENT RENTAL AGREEMENT

This AGREEMENT, made and entered into at Rogers Arkansas this date of 3-1-2018
by and between _____

Williams Tractor of Fayetteville, Ar., hereinafter called LESSOR, and

City of Bentonville of Bentonville, hereinafter called LESSEE;

WITNESSETH: That in consideration of the payments and rentals hereinafter provided for, and of the terms and conditions hereof, the Lessor hereby agrees to lease and does lease to the Lessee, and the Lessee hereby agrees to lease from the Lessor, the following described equipment belonging to the Lessor, to wit:

EQUIPMENT LEASED (Kind of Machine, Make, Model, Serial Number, Description)			
MAKE	MODEL	SERIAL NO.	DESCRIPTION
New Holland	T5.110	ZGLC01792	4x4 Cab Tractor FT8797

Total Value \$ 80000

F.O.B. Lessor's place of business, or Bobcat of NWA

Above equipment to be used in Public Works operations on _____
at or near Bentonville Benton in the State of Arkansas
(Town) (County)

TERM OF LEASE: The term of this lease shall be for a period of 2 Years, beginning with the date of March 1 2018 and terminating the date of March 1 2020

Equipment delivered to Lessee: Date March 1 2018 Time 9 am a.m.-p.m. Hour meter reading or mileage 5 hrs.

Equipment returned to Lessor: Date _____ Time _____ a.m.-p.m. Hour meter reading or mileage _____

RENTAL RATES AND PAYMENT: The rental rates set forth in this contract do not include sales, use or occupational taxes. If and when such taxes are incurred by law, these amounts shall be added to the rental payments due under this contract.

A. If the equipment is leased on a monthly basis, the Lessee agrees to pay for use of the equipment, rental as follows:

\$ _____ payable with order and covering first month's rental, _____ and the balance payable in advance on the _____ day of each month in _____ installments of \$ _____ each commencing with the date of _____

B. If the equipment is leased on an acreage, ton, mileage or any basis other than time, the rate shall be \$ _____ per _____

with order plus deposit of \$ _____, receipt of which is hereby acknowledged by Lessor, and the balance of \$ _____ becoming due and payable _____ or upon return of equipment to Lessor's place of business,

C. If this equipment is leased on a quarterly or seasonal basis, the Lessee agrees to pay a total of \$ 9950 plus tax in rental as follows: \$ 9950 plus tax payable with order, receipt of which is hereby acknowledged by Lessor; and the balance payable

in 1 installments of \$ 9950 each due and payable on 15th of Each February if The Lease is Extended after the First Year.

In the event that all the best efforts of the lessee have been exhausted and funds are still not appropriated for the continued future payments of lease obligations, then the lessee may terminate the lease without further obligation or penalty.

Rental payments shall be made to Lessor at Lessor's address above set forth except that, if Lessee is notified to do so by Lessor or his assignee, payments shall be made to such assignee.

ADDITIONAL RENT: It is contemplated that the equipment will be operated for not more than 700 Hours Per Year hours in any one day;

_____ hours in any one week; _____ hours in any one month and Lessee agrees that he will pay additional rental at pro rata the applicable daily, weekly or monthly rate, for each hour the equipment is used in excess of such time. If equipment is leased for more than thirty (30) days, the additional rent for excess hours shall be paid on the first day of the month following such use, which rent shall be credited on the monthly installments of rent due hereunder in the inverse order of their due date.

If there is an hour meter furnished, Lessee agrees to keep it connected to the equipment and in good working condition at all times, and is to be used as the conclusive basis of the number of hours of operation.

PRIVILEGE OR PURCHASE OPTION: Lessee is granted an option to purchase the equipment leased hereunder for the sum of \$ _____, This option must be exercised on or before the date of _____ and the balance due paid in cash. Option

to purchase shall not be deemed exercised until Lessee's (buyer's) written notification to that effect is received by Lessor (seller). All rentals previously received shall be credited at _____ % to apply on the purchase price. This lease must be in good standing before the option can be exercised, and the option is nontransferable.

No alteration or modification of this Lease is valid unless in writing and signed by the parties hereto. Lessee acknowledges receipt of a signed copy hereof.

ALL TERMS AND CONDITIONS STATED ON THE REVERSE HEREOF ARE A PART OF THIS CONTRACT.

IN WITNESS WHEREOF, the parties hereto have on the day and year first above written hereunto set their hands and seals.

BY SIGNING THIS LEASE, LESSEE AGREES TO THE TERMS AND CONDITIONS SET FORTH ON THE FACE AND REVERSE SIDE HEREOF. ANY DIFFERENT OR ADDITIONAL TERMS, WHETHER WRITTEN OR OTHERWISE, ARE HEREBY OBJECTED TO AND SHALL HAVE NO LEGAL FORCE OR APPLICABILITY WHATSOEVER.

SAFETY CERTIFICATION I have read this Equipment Rental Agreement and certify that the information contained herein is true and correct. I certify that at the time of delivery of the leased equipment, I was instructed in the proper and safe operation of the equipment, its safety features and the purposes for which it was designed to be used. I further certify that, at the time of delivery, all applicable safety features of the leased equipment were installed and operational.

LESSEE City of Bentonville Arkansas

By _____

By _____

Witness _____

Witness _____

Phone No. _____

ROYAL 528 (REV 5/99)

Date Accepted and Approved _____

LESSOR **WILLIAMS TRACTOR, INC.**

By Gary Green



CHECK ALL THAT APPLY		
	Bid Award	Bid #
	Budget Adjustment	
x	Change Order	
	Informational	
	Ordinance	
	Resolution	
	Other	

AGENDA FORM

CITY COUNCIL MEETING OF:

March 13, 2018

Submitted by:

Bryan Wick

Department

Engineering

Phone

696-0227

ACTION REQUIRED:

Staff recommends that the City Council approves a reconciliation change order for Elm Tree & HWY 72 W Intersection Improvements. The final contract amount is \$107,518.51 less than the currently contracted amount of \$976,633.75. J. Johnson Construction also finished more than 50 days ahead of schedule and per the contract will receive the maximum incentive of \$40,000.00. The final contract amount including incentive pay is \$909,115.25.

COST TO CITY:

Cost of this Request: (\$67,518.50)

Additional Budget Amount

☒ One time amount

☐ Continuing O and M

Previously Budgeted	\$ 976,633.75
Funds Expended to Date	775,813.73
Remaining Budget	200,820.02
Budget Adjustment	(67,518.50)
Remaining After Adjustment	\$ 133,301.52

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712
www.bentonvillear.com



PLEASE RECYCLE



Memorandum



To: Mayor and City Council

From: Bryan Wick, Project Manager

Date: Monday, March 05, 2018

Re: Reconciliation Change Order for Elm Tree & HWY 72W Intersection Improvements

Elm Tree & HWY 72W Intersection Improvements project is now complete. A reconciliation change order is needed to adjust the final values of the contract.

Original Contract Amount -	\$943,158.75
Change Order #1 -	\$26,375.00
Change Order #2 -	\$7,100.00
Reconciliation Change Order -	(\$107,518.51)
Incentive Payment -	\$40,000
New Contract Amount -	\$909,115.25

Staff recommends that the Mayor and City Council approve of the reconciliation change order to finalize the Elm Tree & HWY 72W Intersection Improvement project.

Please contact me with any questions or concerns regarding the project. My telephone number is (479) 696-0227 or I can be reached via email at bwick@bentonvillear.com.

ELM TREE INTERSECTION IMPROVEMENTS

FINAL PAYMENT APPLICATION AND CHANGE ORDER RECONCILIATION**CITY OF BENTONVILLE****BID NO. 16-05**

THE CONTRACTOR CERTIFIES THAT (1) TITLE TO ALL WORK, MATERIALS, AND EQUIPMENT INCORPORATED IN THE WORK, OR OTHERWISE LISTED IN OR COVERED BY THIS AND ALL PREVIOUS PAY ESTIMATES WILL PASS TO THE OWNER AT TIME OF PAYMENT FREE AND CLEAR OF ALL LIENS, CLAIMS, SECURITY INTERESTS AND ENCUMBRANCES (EXCEPT SUCH AS ARE COVERED BY BOND ACCEPTABLE TO OWNER INDEMNIFYING OWNER AGAINST ANY SUCH LIEN, CLAIM, SECURITY INTEREST OR ENCUMBRANCE), AND (2) ALL WORK COVERED BY THIS PAY ESTIMATE IS IN ACCORDANCE WITH THE CONTRACT DOCUMENTS AND IS NOT DEFECTIVE.

SUBMITTED BY:

J. JOHNSON CONSTRUCTION

1300 MORSANI DRIVE

ROGERS, AR. 72756

J. JOHNSON CONSTRUCTION

SANDCREEK ENGINEERING

CITY OF BENTONVILLE

PAY ESTIMATE NUMBER:	4
DATE OF ESTIMATE:	3/5/2018
NOTICE TO PROCEED:	3/12/2017
CONTRACT DAYS:	230
CHANGE ORDER DAYS:	60
SUBSTANTIAL COMPLETION DATE:	12/26/2017
DAYS TO FINAL COMPLETION:	30
FINAL COMPLETION DATE:	1/24/2018

ACTUAL SUBSTANTIAL COMPLETION:	12/1/2017
ACTUAL FINAL COMPLETION:	12/5/2017
% CONTRACT TIME USED:	83.75%
% WORK COMPLETED:	100.00%
DAYS UNDER/OVER CONTRACT:	50

ORIGINAL CONTRACT AMOUNT:	\$ 943,158.75
APPROVED CHANGE ORDER:	\$ 33,475.00
RECONCILIATION CHANGE ORDER:	\$ (107,518.51)
FINAL CONTRACT AMOUNT:	\$ 869,115.25

TOTAL WORK TO DATE:	\$ 869,115.25
---------------------	---------------

MATERIALS ON HAND:	
LESS MATERIALS USED:	
SUBTOTAL:	\$ -

LESS RETAINAGE (0%):	\$ -
----------------------	------

MAX INCENTIVE DAYS:	50	
INCENTIVE/DAY:	\$ 800.00	\$ 40,000.00
DISINCENTIVE/DAY:	\$ 800.00	\$ -

AMOUNT DUE:	\$ 909,115.25
LESS PREVIOUS PAYMENTS:	\$ 775,813.73
DUE AND PAYABLE THIS PERIOD:	\$ 133,301.52

ITEM #	ITEM DESCRIPTION	UNITS	UNIT PRICE	PLAN QTY	FINAL QTY	CHANGE	DIFFERENCE	EARNED TO DATE
1	CUT (EXCAVATION FOR SUBGRADE, HAULED OFF-SITE)	CY	\$ 18.25	1283	1283	0.00	\$ -	\$ 23,414.75
2	SELECT FILL (IMPORTED FROM OFF-SITE)	CY	\$ 25.00	1350	1984.5	634.50	\$ 15,862.50	\$ 49,612.50
3	TRENCH SAFETY	LS	\$ 2,500.00	1	1	0.00	\$ -	\$ 2,500.00
4	SAW CUT	LF	\$ 6.50	1000	1000	0.00	\$ -	\$ 6,500.00
5	CONCRETE SIDEWALKS	SF	\$ 2.00	2425	2425	0.00	\$ -	\$ 4,850.00
6	CONCRETE CURB	LF	\$ 4.00	591	591	0.00	\$ -	\$ 2,364.00
7	CONCRETE PAVING	SF	\$ 10.00	496	496	0.00	\$ -	\$ 4,960.00
8	ASPHALT PAVING	SF	\$ 0.25	7770	7770	0.00	\$ -	\$ 1,942.50
9	STORM SEWER BOXES	EA	\$ 1,000.00	2	2	0.00	\$ -	\$ 2,000.00
10	STORM SEWER PIPES	LF	\$ 15.00	150	150	0.00	\$ -	\$ 2,250.00
11	MILLING	SF	\$ 2.00	11420	11420	0.00	\$ -	\$ 22,840.00
12	TRAFFIC SIGNAL REMOVAL	LS	\$ 10,000.00	1	1	0.00	\$ -	\$ 10,000.00
13	SIGNAGE REMOVAL	LS	\$ 6,000.00	1	1	0.00	\$ -	\$ 6,000.00
14	CLASS 7 AGGREGATE BASE COURSE	TON	\$ 32.00	383	455.77	72.77	\$ 2,328.64	\$ 14,584.64
15	2.5" HMAC BINDER COURSE	TON	\$ 150.00	153	153	0.00	\$ -	\$ 22,950.00
16	1.5" HMAC SURFACE COURSE	TON	\$ 130.00	92	266.13	174.13	\$ 26,119.50	\$ 39,919.50
17	TEMPORARY PAVEMENT PATCHING	LS	\$ 23,475.00	1	1	0.00	\$ -	\$ 23,475.00
18	CONCRETE PAVING (7")	SY	\$ 65.00	75	87	12.00	\$ 780.00	\$ 5,655.00
19	CONCRETE CURB AND GUTTER	LF	\$ 16.00	6090	1096.2	(4993.80)	\$ (79,900.80)	\$ 17,539.20
20	2" HMAC SURFACE COURSE (OVERLAY)	TON	\$ 140.00	140	242	102.00	\$ 14,280.00	\$ 35,880.00
21	WORK ZONE SAFETY MEASURES	LS	\$ 25,000.00	1	1	0.00	\$ -	\$ 25,000.00
22	CONSTRUCTION TRAFFIC CONTROL	LS	\$ 15,000.00	1	1	0.00	\$ -	\$ 15,000.00
23	TEMPORARY LANE STRIPING	LS	\$ 40,000.00	1	1	0.00	\$ -	\$ 40,000.00
24	PERMANENT TRAFFIC CONTROL SIGNAGE INSTALLATION	LS	\$ 15,000.00	1	1	0.00	\$ -	\$ 15,000.00
25	TRAFFIC CONTROL PLAN	LS	\$ 6,000.00	1	1	0.00	\$ -	\$ 6,000.00
26	CONCRETE SIDEWALK	SF	\$ 6.00	2640	2640	0.00	\$ -	\$ 15,840.00
27	CLASS 7 BASE (4")	TON	\$ 45.00	64	64	0.00	\$ -	\$ 2,880.00
28	ADA RAMPS AND PADS	EA	\$ 1,600.00	5	7	2.00	\$ 3,200.00	\$ 11,200.00
29	TRUNCATED DOMES	EA	\$ 400.00	5	5	0.00	\$ -	\$ 2,000.00
30	KEYSTONE RETAINING WALL	SF	\$ 28.00	804	683.4	(120.60)	\$ (3,376.80)	\$ 19,135.20
31	SOD	SY	\$ 4.50	1196	2559.44	1363.44	\$ 6,135.48	\$ 11,517.48
32	TOPSOIL	CY	\$ 50.00	150	150	0.00	\$ -	\$ 7,500.00
33	DIRECTIONAL ARROWS	EA	\$ 900.00	14	13	(1.00)	\$ (900.00)	\$ 11,700.00
34	STOP BARS	LF	\$ 100.00	50	50	0.00	\$ -	\$ 5,000.00
35	"ONLY"	EA	\$ 800.00	6	5	(1.00)	\$ (800.00)	\$ 4,000.00
36	PEDESTRIAN CROSSING	LF	\$ 100.00	135	145.8	10.80	\$ 1,080.00	\$ 14,580.00
37	SOLID DOUBLE LANE STRIPE	LF	\$ 4.00	385	727.65	342.65	\$ 1,370.60	\$ 2,910.60
38	SOLID LANE STRIPE	LF	\$ 3.00	75	372	297.00	\$ 891.00	\$ 1,116.00
39	DASHED LANE STRIPE	LF	\$ 2.50	335	70.35	(264.65)	\$ (661.63)	\$ 175.88
40	LANE TRANSITION	LS	\$ 2,500.00	1	1	0.00	\$ -	\$ 2,500.00
41	18" RCP	LF	\$ 80.00	148	149	1.00	\$ 80.00	\$ 11,920.00
42	24" RCP	LF	\$ 95.00	82	82	0.00	\$ -	\$ 7,790.00
43	18" RCP FES	EA	\$ 750.00	3	3	0.00	\$ -	\$ 2,250.00
44	24" RCP FES	EA	\$ 900.00	2	2	0.00	\$ -	\$ 1,800.00
45	JUNCTION BOX	EA	\$ 4,200.00	1	1	0.00	\$ -	\$ 4,200.00
46	CURB INLET (NO EXENTION)	EA	\$ 3,900.00	3	3	0.00	\$ -	\$ 11,700.00
47	SILT FENCE	LF	\$ 7.50	220	220	0.00	\$ -	\$ 1,650.00
48	12" STRAW WATTLE	LF	\$ 7.00	125	125	0.00	\$ -	\$ 875.00
49	INLET PROTECTION	EA	\$ 500.00	4	4	0.00	\$ -	\$ 2,000.00
50	CONCRETE WASHOUT	EA	\$ 1,000.00	3	3	0.00	\$ -	\$ 3,000.00
51	PORT-A-TOLJET	EA	\$ 1,800.00	1	1	0.00	\$ -	\$ 1,800.00
52	SCOURSTOP PANELS	EA	\$ 150.00	2	2	0.00	\$ -	\$ 300.00
53	RELOCATE EXISTING POST INDICATOR VALVE	EA	\$ 3,200.00	1	0	(1.00)	\$ (3,200.00)	\$ -
54	WATER VALVE (ADJUST)	EA	\$ 500.00	4	4	0.00	\$ -	\$ 2,000.00
55	WATER METER (ADJUST)	EA	\$ 750.00	4	4	0.00	\$ -	\$ 3,000.00
56	FIRE HYDRANT (ADJUST)	EA	\$ 3,000.00	1	0	(1.00)	\$ (3,000.00)	\$ -
57	TRANSFORMER PAD (ADJUST)	EA	\$ 1,000.00	1	1	0.00	\$ -	\$ 1,000.00
58	PULL BOX (ADJUST)	EA	\$ 750.00	3	3	0.00	\$ -	\$ 2,250.00
59	SIGNS (RELOCATE)	EA	\$ 300.00	6	6	0.00	\$ -	\$ 1,800.00
60	8" PVC SEWER LINE (INSTALLATION ONLY)	LF	\$ 120.00	61	70.15	9.15	\$ 1,098.00	\$ 8,418.00
61	FULL DEPTH STONE BACKFILL	TON	\$ 45.00	110	110	0.00	\$ -	\$ 4,950.00
62	SANITARY SEWER MANHOLE (6' <DEPTH<11')	EA	\$ 4,000.00	1	1	0.00	\$ -	\$ 4,000.00
63	ADJUST MANHOLE RIM	EA	\$ 2,500.00	1	1	0.00	\$ -	\$ 2,500.00
64	CORE EXISTING MANHOLE	EA	\$ 3,000.00	1	1	0.00	\$ -	\$ 3,000.00
65	6" PVC C-900 WATER PIPE	LF	\$ 75.00	37	37	0.00	\$ -	\$ 2,775.00
66	6" TAPPING SLEEVE	EA	\$ 2,500.00	1	1	0.00	\$ -	\$ 2,500.00
67	6" GATE VALVE	EA	\$ 1,200.00	1	1	0.00	\$ -	\$ 1,200.00
68	6" X 12" TEE	EA	\$ 1,100.00	1	1	0.00	\$ -	\$ 1,100.00
69	CUT AND CAPP EXISTING 6" LINE	EA	\$ 900.00	1	1	0.00	\$ -	\$ 900.00
70	8" PVC C-900 WATER PIPE	LF	\$ 80.00	41	41	0.00	\$ -	\$ 3,280.00

ITEM #	ITEM DESCRIPTION	UNITS	UNIT PRICE	PLAN QTY	FINAL QTY	CHANGE	DIFFERENCE	EARNED TO DATE	
71	8" TAPPING SLEEVE	EA	\$ 2,700.00	1	1	0.00	\$ -	\$ 2,700.00	
72	8" GATE VALVE	EA	\$ 1,250.00	1	1	0.00	\$ -	\$ 1,250.00	
73	8" X 12" TEE	EA	\$ 1,250.00	1	1	0.00	\$ -	\$ 1,250.00	
74	CUT AND CAP EXISTING 8" LINE	EA	\$ 1,200.00	1	1	0.00	\$ -	\$ 1,200.00	
75	12" DUCTILE IRON CLASS 50 WATER PIPE	LF	\$ 90.00	202	405	203.00	\$ 18,270.00	\$ 36,450.00	
76	12" TAPPING SLEEVE	EA	\$ 3,500.00	2	2	0.00	\$ -	\$ 7,000.00	
77	12" GATE VALVE	EA	\$ 1,600.00	3	2	(1.00)	\$ (1,600.00)	\$ 3,200.00	
78	12" X 12" TEE	EA	\$ 1,500.00	1	0	(1.00)	\$ (1,500.00)	\$ -	
79	CUT AND CAP EXISTING 12" LINE	EA	\$ 1,400.00	2	1	(1.00)	\$ (1,400.00)	\$ 1,400.00	
80	CLASS 7 FULL DEPTH BACKFILL (45 LF)	TON	\$ 65.00	55	55	0.00	\$ -	\$ 3,575.00	
601	MOBILIZATION	LS	\$ 20,000.00	1	1	0.00	\$ -	\$ 20,000.00	
SP & 701	SYSTEM LOCAL CONTROLLER TS2 TYPE 2 (8-PHASE)	EA	\$ 28,500.00	1	1	0.00	\$ -	\$ 28,500.00	
SP & 706	TRAFFIC SIGNAL HEAD LED (3-SECTION, 1 WAY)	EA	\$ 950.00	8	8	0.00	\$ -	\$ 7,600.00	
SP & 706	TRAFFIC SIGNAL HEAD LED (4-SECTION, 1 WAY)	EA	\$ 1,350.00	4	4	0.00	\$ -	\$ 5,400.00	
SP & 707	COUNTDOWN PEDESTRIAN SIGNAL HEAD LED	EA	\$ 1,350.00	4	4	0.00	\$ -	\$ 5,400.00	
708	TRAFFIC SIGNAL CABLE (5C/14 AWG)	LS	\$ 2,150.00	1	1	0.00	\$ -	\$ 2,150.00	
708	TRAFFIC SIGNAL CABLE (7C/14 AWG)	LS	\$ 1,515.00	1	1	0.00	\$ -	\$ 1,515.00	
708	TRAFFIC SIGNAL CABLE (20C/14 AWG)	LS	\$ 2,550.00	1	1	0.00	\$ -	\$ 2,550.00	
710	NON-METALLIC CONDUIT (3")	LS	\$ 9,400.00	1	1	0.00	\$ -	\$ 9,400.00	
710	NON-METALLIC CONDUIT (1.25")	LS	\$ 350.00	1	1	0.00	\$ -	\$ 350.00	
711	CONCRETE PULL BOX (TYPE 2 HD)	EA	\$ 850.00	2	2	0.00	\$ -	\$ 1,700.00	
714	TRAFFIC SIGNAL MAST ARM AND POLE WITH FOUNDATION (34')	EA	\$ 12,850.00	1	1	0.00	\$ -	\$ 12,850.00	
714	TRAFFIC SIGNAL MAST ARM AND POLE WITH SPECIALTY FOUNDATION (38')	EA	\$ 17,200.00	1	1	0.00	\$ -	\$ 17,200.00	
714	TRAFFIC SIGNAL MAST ARM AND POLE WITH FOUNDATION (50')	EA	\$ 21,000.00	1	1	0.00	\$ -	\$ 21,000.00	
715	TRAFFIC SIGNAL PEDESTAL POLE WITH FOUNDATION (15')	EA	\$ 2,435.00	1	1	0.00	\$ -	\$ 2,435.00	
SP & 733	VIDEO DETECTOR (CLR)	EA	\$ 3,125.00	4	4	0.00	\$ -	\$ 12,500.00	
733	VIDEO MONITOR (CLR)	EA	\$ 950.00	1	1	0.00	\$ -	\$ 950.00	
SP & 733	VIDEO PROCESSOR EDGE CARD (2 CAMERAS)	EA	\$ 7,995.00	2	2	0.00	\$ -	\$ 15,990.00	
733	VIDEO EDGE CARD EXTENDER	EA	\$ 700.00	1	1	0.00	\$ -	\$ 700.00	
SP & 733	VEHICLE DETECTOR RACK (16 CHANNEL)	EA	\$ 2,325.00	1	1	0.00	\$ -	\$ 2,325.00	
733	VIDEO CABLE	LS	\$ 3,500.00	1	1	0.00	\$ -	\$ 3,500.00	
SP	ELECTRICAL CONDUCTORS IN CONDUIT (2C/6 AWG EGC)	LS	\$ 450.00	1	1	0.00	\$ -	\$ 450.00	
SP	ELECTRICAL CONDUCTORS IN CONDUIT (1C/8 AWG EGC)	LS	\$ 825.00	1	1	0.00	\$ -	\$ 825.00	
SP	ELECTRICAL CONDUCTORS IN CONDUIT (1C/12 AWG EGC)	LS	\$ 150.00	1	1	0.00	\$ -	\$ 150.00	
SP	SERVICE POINT ASSEMBLY (2 CIRCUITS)	LS	\$ 1,750.00	1	1	0.00	\$ -	\$ 1,750.00	
SP	18" STREET NAME SIGN	EA	\$ 550.00	4	4	0.00	\$ -	\$ 2,200.00	
SP	EXISTING FIBER OPTIC CABLE TO BE RE-LOCATED IN CONDUIT	LS	\$ 10,000.00	1	1	0.00	\$ -	\$ 10,000.00	
BOND 1	PERFORMANCE BOND	LS	\$ 5,175.00	1	1	0.00	\$ -	\$ 5,175.00	
BOND 2	PAYMENT BOND	LS	\$ 5,175.00	1	1	0.00	\$ -	\$ 5,175.00	
CONT.	CONTINGENCY	LS	\$ 80,000.00	1	0	(1.00)	\$ (80,000.00)	\$ -	
CO-1	FIRE HYDRANT ASSEMBLY	EA	\$ 4,500.00	1	0	(1.00)	\$ (4,500.00)	\$ -	
CO-2	8" MJ BEND - 90 DEGREE	EA	\$ 1,100.00	1	0	(1.00)	\$ (1,100.00)	\$ -	
CO-3	8" MJ BEND - 45 DEGREE	EA	\$ 1,100.00	4	0	(4.00)	\$ (4,400.00)	\$ -	
CO-4	6" MJ BEND - 90 DEGREE	EA	\$ 975.00	1	0	(1.00)	\$ (975.00)	\$ -	
CO-5	6" MJ BEND - 45 DEGREE	EA	\$ 975.00	4	0	(4.00)	\$ (3,900.00)	\$ -	
CO-6	12" MJ BEND - 11.25 DEGREE	EA	\$ 1,300.00	2	0	(2.00)	\$ (2,600.00)	\$ -	
CO-7	12" MJ BEND - 22.5 DEGREE	EA	\$ 1,300.00	2	0	(2.00)	\$ (2,600.00)	\$ -	
CO-8	12" MJ BEND - 45 DEGREE	EA	\$ 1,300.00	2	0	(2.00)	\$ (2,600.00)	\$ -	
CO-9	CLARDY BATTERY BACKUP UPS	EA	\$ 7,100.00	1	1	0.00	\$ -	\$ 7,100.00	
ELM TREE INTERSECTION IMPROVEMENTS			PAY ESTIMATE NUMBER		4	4	0.00	\$ (107,518.51)	\$ 829,115.25



CHECK ALL THAT APPLY		
	Bid Award	Bid #
	Budget Adjustment	
	Change Order	
	Informational	
x	Ordinance	
	Resolution	
	Other	

AGENDA FORM

CITY COUNCIL MEETING OF:

March 13, 2018

Submitted by:

City Hall

Department

-

Phone

271-3112

ACTION REQUIRED:

ACTION REQUIRED: Approve an ordinance authorizing the Mayor and Clerk to enter into an agreement with Harness Roofing Inc., for certain repairs to City Hall, waiving the requirement of competitive bidding and declaring an emergency. We have been experiencing roof leaks at City Hall for several weeks. A temporary fix has been made but an immediate, permanent repair is recommended to stop water intrusion. In addition to this repair, the building will be evaluated by a professional for any environmental concerns related to the water damage.

COST TO CITY:

Cost of this Request: \$28,000

Additional Budget Amount

☐ One time amount

☐ Continuing O and M

Previously Budgeted	\$
Funds Expended to Date	
Remaining Budget	-
Budget Adjustment	-
Remaining After Adjustment	\$ -

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712
www.bentonvillear.com



PLEASE RECYCLE



REQUEST FOR WAIVER OF BID

Date	<u>3/13/2018</u>		
Requested by:	<u>City Hall</u>		
Department:	<u>City Hall</u>		
DESCRIPTION OF REQUEST:			
Type of Equipment:	<u>Roof repair</u>		
Year & Model:	<u></u>		
Serial #	<u></u>		
To Be Purchased From:	<u>Harness Roofing</u>		
	<u></u>		
	<u></u>		
Amount:	Base Amount:	\$	<u>28,000.00</u>
	Tax:		<u></u>
	*Other:		<u></u>
	TOTAL	\$	<u>28,000.00</u>
* List all other costs:			
JUSTIFICATION FOR REQUEST FOR WAIVER OF BID:			
This company is familiar with the roofing system having made 2 recent short term repairs. There is a lack of roofing companies willing to work on this type of roof.			
<u>Department Head</u>		<u>Director of Finance & Administration</u>	
Revised 6-18-99			



HARNES ROOFING, INC.

C² Customer Committed

www.barnesroofing.com

Arkansas Contractor's License #0018900417

Oklahoma Roofing Contractor Registration #8000044

4185 Treadco Drive * Springdale, AR 72762 * Phone 479.751.6649 * Fax 479.750.9081

DATE: 2-23-18

PROPOSAL: M&R

Harness Roofing, Inc. (hereinafter referred to as "HRI") proposes to perform and furnish the labor, materials, insurance, supervision, equipment and warranty (herein together referred to as the "Work") described herein for:

OWNER/CUSTOMER: City Of Bentonville
ADDRESS: 117 W Central Ave Bentonville AR
PROJECT: Repairs on 3 different sections of roof at City Hall

SCOPE OF WORK:

Section 1:

Mechanically attach cover board thru existing roof system into decking to bring roof to level on back of building(SEE GOOGLE MAP). Then install Base sheet over coverboard and then install white granulated cap sheet with cold adhesive and tie into existing roof system with new drip edge metal. Total price for section 1: \$9,343.00 In this price we will install a cricket in front of HVAC unit to divert water.

Section 2:

Mechanically attach cover board thru existing roof system into decking to bring roof to level on back of building(SEE GOOGLE MAP). Then install Base sheet over coverboard and then install white granulated cap sheet with cold adhesive and tie into existing roof system with new drip edge metal. Total price for section 2: \$7,856.00

Section 3:

Build up areas on South wall between crickets to help water run to scuppers by installing coverboard, base sheet and white granulated cap sheet with cold adhesive.

Total price for section 3 : \$9,821.00

EXCLUSIONS: Decking, interior protection, structure, HVAC units, Gutter and downspouts, coping metal, brick, Electrical and plumbing

CONTRACT PRICE: HRI shall perform the Work for:

Dollars \$ _____, in current funds.

TERMS AND CONDITIONS: The terms and conditions set forth on the following pages are a part of this proposal.

This Proposal is subject to revision or withdrawal by HRI for any reason until communication of acceptance and may be revised after communication of acceptance where an inadvertent error by HRI has occurred. This Proposal expires thirty (30) days after the date stated above unless otherwise agreed if not earlier withdrawn. Acceptance shall be subject to approval of credit department.

TH

By:

ACCEPTANCE:

The undersigned hereby accepts this Proposal and, intending to be legally bound hereby, agrees that this writing shall be a binding contract and shall constitute the entire contract.

Owner/Customer:

By:

Title:

Date:

TERMS AND CONDITIONS

1. **Nature of Work.** Harness Roofing, Inc. ("HRI") shall furnish the labor and material necessary to perform the work described herein or in the referenced contract documents. HRI does not provide design, engineering, consulting or architectural services. It is the Owner's responsibility to retain a licensed architect or engineer to determine proper design and code compliance, including a determination as to whether and what type of a vapor or air retarder is needed. If plans, specifications or other design documents have been furnished to HRI, Customer warrants that they are sufficient and conform to all applicable laws and building codes. HRI is not responsible for any loss, damage or expense due to defects in plans or specifications or building code violations unless such damage results from a deviation by HRI from what is specified. HRI is not responsible for condensation, moisture migration from the building interior or other building components, location or size of roof drains, adequacy of drainage, ponding on the roof, structural conditions or the properties of the roof deck or substrate on which HRI's roofing work is installed.
2. **Deck.** Customer warrants that structures on which HRI is to work are in sound condition and capable of withstanding roofing construction, equipment and operations. HRI's commencement of roof installation indicates only that HRI has visually inspected the surface of the roof deck for visible defects. HRI is not responsible for the structural sufficiency, quality of construction (including compliance with FMG criteria), undulations, fastening or moisture content of the roof deck or other trades' work or design.
3. **Concrete Decks.** In the event that roofing is to be installed over a concrete or other wet deck or substrate, the determination as to when the concrete or wet substrate is sufficiently cured and dried so that roofing materials can be installed without potential future adverse effect shall be made by the General Contractor in consultation with the concrete subcontractor, concrete manufacturer and design professional. HRI is not responsible to test or assess moisture content of the deck or substrate.
4. **Asbestos and Toxic Materials.** This proposal is based on HRI's not coming into contact with asbestos-containing or toxic materials ("ACM"). HRI is not responsible for expenses, claims or damages arising out of the presence, disturbance or removal of ACM. HRI shall be compensated for additional expenses resulting from the presence of ACM. Customer agrees to indemnify HRI from and against any liability, damages, losses, claims, demands or citations arising out of the presence of ACM.
5. **Payment.** Unless stated otherwise on the face of this proposal, Customer shall pay the contract price plus any additional charges for changed or extra work within ten (10) days of substantial completion of the Work. If completion of the Work extends beyond one month, Customer shall make monthly progress payments to HRI by or before the fifth (5th) day of each month for the value of Work completed during the preceding month, plus the value of materials suitably stored for the project. All sums not paid when due shall earn interest at the rate of 1-1/2% per month. HRI shall be entitled to recover from Customer all costs of collection incurred by HRI, including attorney's fees, resulting from Customer's failure to make proper payment when due. HRI's entitlement to payment is not dependent upon criteria promulgated by Factory Mutual Global, including wind uplift testing.
6. **Right to Stop Work.** The failure of Customer to make proper payment to HRI when due shall, in addition to all other rights, constitute a material breach of contract and shall entitle HRI, at its discretion, to suspend all work and shipments, including furnishing warranty, until full payment is made. The time period in which HRI shall perform the work shall be extended for a period equal to the period during which the Work was suspended, and the contract sum to be paid HRI shall be increased by the amount of HRI's reasonable costs of shut-down, delay and start-up.
7. **Insurance.** HRI will carry worker's compensation, automobile and commercial general liability (bodily injury and property damage) insurance. HRI will furnish a Certificate of Insurance, evidencing the types and amounts of its coverages, upon request. Customer shall purchase and maintain builder's risk and property insurance, including the labor and materials furnished by HRI, covering fire, extended coverage, malicious mischief, vandalism and theft on the premises to protect against loss or damage to material and equipment and partially completed work until the job is completed and accepted. Monies owed to HRI shall not be withheld by reason of any damage or claim against HRI covered by liability or property damage insurance maintained by HRI or claims covered under builder's risk insurance.
8. **Additional Insured.** If Customer requires and HRI agrees to name Customer or others as additional insureds on HRI's liability insurance policy, Customer and HRI agree that the naming of Customer or others as additional insureds is intended to apply to claims made against the additional insured to the extent the claim is due to the negligence of HRI and is not intended to make HRI's insurer liable for claims that are due to the fault of the additional insured.
9. **Interior Protection.** Customer acknowledges that re-roofing of an existing building may cause disturbance, dust or debris to fall into the interior. Customer agrees to remove or protect property directly below the roof in order to minimize potential interior damage. HRI shall not be responsible for disturbance, damage, clean up or loss to interior property that Customer did not remove or protect prior to commencement of roofing operations. Customer shall notify tenants of re-roofing and the need to provide protection underneath areas being re-roofed. Customer agrees to hold HRI harmless from claims of tenants who were not so notified and did not provide protection.

TERMS AND CONDITIONS

10. **Deck Repairs.** Any work required to replace rotten or missing wood or deteriorated decking shall be done on a labor and material or unit price basis as an extra unless specifically included in the scope of work.

11. **Damages and Delays.** HRI will not be responsible for damage done to HRI's work by others, including damage to temporary tie-offs. Any repairing of the same by HRI will be charged as an extra. HRI shall not be liable for liquidated or delay damages due to a delay in completion of the Project unless the delay was caused by HRI. HRI shall not be responsible for loss, damage or delay caused by circumstances beyond its reasonable control, including but not limited to acts of God, accidents, snow, fire, weather, vandalism, regulation, strikes, jurisdictional disputes, failure or delay of transportation, shortage of or inability to obtain materials, equipment or labor. In the event of these occurrences, HRI's time for performance under this proposal shall be extended for a time sufficient to permit completion of the Work.

12. **Roof Projections.** HRI will flash roof projections that are in place prior to installation of roofing or shown on the architectural plans provided to HRI. Penetrations not shown on the plans provided to HRI prior to submittal of this proposal or required after installation of roofing shall be considered an order for extra work, and HRI shall be compensated at its customary time and material rates for additional expense resulting from additional penetrations.

13. **Tolerances.** All labor and materials shall be furnished in accordance with normal industry standards and industry tolerances for uniformity, color, variation, thickness, size, weight, finish and texture. Specified quantities are intended to represent an average over the entire roof area.

14. **Wind Loads or Uplift Pressures.** Design Professional is responsible to design the work to be in compliance with applicable codes and regulations and to specify or show the work that is to be performed. HRI is not responsible for design, including calculation or verification of wind-load design. To the extent minimum wind loads or uplift pressures are required, HRI's bid is based solely on manufacturer's printed test results. HRI itself makes no representation regarding wind uplift capacity and assumes no liability for wind uplift.

15. **Fumes and Emissions.** Customer acknowledges that odors and emissions from roofing products will be released as part of the roofing operations to be performed by HRI. Customer shall be responsible for interior air quality, including controlling mechanical equipment, HVAC units, intake vents, wall vents, windows, doors and other openings to prevent fumes and odors from entering the building. Customer is aware that roofing products emit fumes, vapors and odors during the application process. Some people are more sensitive to these emissions than others. Customer shall hold HRI harmless from claims from third parties relating to fumes and odors that are emitted during the normal roofing process.

16. **Material Cost Escalation.** Steel products, asphalt, polyisocyanurate and other roofing products are sometimes subject to unusual price volatility due to conditions that are beyond the control or anticipation of HRI. If there is a substantial increase in these or other roofing products between the date of this proposal and the time when the work is to be performed, the amount of the contract may be increased to reflect the additional cost to HRI, upon submittal of written documentation and advance notice to Customer.

17. **Backcharges.** No backcharges or claims for payment of services rendered or materials and equipment furnished by Customer to HRI shall be valid unless previously authorized in writing by HRI and unless written notice is given to HRI within five (5) days of the event, act or omission which is the basis of the backcharge.

18. **Safety.** Owner warrants there will be no live power lines on or near the roof servicing the building where HRI will be working and that Owner will turn off any such power supplies to avoid an electrocution risk to HRI's employees. HRI's price is based upon there not being electrical conduit or other materials embedded within the roof assembly or attached directly to the underside or topside of the roof deck upon which HRI will be installing the new roof. Owner will indemnify HRI from personal injury and other claims and expenses if Owner fails to turn-off power so as to avoid injury to HRI's personnel or resulting from the presence of concealed electrical conduit and live electrical power. HRI is not responsible for costs of repair or damages, including disruption of service, resulting from damage to undisclosed or concealed electrical or other utility lines. Owner shall shut down roof located electronic equipment that emits or receives radio frequency waves while roofing contractor is to be working on the roof so that roofing personnel will not be subject to radio frequency waves or electromagnetic radiation while working on the roof and shall indemnify and hold HRI and its personnel harmless from any personal injury claims resulting from a failure by Owner to do so. HRI is not responsible for the safety of persons on the roof other than its own employees. Owner and general contractor agree to indemnify and hold HRI harmless, including attorney's fees, from claims for personal injury by persons or entities whom owner or general contractor have allowed or authorized to be on the roof.

19. **Availability of Site.** HRI shall be provided with direct access to the work site for the passage of trucks and materials and direct access to the roof. HRI shall not be required to begin work until underlying areas are ready and acceptable to receive HRI's work and sufficient areas of roof deck are clear and available and free from snow, water or debris to allow for continuous full operation. The expense of any extra trips by HRI to and from the job as a result of the job not being ready for the Work after HRI has been notified to proceed will be charged as an extra.

TERMS AND CONDITIONS

20. Warranty. HRI's work will be warranted by HRI in accordance with its standard warranty, which is made a part of this proposal and contract and incorporated by reference. A facsimile of HRI's standard warranty is attached or, if not, will be furnished upon request. HRI SHALL NOT BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES. The acceptance of this proposal by the Customer signifies his agreement that this warranty shall be and is the exclusive remedy against HRI.

A manufacturer's warranty shall be furnished to Customer if a manufacturer's warranty is called for on the face of this proposal. It is expressly agreed that in the event of alleged defects in the materials furnished pursuant to this contract, Customer shall have recourse only against the manufacturer of such material.

21. Existing Conditions. HRI is not responsible for leakage through the existing roof or other portions of the building that have not yet been reroofed by HRI.

22. Mold. HRI and Owner are committed to acting promptly so that roof leaks are not a source of potential interior mold growth. Owner will make periodic inspections for signs of water intrusion and act promptly including prompt notice to HRI if Owner believes there are roof leaks, to correct the condition. Upon receiving notice, HRI will make roof repairs at the Owner's expense. The Owner is responsible for monitoring any leak areas and for indoor air quality. HRI is not responsible for indoor air quality. Owner shall hold harmless and indemnify HRI from claims due to indoor air quality and resulting from a failure by Owner to maintain the building in a manner to avoid growth of mold. Customer agrees to indemnify and hold harmless HRI from claims brought by tenants and third parties arising from mold growth.

23. Material References. HRI is not responsible for the actual verification of technical specifications of product manufacturers; i.e., R-value or ASTM or UL compliance, but rather the materials used are represented as such by the material manufacturer.

24. Oil-canning. Metal roofing and especially lengthy flat-span sheet-metal panels often will exhibit waviness, commonly referred to as "oil-canning." The degree of oil-canning and the appearance of the panels will vary depending on factor such as the length and color of the panels, alloy, gauge, galvanizing process, substrate condition, and exposure to sunlight. Oil-canning pertains to aesthetics and not the performance of the panels and is not controlled by HRI. HRI is not responsible for oil-canning or aesthetics. Oil-canning shall not be grounds to withhold payment or reject panels.

25. Dispute Resolution. If a dispute shall arise between HRI and Customer with respect to any matters or questions arising out of or relating to this Agreement or the breach thereof, HRI and Customer will seek to mediate the dispute. If mediation is not successful, arbitration shall be administered by and conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association unless the parties mutually agree otherwise. This Agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in any Court having jurisdiction thereof. Any legal claim against HRI alleging any breach of this contract or negligence by HRI must be initiated no later than two (2) years after HRI performed the roofing installation covered by this contract.



ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE MAYOR AND THE CITY CLERK TO ENTER INTO AN AGREEMENT WITH HARNESS ROOFING, INC. FOR CERTAIN REPAIRS TO BENTONVILLE CITY HALL, WAIVING THE REQUIREMENT OF COMPETITIVE BIDDING AND DECLARING AN EMERGENCY.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF BENTONVILLE, ARKANSAS.

Section 1: That the Mayor and City Clerk be and are hereby authorized to enter into an agreement with Harness Roofing, Inc. for certain repairs to Bentonville City Hall, as set forth in the agreement attached hereto as Exhibit A.

Section 2: Because there is an immediate need for this repair, this company completed the recent temporary repair measures and is familiar with the roofing at City Hall and because of the lack of qualified providers willing to work on this type of roof, it would be neither practical nor feasible to advertise for competitive bidding, and that requirement is herein waived.

Section 3: That this Ordinance is necessary to preserve the public peace, health, safety and welfare, and because of such, an emergency is declared to exist, and this Ordinance shall be in full force and effect from the date of its passage and approval.

PASSED and APPROVED this ____ day of _____, 2018.

APPROVED:

MAYOR

ATTEST:

CITY CLERK