



BENTONVILLE CITY COUNCIL AGENDA

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

**Tuesday, November 12, 2019 6:00 p.m.
305 SW "A" Street**

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

**Tuesday, November 12, 2019 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: October 22, 2019**

AGENDA

1. An ordinance accepting the annexation of certain territory to the City of Bentonville, Arkansas, and making same a part of the City of Bentonville, and assigning same to wards. (Jones Annexation) **(Pages 4-29)**
2. Planning:
 - 2a. **Ordinance accepting a lot split of Lots 7, 8, & 9, Block F of Orchard Addition, Lamplighter Restorations, LLC, SE 6th Street & SE D Street, DN-4, Downtown Mixed-Use Residential.**
(Pages 34-37)
The Planning Commission voted 7-0, recommending approval.

A lot split of Lot 1, Block F of Orchard Addition, creating new Lots 7, 8, & 9. The plat dedicates a 15-foot utility easement along the rear of all three lots and additional right-of-way to meet the requirements of the Master Street Plan along Lots 8 and 9.
 - 2b. **Ordinance accepting a lot split of Lots 23 & 24 of Limestone Ranch, Stearman Revocable Trust, SW H Street, C-2, General Commercial.**
The Planning Commission voted 7-0, recommending approval.
(Pages 38-41)

A lot split of Lot 20 of Limestone Ranch Subdivision, creating new Lots 23 & 24. The plat dedicates additional utility easements on Lot 23.

- 2c. **Ordinance accepting a lot split of Lot 20 of Lefors Addition, Elvis & Janice Moody, NW 2nd Street, R-1, Single Family Residential.**
(Pages 42-45)

The Planning Commission voted 7-0, recommending approval.

A lot split of a part of Lot 4 of Lefors Addition, creating new Lot 20. The plat dedicates an additional 10-feet of utility easement. The plat dedicates additional right-of-way along NW 2nd Street to meet the requirements of the Master Street Plan.

- 2d. **Ordinance accepting a lot split of Lot 1 of Gateway Park North Subdivision, Glass Investments, LLC, SW Regional Airport Boulevard, I-1, Light Industrial.**

(Pages 46-51)

The Planning Commission voted 7-0, recommending approval.

A lot split creating Lot 1 of Gateway Park North Subdivision. The plat dedicates multiple utility easements of varying widths, additional right-of-way along SW Rainbow Farm Road, and a shared access easement for future development to the west.

- 2e. **Ordinance accepting a final plat of Preston Park Phase I.**

(Pages 52-55)

The Planning Commission voted 7-0, recommending approval.

A final plat to create Preston Park Phase I, a PRD Subdivision, which contains a total of 98 lots. A final inspection was completed and approved on October 29, 2019. All non-bondable items and guarantees of improvements are complete.

- 2f. **Ordinance changing real estate from A-1, Agricultural to R-2, Duplex & Patio-Home Residential, Todd & Brenda Elzey, 9549 Glen Road.**

(Pages 56-60)

The Planning Commission voted 7-0, recommending approval.

The Future Land Use Plan currently depicts this property as Medium Density Residential. These areas typically include townhouse or duplex residential properties with an inferred density of 8-12 units per acre. The proposed rezoning can potentially be justified due to the site's general compatibility with the Future Land Use Plan and surrounding uses.

3. Resolution accepting right-of-way dedication from Lot 34 of Dickson's Addition at 705 West Central Avenue. Right-of-way dedication was needed due to necessary sidewalk improvements as required by Article 1100, Section 1100.15 of the Land Development Code.
(Pages 61-67)

4. Approval a resolution allowing the Mayor and City Clerk to enter into a contract with Flintco, LLC for Construction Management Services for the Community Development Building. Utilizing a construction management firm during the design phase has shown be be beneficial by providing periodic evaluations and recommendations with reduces overall costs and streamlines scheduling.

(Pages 68-140)

- 5a. Resolution authorizing the Mayor and City Clerk to enter into an agreement with West Plaza Investment LLC, in the amount of \$3,385,000.00 including \$25,000.00 of earnest money, for the purchase of the West Plaza building located at 1000 SW 14th Street. This building will house the Utility Billing, Accounting/Purchasing, Human Resource and Information Technology departments. See the attached memo. **(Pages 141-153)**
- 5b. Approval of a budget adjustment related to the purchase of the West Plaza building located at 1000 SW 14th Street. The budget adjustment is for the purchase price and for costs related to feasibility study, appraisal, inspection and closing costs. **(Pages 154-155)**
- 6. Public hearing and ordinance vacating an Alley Right of Way and establishing Utility Easement located in Bentonville Original Subdivision to the City of Bentonville, Arkansas, Benton County, Arkansas. **(Pages 156-159)**
- 7. Resolution authorizing the Mayor and City Clerk to enter into an amended agreement with McClelland Consulting Engineers, Inc., for additional design items related to the Water Tower Road expansion project. **(Pages 160-164)**
- 8. Resolution allowing the Mayor to enter into an amended agreement with Morrison Shipley Engineers to update the fee schedule and add additional construction observation to the PIIP18-0002 - Town Vu Bridge Replacement project. **(Pages 165-171)**
- 9. A resolution for the Mayor and City Clerk to execute approval of assignment of an airport ground lease from TAR & DOK Development, LLC to Effectual Assets, LLC. Said lease is known as 2505 SW "I" Street, Bentonville, Arkansas. **(Pages 172-182)**
- 10. A resolution seeking Council approval to accept the proposed Bentonville Municipal Airport/Louise M. Thaden Field, Amended Turf (Grass) Runway 17/35 Written Operations Procedures. **(Pages 183-187)**
- 11. Approval of a resolution supporting Movista Inc. participation in the Tax Back Program (The Consolidated Incentive Act of 2003, Section 15-4-2706(d). The City's support of the resolution will have no fiscal impact on the City, but is required by the State of Arkansas as a component of Movista Inc. participation. **(Pages 188-195)**
- 12a. Change order approval from City Council for Parks and Recreation, in the amount of \$22,508.00, for additional fencing and fall safe material at the Citizens Park Playground. **(Pages 196-198)**
- 12b. Budget Adjustment approval from City Council for Parks and Recreation, in the amount of \$22,508.00, to recognize the expenses for change order for the Citizens Park Playground. **(Pages 199-201)**
- 13. Change order approval from City Council for Parks and Recreation, in the amount of \$10,000.00, for design work for the McCollum Sidepath Trail. **(Pages 202-204)**
- 14. Adjournment of City Council meeting to be followed by Committee of the Whole for discussion of the City of Bentonville's 2020 budget.



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

AGENDA FORM

CITY COUNCIL MEETING OF:

November 12, 2019

Submitted by:

Jim Wheelless

Department

Phone

271-3112

ACTION REQUIRED:

An Ordinance accepting the annexation of certain territory to the City of Bentonville, Arkansas, and making same a part of the City of Bentonville, and assigning same to wards. (Jones Annexation)

COST TO CITY:

Cost of this Request:

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 ACCEPTING THE ANNEXATION OF CERTAIN TERRITORY TO THE CITY OF BENTONVILLE, ARKANSAS, AND MAKING SAME A PART OF THE CITY OF BENTONVILLE, AND ASSIGNING SAME TO WARDS.

WHEREAS, petition was filed with the County Clerk of Benton County, Arkansas by all of the owners of the hereinafter described territory, said owners being listed in Exhibit "A" to this ordinance, praying that said territory be annexed to, and made a part of the City of Bentonville, Arkansas, and

WHEREAS, on the 26th day of September, 2019, the County Court of Benton County, Arkansas, entered an order authorizing annexation pursuant to § 14-40-609 of the Arkansas Code, finding that the petition met the requirements for annexation under that provision and directed the Clerk to forward the order to the Mayor of the City of Bentonville; and

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

Section 1. That the land described on the attached Exhibit "B," which includes both the territory sought to be annexed by the petitioners and the dedicated public roads and rights of way abutting or traversing the property proposed to be annexed, is territory contiguous to and adjoining the City of Bentonville, Arkansas, and the petition to annex that property is hereby granted and the property described in Exhibit "B" is hereby accepted as part of and annexed to and made a part of the City of Bentonville.

Section 2. That the above described territory shall be annexed to and made a part of Ward 2 of the City of Bentonville, and the same shall henceforth be a part of said ward as fully as existing parts of said ward.

Section 3. That the above described territory shall be zoned A-1, to be used in accordance with City zoning laws and the laws of the State of Arkansas.

Section 4: That this ordinance shall become effective 30 days from its passage and approval.

PASSED AND APPROVED THIS _____ DAY OF November, 2019.

APPROVED: _____
HON. STEPHANIE ORMAN, Mayor

ATTEST: _____
HON. LINDA SPENCE, City Clerk

Jones Annexation
EXHIBIT "A"

JONES, DANNY R & JO R

18-10167-001

JONES ANNEXATION
EXHIBIT "B"

Part of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 36, Township 20N, Range 31W, Benton County, Arkansas, and further described as follows.

Commencing at the NW Corner of said SE $\frac{1}{4}$ of the NW $\frac{1}{4}$.

Thence N89°58'16"E, 370.08';

Thence S0°08'09"E, 828.13';

Thence N89°46'47"E, 741.95';

Thence S0°13'27"E, 161.09';

Thence N89°46'55"E, 207.99';

Thence N89°46'55"E, 3.49';

Thence S0°12'06"E, 329.98';

Thence S89°46'58"W, 3.65';

Thence S89°46'58"W, 542.27' for the point of beginning.

Thence N0°03'37"W, 215.94';

Thence N86°40'43"E, 90.72';

Thence N82°45'08"E, 46.54';

Thence S24°43'20"E, 62.59';

Thence S60°23'24"E, 71.37';

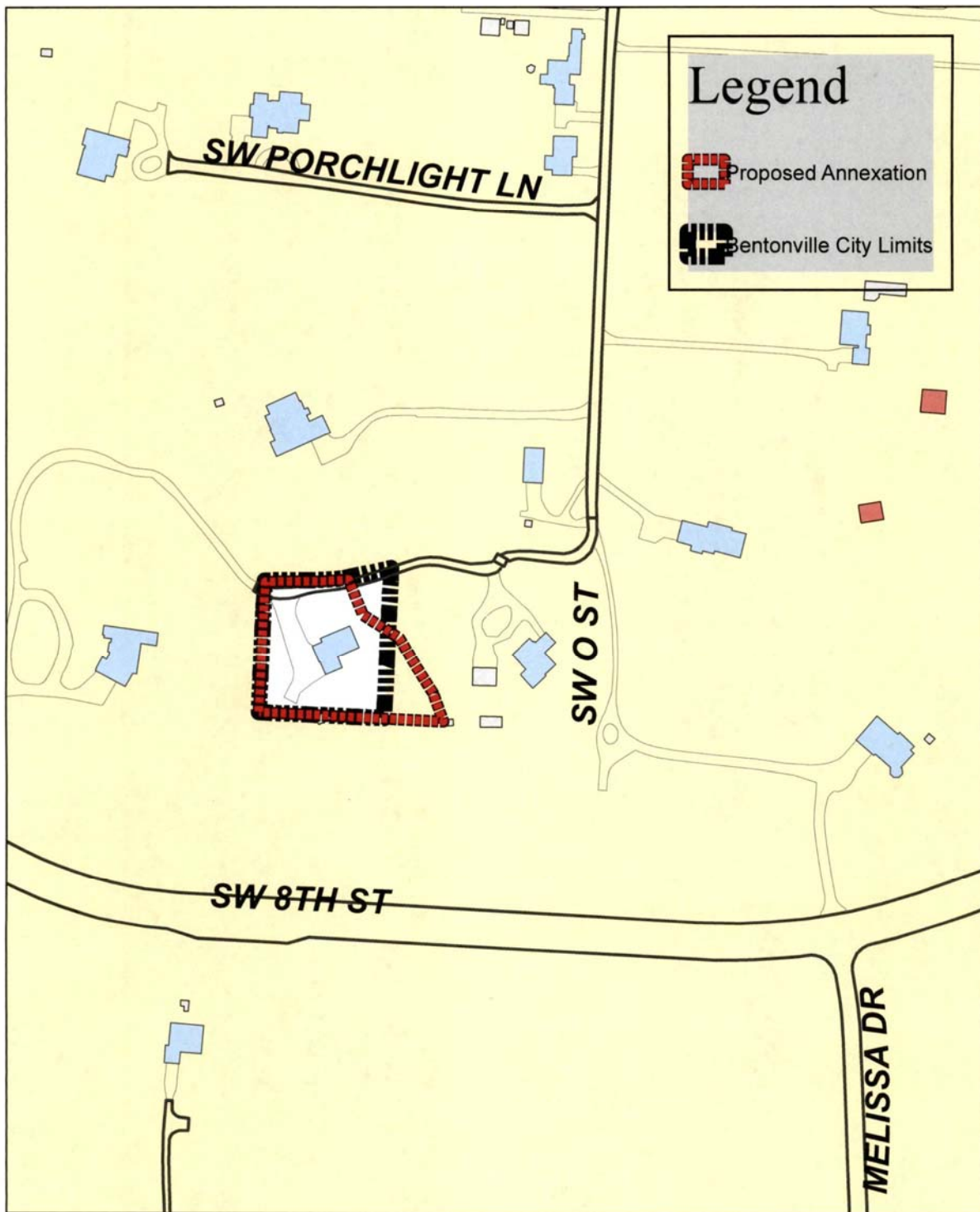
Thence S33°36'54"E, 53.36';

Thence S35°32'08"E, 52.90';

Thence S23°15'23"E, 50.12';

Thence S89°46'58"W, 305.26' to the point of beginning;

Containing 1.16 Acres more or less and all that part not currently in the City of Bentonville.



**Proposed Annexation
Jones
EXHIBIT 'A'**

1 inch = 200 feet



BENTON COUNTY

STATE OF ARKANSAS

RECEIVED OCT 02 2019

BETSY HARRELL

COUNTY CLERK & VOTER REGISTRAR

215 EAST CENTRAL, SUITE 217
BENTONVILLE, AR 72712-5373
479-271-1013
Fax: 479-271-1019

PROBATE COURT CLERK

COURTHOUSE, 102 N.E. "A" STREET
BENTONVILLE, AR 72712-5350
479-271-5727
FAX: 479-271-1712

September 26, 2019

Honorable Stephanie Orman
City of Bentonville
117 W. Central Ave
Bentonville, AR 72712

Re: In the Matter of Annexing to the City of Bentonville, Arkansas Certain
Territory Contiguous To Said City of Bentonville, Arkansas

Dear Mayor Orman:

The County has received and processed a proposed annexation pursuant to ACA § 14-40-609 related to annexations by 100% of the property owners. I am transmitting to you a copy of the documents relating to the proposed annexation for consideration by the Bentonville City Council.

If your council and you approve the annexation, please ask your clerk or recorder to return to me one (1) certified copy of the plat of the annexed property and one (1) certified copy of the ordinance or resolution approving the annexation so that I can send those on to the Secretary of State as required by the statute.

Please feel free to contact me if you have questions.

Sincerely,


BETSY HARRELL, County Clerk

enc

ROGERS OFFICE
2111 W. WALNUT
(479) 636-3727
FAX (479) 636-4922

ROGERS ARCHIVES
2111 W. WALNUT
(479) 636-1037
FAX (479) 636-1053

SILOAM SPRINGS OFFICE
707 S. LINCOLN
479-271-1013
FAX (479) 524-8534

FILED

2019 SEP 26 PM 3:33

BEISTY HARRELL
CO & PROBATE CLERK
BENTON COUNTY, AR

IN THE MATTER OF ANNEXING TO THE
CITY OF BENTONVILLE, ARKANSAS
CERTAIN TERRITORY CONTIGUOUS TO SAID
CITY OF BENTONVILLE, ARKANSAS

COUNTY COURT ORDER NO. CC 2019-16

ORDER AUTHORIZING ANNEXATION PURSUANT TO ACA § 14-40-609

I, Barry Moehring, County Judge of Benton County, having reviewed the attached petition for annexation and verification of petition, hereby find that the petition:

- 1) is in writing;
- 2) contains an attestation signed before a notary or notaries by the property owner or owners of the relevant property or properties confirming their desire to be annexed;
- 3) contains an accurate description of the relevant property or properties;
- 4) contains a letter or title opinion from a certified abstractor or title company verifying that the petitioners are all owners of record of the relevant property or properties;
- 5) contains a letter or verification from a certified surveyor or engineer verifying that the relevant property or properties are contiguous with the annexing city or town and that no enclaves will be created if the property or properties are accepted by the city or town – additionally a copy of the letter from the State of Arkansas GIS office approving the legal description for the annexation was provided; and
- 6) includes a schedule of services of the annexing city or town that will be extended to the area within three (3) years after the date the annexation becomes final.

The County Clerk is directed to forward a copy of this order and the related Petition to the Mayor of the City of BENTONVILLE.



HON. BARRY MOEHRING, County Judge

Date

09-26-19

2019 3297

FILED

2019 SEP 23 AM 8:14

BETSY HARRELL
CO & PROBATE CLERK
BENTON COUNTY, AR
CC 2019-16

IN THE MATTER OF ANNEXING TO THE
CITY OF BENTONVILLE, ARKANSAS
CERTAIN TERRITORY CONTIGUOUS TO SAID
CITY OF BENTONVILLE, ARKANSAS

VERIFICATION OF PETITION FOR ANNEXATION PURSUANT TO ACA § 14-40-609

We, Betsy Harrell, County Clerk of Benton County, and Roderick Grieve, County Assessor of Benton County, attest as follows:

Our offices have received the attached petition seeking annexation. The petition has been reviewed and we hereby verify that the petition:

- (A) is in writing;
- (B) contains an attestation signed before a notary or notaries by the property owner or owners of the relevant property or properties confirming the desire to be annexed;
- (C) contains an accurate description of the relevant property or properties;
- (D) contains a letter or title opinion from a certified abstractor or title company verifying that the petitioners are all owners of record of the relevant property or properties;
- (E) contains a letter or verification from a certified surveyor or engineer verifying that the relevant property or properties are contiguous with the annexing city or town and that no enclaves will be created if the property or properties are accepted by the city or town; and
- (F) include a schedule of services of the annexing city or town that will be extended to the area within three (3) years after the date the annexation becomes final.


HON. BETSY HARRELL, County Clerk


HON. RODERICK GRIEVE, County Assessor



FILED

2019 SEP 23 AM 8:14

GETSY HARRELL
CO & PROBATE CLERK
BENTON COUNTY, AR

Date: September 18, 2019
Subject: Proposed Annexation Checklist
CC 2019-16 Bentonville, AR

☒ (A) is in writing;

☒ (B) contains an attestation signed before a notary or notaries by the property owner or owners of the relevant property or properties confirming the desire to be annexed;

☒ (C) contains an accurate description of the relevant property or properties;

☒ (D) contains a letter or title opinion from a certified abstractor or title company verifying that the petitioners are all owners of record of the relevant property or properties;

☒ (E) contains a letter or verification from a certified surveyor or engineer verifying that the relevant property or properties are contiguous with the annexing city or town and that no enclaves will be created if the property or properties are accepted by the city or town; and

☒ (F) include a schedule of services of the annexing city or town that will be extended to the area within three (3) years after the date the annexation becomes final.

N/A [Additionally, we note that the legal description in (B) does not include in its description certain dedicated public roads and rights of way abutting or traversing the property to be annexed, the legal descriptions for which are included on the attached Exhibit "A"]

[REDACTED]
Michael D. Million
Manager – GIS-Mapping Dept.
Benton County Assessor's Office
Phone: 479-271-1037, ext. 7004
Email: michael.million@bentoncountyar.gov

FILED

2019 SEP 17 PM 1:51

BETSY HARRELL
CO. & PROBATE CLERK
BENTON COUNTY, AR

IN THE MATTER OF ANNEXING TO THE CITY
OF BENTONVILLE, ARKANSAS CERTAIN TERRITORY
CONTIGUOUS TO SAID CITY

NO. 2019-16

PETITION FOR ANNEXATION – 100 % OF OWNERS PETITIONING

DATE: 8-26-19

Come now the undersigned petitioners, and state as follows:

1. That we, owning 100% of the property in the following described area, do hereby petition, pursuant to A.C.A. §14-40-609, the City Council of Bentonville, Arkansas, to annex the following lands to the City of Bentonville, Arkansas.

Refer to Exhibit "A"

2. We further state that this petition is signed by one hundred percent (100%) of the real estate owners owning one hundred percent (100%) of the acreage in said area and that the area to be annexed does not contain property whose owners do not wish to have their property annexed.

3. That said property description herein is contiguous to and adjoining the present City of Bentonville city limits, as shown on the map attached hereto as Exhibit "B".

4. That no enclaves will be created if this petition is accepted and the territory annexed into the City of Bentonville.

5. That the following schedule of services shall be extended to the area by the City of Bentonville within three (3) years after the date the annexation becomes final:

All properties annexed into the City of Bentonville are provided with Police, Fire and EMS services.

Additional services such as water and sewer may be provided if readily available. Such services are provided in accordance with existing ordinances and terms of service, including but not limited to the payment of required fees, the necessary permits, inspections and approvals.

FILED

6. That a letter or title opinion from a certified abstractor or title company verifying that the petitioners are all owners of record of the relevant property or properties is attached hereto as Exhibit "C" and is made part of this petition as if set out word for word herein.

7. That a letter or verification from a certified surveyor or engineer verifying that the relevant property or properties are contiguous with the City of Bentonville and that no enclaves will be created if the property or properties are accepted by the City of Bentonville is attached hereto as Exhibit "D" and is made part of this petition as if set out word for word herein.

8. That each of the undersigned persons executing this petition has confirmed by their signature a desire that their property, which is included in the property described above, be annexed into the City of Bentonville.

FILED

I confirm my desire that property owned by me, which is to be included in a petition to annex property, be annexed into the City of Bentonville.

If the property being annexed is owned jointly, I attest that all owners of the property are signing a copy of this confirmation.

If the property is owned by a trust, I attest either that I have the authority to sign this confirmation on behalf of the trust, or that all persons required to do so by the trust are signing a copy of this confirmation.

If the property is owned by a corporation, limited liability company or other entity I attest either that I have the authority to sign this confirmation on behalf of the entity, or that all persons required to do so by the entity's governing documents are signing a copy of this confirmation.

Signature of Property Owner or
Legal Representative of Property Owner,
Petitioner

Danny R. Jones
Title, if applicable (i.e. Trustee,
(Managing Member, President,
Secretary)

18-10167-001

Parcel number of property to be annexed

ACKNOWLEDGMENT

State of Arkansas)
) ss.
County of Benton)

On this the 26 day of August, 2019, before me, the undersigned officer, personally appeared Danny R. Jones, known to me (or satisfactorily proven) to be the person whose name is subscribed above and acknowledged and attested that it was executed for the purposes therein apparent.

NOTARY PUBLIC

My Commission Expires:

2/17/28



FILED

2019 SEP 17 PM 1:51

I confirm my desire that property owned by me, which is to be included in a petition to annex property, be annexed into the City of Bentonville.

If the property being annexed is owned jointly, I attest that all owners of the property are signing a copy of this confirmation.

BETSY HARRELL
CLERK
BENTON COUNTY, AR

If the property is owned by a trust, I attest either that I have the authority to sign this confirmation on behalf of the trust, or that all persons required to do so by the trust are signing a copy of this confirmation.

If the property is owned by a corporation, limited liability company or other entity I attest either that I have the authority to sign this confirmation on behalf of the entity, or that all persons required to do so by the entity's governing documents are signing a copy of this confirmation.



Jo Rene Jones

Property Owner,

Title, if applicable (i.e. Trustee,
(Managing Member, President,
Secretary)

18-10167-001

Parcel number of property to be annexed

ACKNOWLEDGMENT

State of Arkansas)
) ss.
County of Benton)

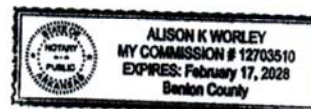
On this the 26 day of August, 2019, before me, the undersigned officer, personally appeared Jo Rene Jones, known to me (or satisfactorily proven) to be the person whose name is subscribed above and acknowledged and attested that it was executed for the purposes therein apparent.



NOTARY PUBLIC

My Commission Expires:

2/17/28



JONES ANNEXATION
EXHIBIT "A"

FILED

2019 SEP 17 PM 1:52

BETSY MADRELL
CO & PROBATE CLERK
BENTON COUNTY, AR

Part of the SE ¼ of the NW ¼ of Section 36, Township 20N, Range 31W, Benton County, Arkansas, and further described as follows.

Commencing at the NW Corner of said SE ¼ of the NW ¼.

Thence N89°58'16"E, 370.08';

Thence S0°08'09"E, 828.13';

Thence N89°46'47"E, 741.95';

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Thence S89°46'58"W, 542.27' for the point of beginning.

Thence N0°03'37"W, 215.94';

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Thence S60°23'24"E, 71.37';

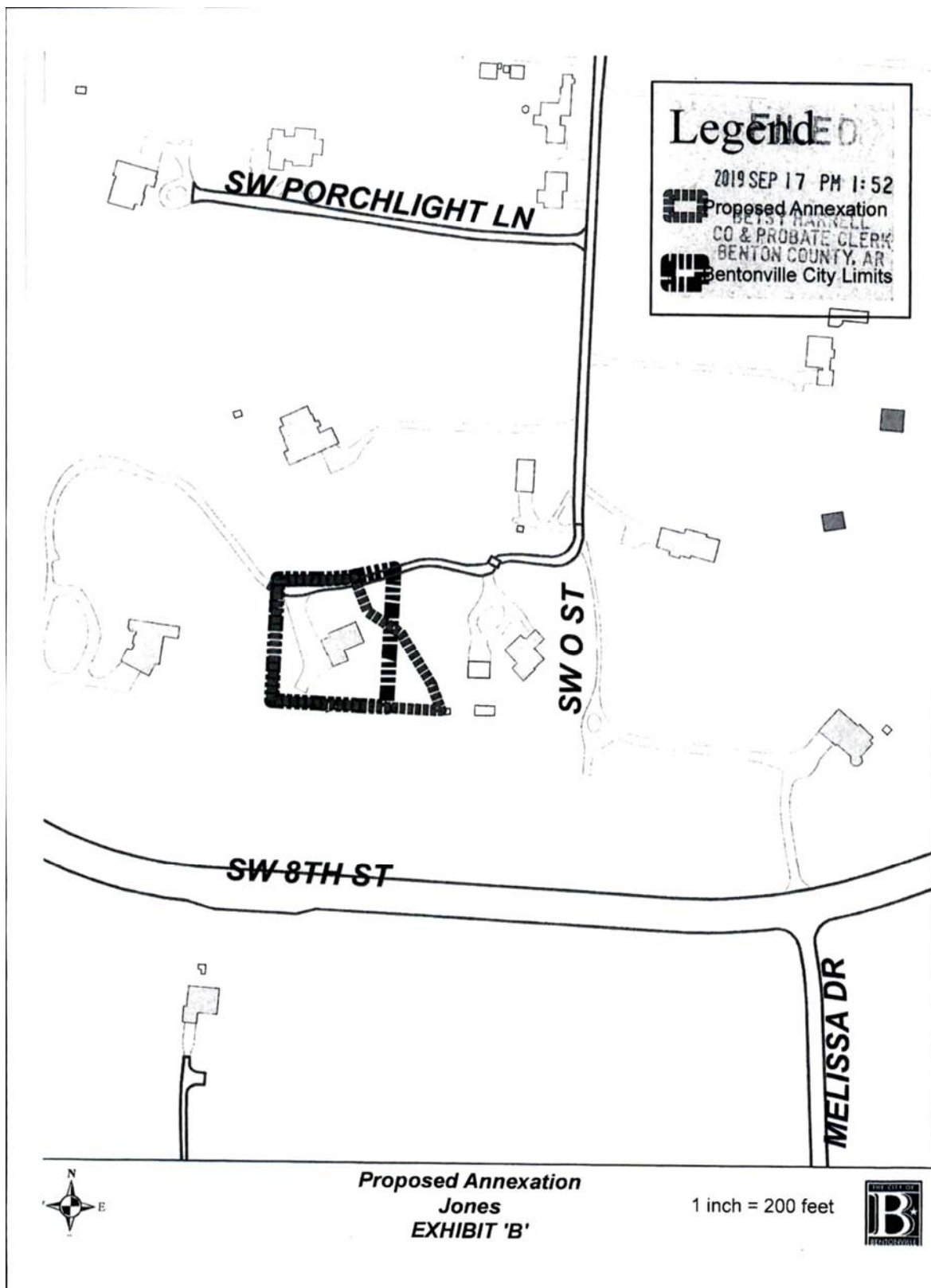
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Thence S35°32'08"E, 52.90';

Thence S23°15'23"E, 50.12';

Thence S89°46'58"W, 305.26' to the point of beginning;

Containing 1.16 Acres more or less and all that part not currently in the City of Bentonville.



Benton
216 W Sevier Street
Benton, AR 72015

Bentonville
300 SW 28th Street
Bentonville, AR 72712

Eureka Springs
70 S. Main Street, Suite 2
Eureka Springs, AR 72632

Fayetteville
1420 Augustine Lane, Suite 1
Fayetteville, AR 72703

Sheridan
206 N Rose Street
Sheridan, AR 72150



EXHIBIT "C"

First National
Title Company

Headquarters
First National Title Company
Little Rock
415 N McKinley Street Suite 1200
Little Rock, AR 72205

Faulkner County Title Company
A Division of
First National Title Company
Conway
711 Locust Street
Conway, AR 72034

Little Rock Title Company
A Division of
First National Title Company
Little Rock
1001 W. Markham Street #100
Little Rock, AR 72201

2019 SEP 17 PM 1:52
8 Wilson Farm Road, Suite A
Greenbrier, AR 72058
BETSY HANBELL
CO & PROBATE CLERK
BENTON COUNTY, AR

September 16, 2019

Greetings,

This letter is given in connection with what is understood to be an effort to voluntarily annex certain real property into the City of Bentonville. Based on our review, we verify that the persons listed in Exhibit C-1 to this letter are all the owners of record of the real property described in Exhibit C-2 to this letter.

Sincerely,

Steve Pangle

Benton County Manager

First National Title

www.firstnationaltitle.net

JONES ANNEXATION
EXHIBIT "C-1"

FILED

2019 SEP 17 PM 1:52

BETSY HARRELL
CO & PROBATE CLERK
BENTON COUNTY, AR

JONES, DANNY R & JO R

18-10167-001

JONES ANNEXATION

EXHIBIT "C-2"

FILED

2019 SEP 17 PM 1:52

BETSY HARRELL
CO & PROBATE CLERK
BENTON COUNTY, AR

Part of the SE ¼ of the NW ¼ of Section 36, Township 20N, Range 31W, Benton County, Arkansas, and further described as follows.

Commencing at the NW Corner of said SE ¼ of the NW ¼.

Thence N89°58'16"E, 370.08';

Thence S0°08'09"E, 828.13';

Thence N89°46'47"E, 741.95';

Thence S0°13'27"E, 161.09';

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Thence S60°23'24"E, 71.37';

Thence S33°36'54"E, 53.36';

Thence S35°32'08"E, 52.90';

Thence S23°15'23"E, 50.12';

Thence S89°46'58"W, 305.26' to the point of beginning;

Containing 1.16 Acres more or less and all that part not currently in the City of Bentonville.

EXHIBIT "D"

FILED

Greetings:

2019 SEP 17 PM 1:52

This letter is given in connection with what is understood to be an effort to voluntarily annex certain real property (Jones Annexation) into the City of Bentonville. I am a licensed Professional Engineer in the State of Arkansas. Based on my review, I verify that the real property described in Exhibit D-1 to this letter is contiguous with the City of Bentonville and that no enclaves will be created if the described property is accepted by the City of Bentonville.

BETSY HARRILL
CLERK & PROBATE CLERK
BENTON COUNTY, AR

Sincerely,

STATE OF
ARKANSAS
REGISTER
11416
TRAVIS W. MATLOCK
9-3-19

Travis Matlock, P.E.

JONES ANNEXATION

EXHIBIT "D-1"

FILED

2019 SEP 17 PM 1:52

Part of the SE ¼ of the NW ¼ of Section 36, Township 20N, Range 31W, Benton County, Arkansas, and further described as follows.

RETSY HARRELL
CLERK & PROBATE CLERK
BENTON COUNTY, AR

Commencing at the NW Corner of said SE ¼ of the NW ¼.

Thence N89°58'16"E, 370.08';

Thence S0°08'09"E, 828.13';

Thence N89°46'47"E, 741.95';

Thence S0°13'27"E, 161.09';

Thence N89°46'55"E, 207.99';

Thence N89°46'55"E, 3.49';

Thence S0°12'06"E, 329.98';

Thence S89°46'58"W, 3.65';

Thence S89°46'58"W, 542.27' for the point of beginning.

Thence N0°03'37"W, 215.94';

Thence N86°40'43"E, 90.72';

Thence N82°45'08"E, 46.54';

Thence S24°43'20"E, 62.59';

Thence S60°23'24"E, 71.37';

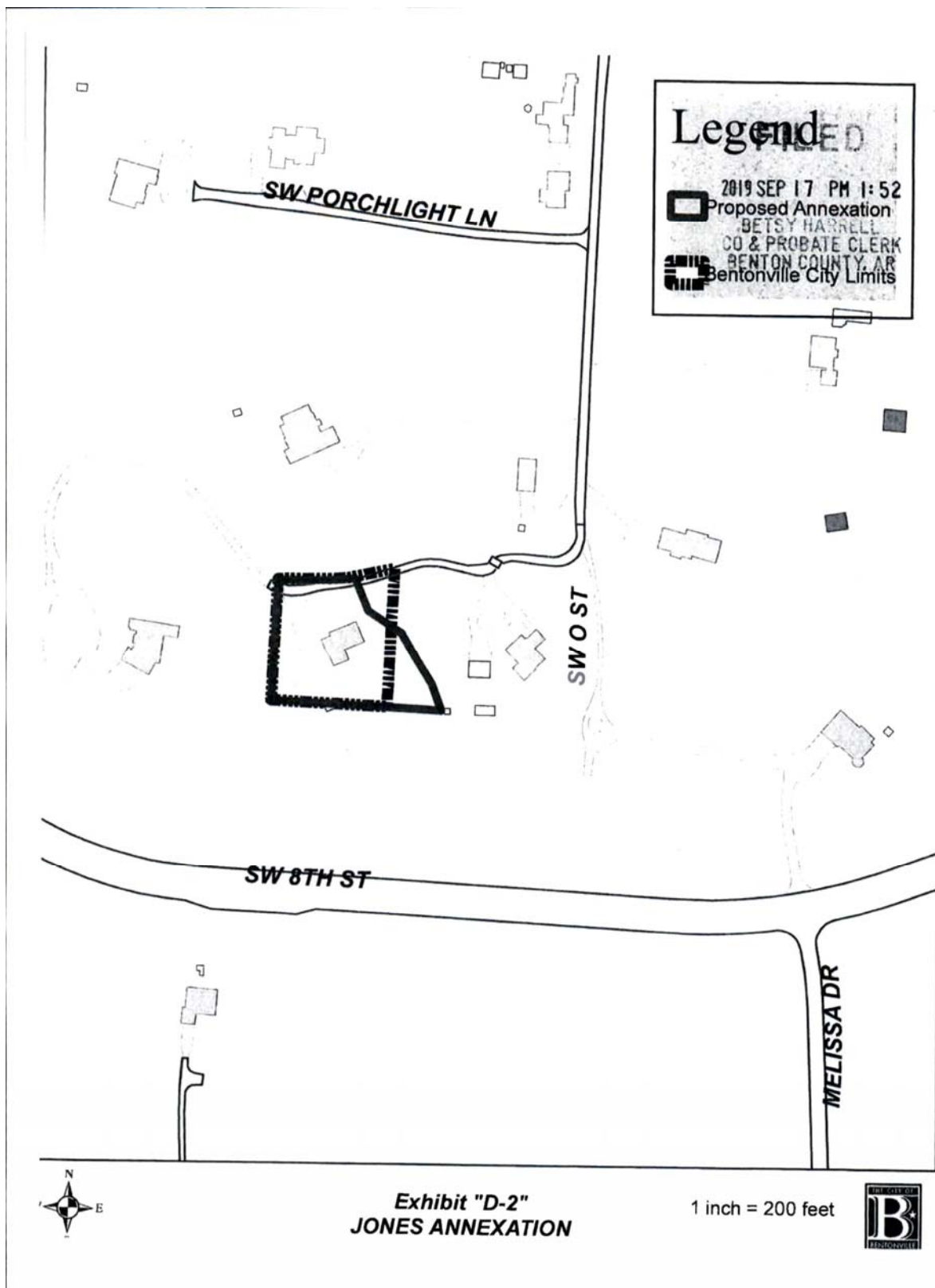
Thence S33°36'54"E, 53.36';

Thence S35°32'08"E, 52.90';

Thence S23°15'23"E, 50.12';

Thence S89°46'58"W, 305.26' to the point of beginning;

Containing 1.16 Acres more or less and all that part not currently in the City of Bentonville.





ARKANSAS GIS OFFICE

A Division of the Department of Transformation and Shared Services

FILED

2019 SEP 17 PM 1:52

BETSY HARRILL
CO & PROBATE CLERK
BENTON COUNTY, AR

September 3, 2019

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 "Jones Annexation" and located in Section 36, Township 20 North, Range 31 West. 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

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

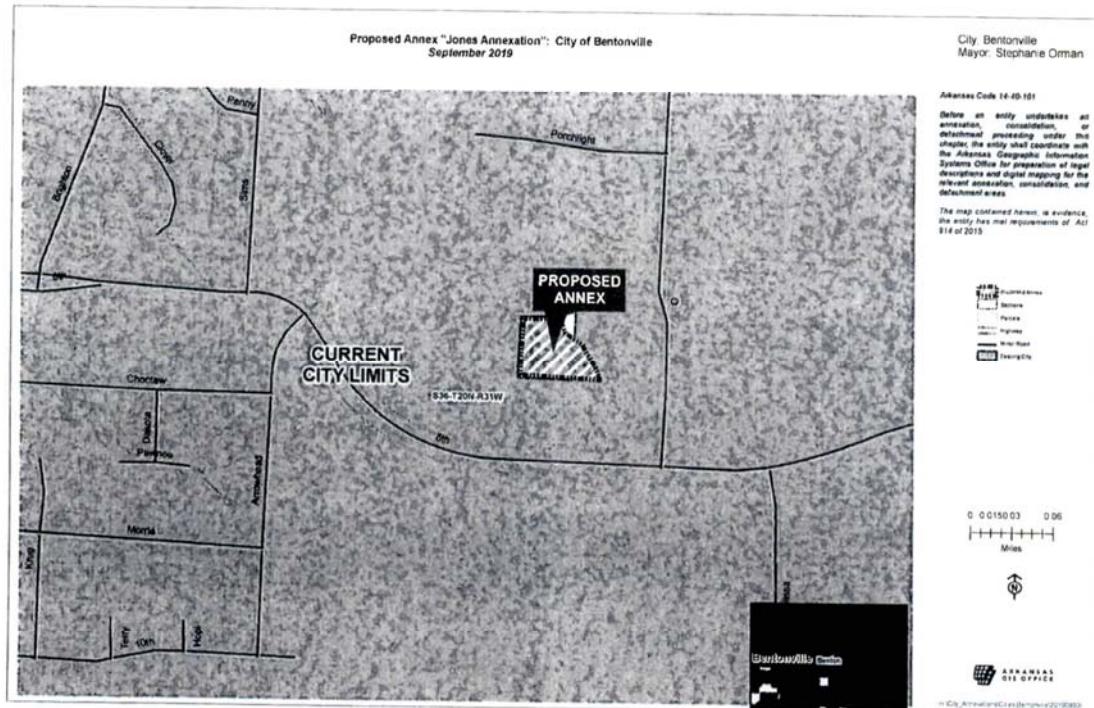
H:\City_Annexations\Cities\Bentonville\20190903\Doc\20190903_Bentonville_Annexation_Coordination_Letter.docx

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

FILED

2019 SEP 17 PM 1:52

BETSY HARKNELL
CO & PROBATE CLERK
BENTON COUNTY, AR



ANNEXATION-JONES

FILED

2019 SEP 17 PM 1:52

Part of the SE ¼ of the NW ¼ of Section 36, Township 20N, Range 31W, Benton County, Arkansas, and further described as follows.

BETSY HARNELL
CLERK & PROBATE CLERK
BENTON COUNTY, AR

Commencing at the NW Corner of said SE ¼ of the NW ¼.

Thence N89°58'16"E, 370.08';

Thence S0°08'09"E, 828.13';

Thence N89°46'47"E, 741.95';

Thence S0°13'27"E, 161.09';

Thence N89°46'55"E, 207.99';

Thence N89°46'55"E, 3.49';

Thence S0°12'06"E, 329.98';

Thence S89°46'58"W, 3.65';

Thence S89°46'58"W, 542.27' for the point of beginning.

Thence N0°03'37"W, 215.94';

Thence N86°40'43"E, 90.72';

Thence N82°45'08"E, 46.54';

Thence S24°43'20"E, 62.59';

Thence S60°23'24"E, 71.37';

Thence S33°36'54"E, 53.36';

Thence S35°32'08"E, 52.90';

Thence S23°15'23"E, 50.12';

Thence S89°46'58"W, 305.26' to the point of beginning;

FILED

2019 SEP 17 PM 1:51

BETSY HARRELL
CO & PROBATE CLERK
BENTON COUNTY, AR

September 17, 2019

Hon. Betsy Harrell, County Clerk
Benton County Administration Building
215 East Central
Bentonville, AR 72712

Re: JONES Annexation.

Dear Ms. Betsy Harrell:

This letter accompanies the voluntary annexation petition being filed today by me on behalf of the City of Bentonville. In addition to the petition, accompanying this letter, please find:

- 1) a copy of the Arkansas GIS Office approval of the legal description as provided for in § 14-40-101 of the Arkansas Code.

Item 1) is not required by the 100% annexation statute, but does show up elsewhere in the Code so we thought it appropriate to provide it.

I am aware the County Judge has authority to require adjoining road right-of-way be added to this annexation. My review indicates there is no adjoining road right-of-way with respect to this proposed annexation.

Sincerely,



James M. Wheelless, GIS Coordinator
City of Bentonville

enc



City Council Agenda Items

For City Council Meeting of November 12, 2019

From the November 5, 2019 Planning Commission Meeting

- a. Ordinance accepting a lot split of Lots 7, 8, & 9, Block F of Orchard Addition, Lamplighter Restorations, LLC, SE 6th Street & SE D Street, DN-4, Downtown Mixed-Use Residential.**

The Planning Commission voted 7-0, recommending approval.

A lot split of Lot 1, Block F of Orchard Addition, creating new Lots 7, 8, & 9. The plat dedicates a 15-foot utility easement along the rear of all three lots and additional right-of-way to meet the requirements of the Master Street Plan along Lots 8 and 9.

- b. Ordinance accepting a lot split of Lots 23 & 24 of Limestone Ranch, Stearman Revocable Trust, SW H Street, C-2, General Commercial.**

The Planning Commission voted 7-0, recommending approval.

A lot split of Lot 20 of Limestone Ranch Subdivision, creating new Lots 23 & 24. The plat dedicates additional utility easements on Lot 23.

- c. Ordinance accepting a lot split of Lot 20 of Lefors Addition, Elvis & Janice Moody, NW 2nd Street, R-1, Single Family Residential.**

The Planning Commission voted 7-0, recommending approval.

A lot split of a part of Lot 4 of Lefors Addition, creating new Lot 20. The plat dedicates an additional 10-feet of utility easement. The plat dedicates additional right-of-way along NW 2nd Street to meet the requirements of the Master Street Plan.

- d. Ordinance accepting a lot split of Lot 1 of Gateway Park North Subdivision, Glass Investments, LLC, SW Regional Airport Boulevard, I-1, Light Industrial.**

The Planning Commission voted 7-0, recommending approval.

A lot split creating Lot 1 of Gateway Park North Subdivision. The plat dedicates multiple utility easements of varying widths, additional right-of-way along SW Rainbow Farm Road, and a shared access easement for future development to the west.

e. Ordinance accepting a final plat of Preston Park Phase I.

The Planning Commission voted 7-0, recommending approval.

A final plat to create Preston Park Phase I, a PRD Subdivision, which contains a total of 98 lots. A final inspection was completed and approved on October 29, 2019. All non-bondable items and guarantees of improvements are complete.

f. Ordinance changing real estate from A-1, Agricultural to R-2, Duplex & Patio-Home Residential, Todd & Brenda Elzey, 9549 Glen Road.

The Planning Commission voted 7-0, recommending approval.

The Future Land Use Plan currently depicts this property as Medium Density Residential. These areas typically include townhouse or duplex residential properties with an inferred density of 8-12 units per acre. The proposed rezoning can potentially be justified due to the site's general compatibility with the Future Land Use Plan and surrounding uses.



Consent Agenda Items

For Planning Commission meeting of November 5, 2019

Reviewer: Tyler Overstreet, Senior Planner, AICP

- ❖ At the Technical Review meeting held on October 29, 2019 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 7, 8, & 9, Block F, Orchard Addition, Lamplighter Restorations, LLC, SE 6th Street and SE D Street, DN-4, Downtown Mixed-Use Residential, (LS19-0031)

A Lot Split of Lot 1, Block F of Orchard Addition, creating new Lots 7, 8, & 9. The plat dedicates a 15-foot utility easement along the rear of all three lots and additional right-of-way to meet the requirements of the Master Street Plan along Lots 8 and 9.

(Please click on this link to access the vicinity map for this item: <http://geo.bentonvillear.com/mgweb/PZpending/>)

Lot Split: Lots 23 & 24, Limestone Ranch Subdivision, Stearman Revocable Trust, SW H Street, C-2, General Commercial, (LS19-0032)

A Lot Split of Lot 20 of Limestone Ranch Subdivision, creating new Lots 23 & 24. The plat dedicates additional utility easements on Lot 23. This Lot Split is related to the Mustard Seed Childcare Large Scale Development (LSD19-0048)

(Please click on this link to access the vicinity map for this item: <http://geo.bentonvillear.com/mgweb/PZpending/>)

Lot Split: Lot 20, Lefors Addition, Elvis and Janice Moody, NW 2nd Street, R-1, Single-Family Residential, (LS19-0033)

A Lot Split of a part of Lot 4, Lefors Addition, creating new Lot 20. The plat dedicates an additional 10-feet of utility easement. The plat dedicates additional right-of-way along NW 2nd Street to meet the requirements of the Master Street Plan.

(Please click on this link to access the vicinity map for this item: <http://geo.bentonvillear.com/mgweb/PZpending/>)

Lot Split: Lot 1, Gateway Park North Subdivision, Glass Investments, LLC, SW Regional Airport Boulevard, I-1, Light Industrial (PLA19-0033)

A Lot Split creating Lot 1, Gateway Park North Subdivision. The plat dedicates multiple utility easements of varying widths, additional right-of-way along SW Rainbow Farm Road, and a shared access easement for future development to the west. This Lot Split is related to the Gateway Park North Large Scale Development (LSD19-0049)

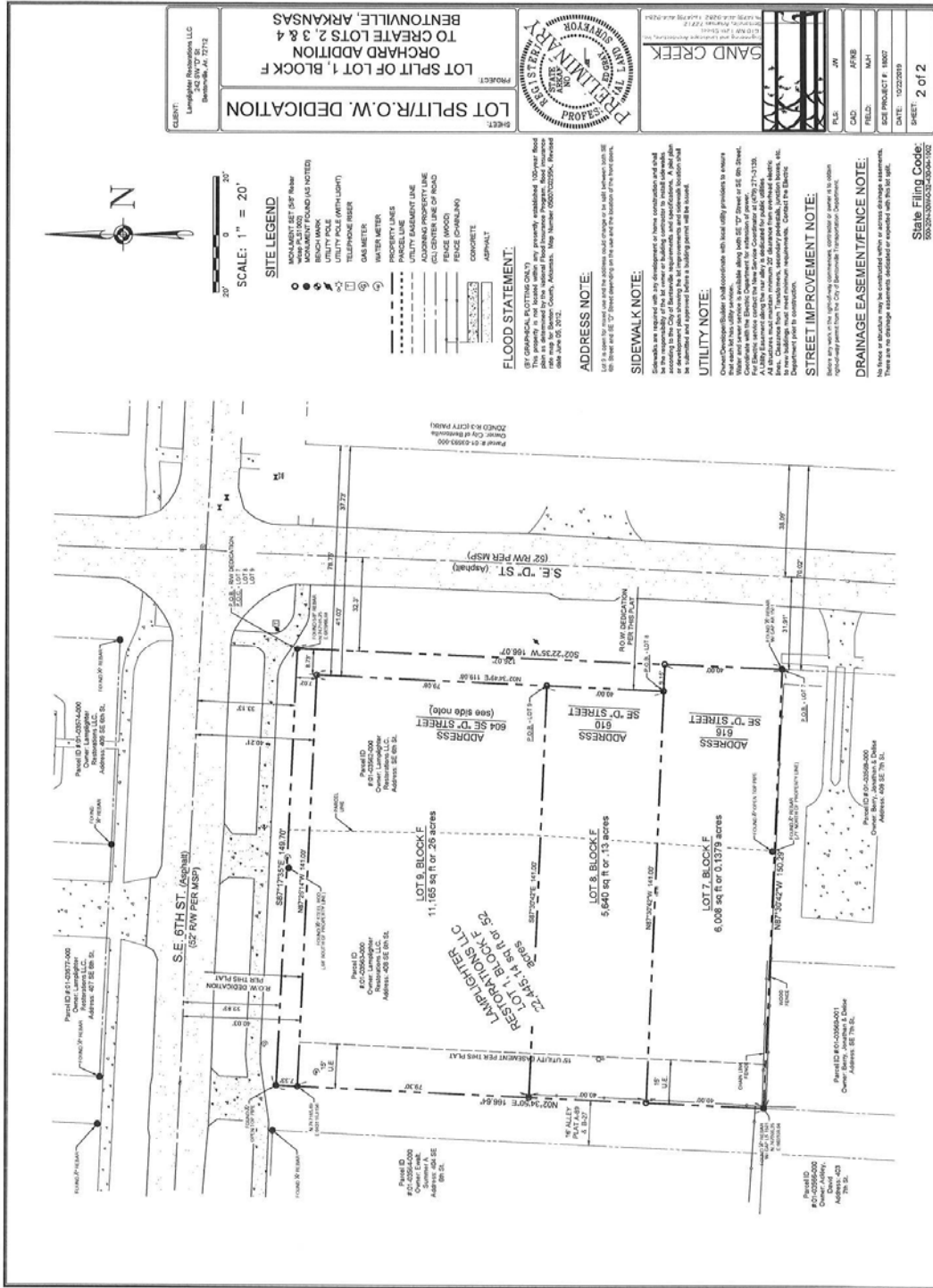
(Please click on this link to access the vicinity map for this item: <http://geo.bentonvillear.com/mgweb/PZpending/>)

Final Plat: Preston Park Phase I, Bright Gator, LLC, SW Bright Road, PRD, Planned Residential Development (FP19-0005)

Final Plat to create Preston Park Phase I, a PRD Subdivision, which contains a total of 98 lots. A final inspection was completed and approved on October 29, 2019. All non-bondable items and guarantees of improvements are complete.

(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 7, 8, & 9, BLOCK F OF
ORCHARD ADDITION TO THE CITY OF BENTONVILLE, ARKANSAS
(PROJECT NUMBER: LS19-0031).**

WHEREAS, pursuant to the provisions of Title 15 of the Bentonville Municipal Code, the lot split of Lots 7, 8, & 9, Block F of Orchard Addition, Benton County, Arkansas, was submitted to the Bentonville Planning Commission on November 5, 2019; 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 7, 8, & 9, Block F of Orchard Addition 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.

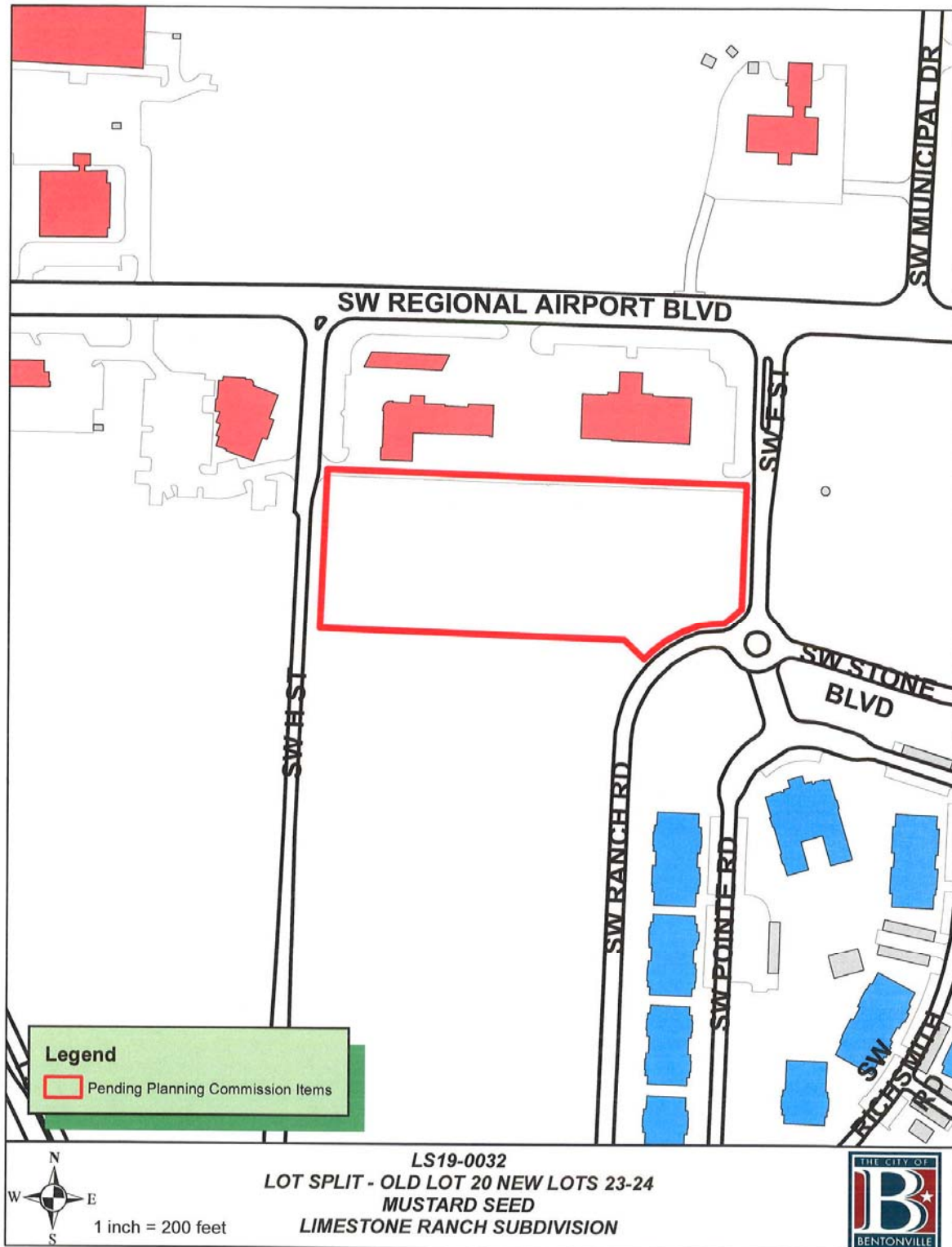
PASSED AND APPROVED this _____ day of _____, 2019.

APPROVED:

MAYOR

ATTEST:

CITY CLERK



ORDINANCE NO. _____

**AN ORDINANCE ACCEPTING A LOT SPLIT OF LOTS 23 & 24 OF
LIMESTONE RANCH SUBDIVISION TO THE CITY OF BENTONVILLE,
ARKANSAS (PROJECT NUMBER: LS19-0032).**

WHEREAS, pursuant to the provisions of Title 15 of the Bentonville Municipal Code, the lot split of Lots 23 & 24 of Limestone Ranch Subdivision, Benton County, Arkansas, was submitted to the Bentonville Planning Commission on November 5, 2019; 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 23 & 24 of Limestone Ranch 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 lot split by certifying said acceptance on the approved lot split.

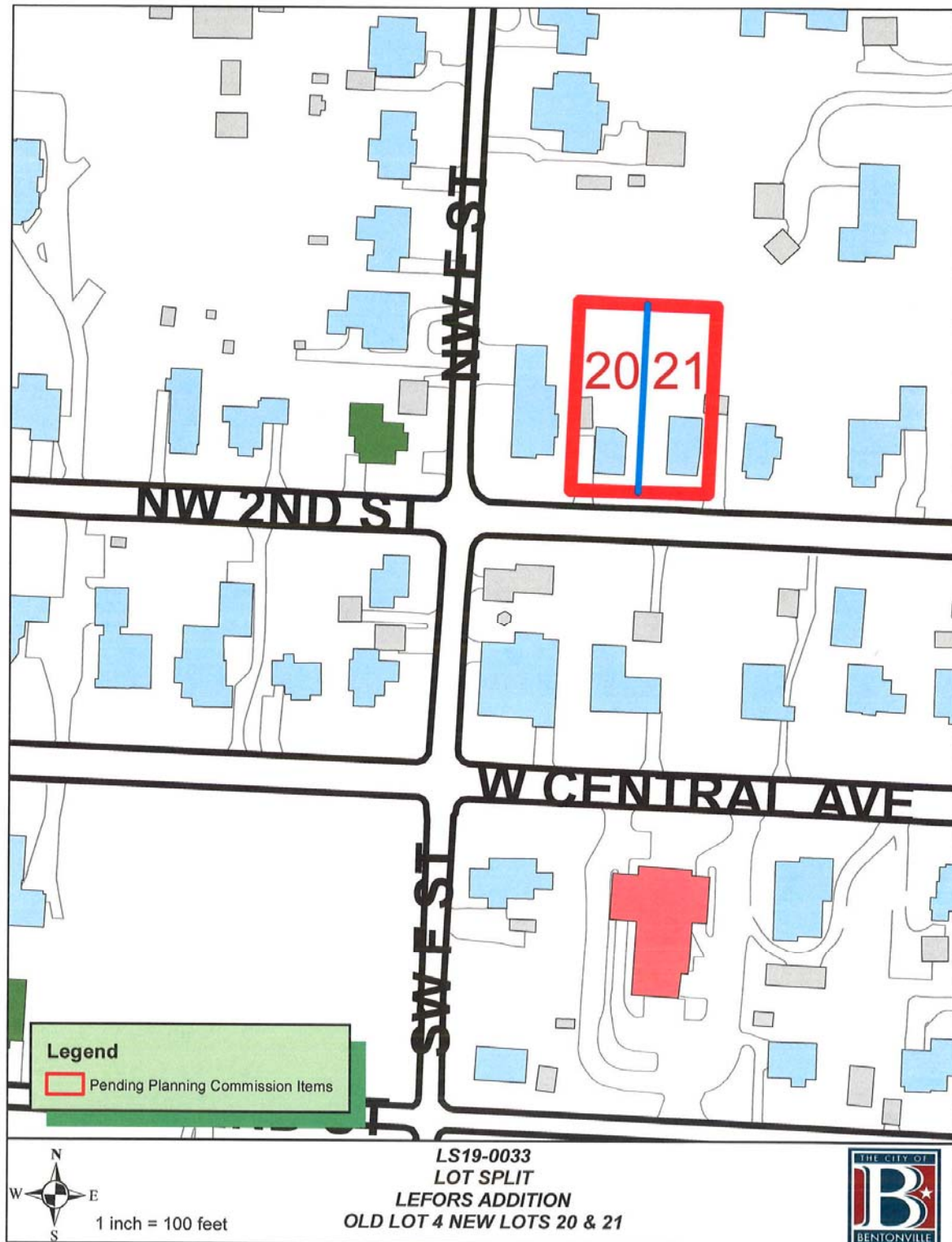
PASSED AND APPROVED this _____ day of _____, 2019.

APPROVED:

MAYOR

ATTEST:

CITY CLERK



CLIENT: The Moody Group LLC
Eric Moody
101 Christian Lane
Bartonsville, AR 72712
(479) 621-3850
emj@moodygroup.com

[illegible][illegible][illegible][illegible]

Pursuant to the Bentonville Subdivision Regulations and all other covenants and agreements, the undersigned hereby certifies that the information herein is true and correct. This Certificate is hereby executed under the authority of the said rules and regulations.

We the undersigned, owners of the real estate shown and described herein, do hereby certify that we have laid off, platted, and subdivided and do hereby lay off, plat, subdivide, and re-plat the above described real estate in accordance with the plat and do hereby dedicate to use of the public the streets, alleys, drives, easements, etc. as shown on said plat.

We the undersigned, owners of the real estate shown and described herein, do hereby certify that we have had platted, and subdivided and do hereby lay off, plat, subdivide said real estate in accordance with this plat and do hereby dedicate to use of the public the streets, alleys, drives, easements, etc. as shown on said plat.



SAND CREEK
Engineering and Land Surveying



SURVEYOR'S CERTIFICATE:

C. Ed Gray, hereby certify that this plat correctly represents a boundary survey made by me and all monuments shown hereon actually exist and their location, size, type, and material are correctly shown and all minimum requirements of the Arkansas Minimum Standards for Land Surveyors have

Date of Event Over:

C. Ed City
Registered Land Surveyor
State of Arkansas

ORDINANCE NO. _____

AN ORDINANCE ACCEPTING A LOT SPLIT OF LOT 20 OF LEFORS
ADDITION TO THE CITY OF BENTONVILLE, ARKANSAS (PROJECT
NUMBER: LS19-0033).

WHEREAS, pursuant to the provisions of Title 15 of the Bentonville Municipal Code, the lot split of Lot 20 of Lefors Addition, Benton County, Arkansas, was submitted to the Bentonville Planning Commission on November 5, 2019; 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 Lot 20 of Lefors Addition 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 _____, 2019.

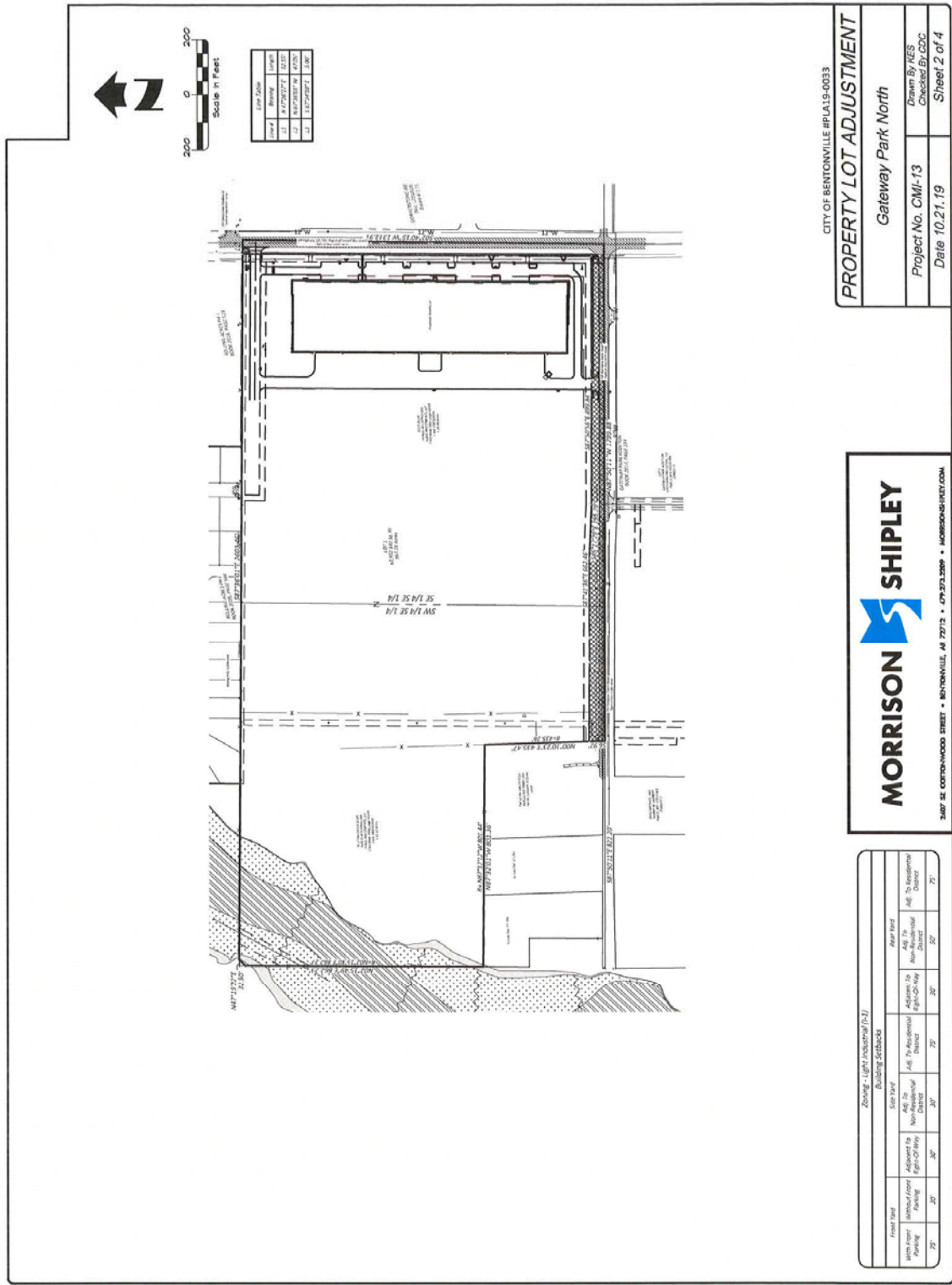
APPROVED:

MAYOR

ATTEST:

CITY CLERK





ORDINANCE NO. _____

**AN ORDINANCE ACCEPTING A LOT SPLIT OF LOT 1 OF GATEWAY PARK
NORTH SUBDIVISION TO THE CITY OF BENTONVILLE, ARKANSAS
(PROJECT NUMBER: PLA19-0033).**

WHEREAS, pursuant to the provisions of Title 15 of the Bentonville Municipal Code, the lot split of Lot 1 of Gateway Park North Subdivision, Benton County, Arkansas, was submitted to the Bentonville Planning Commission on November 5, 2019; 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 Lot 1 of Gateway Park North 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 lot split by certifying said acceptance on the approved lot split.

PASSED AND APPROVED this _____ day of _____, 2019.

APPROVED:

MAYOR

ATTEST:

CITY CLERK



ORDINANCE NO. _____

**AN ORDINANCE ACCEPTING A FINAL PLAT OF PRESTON PARK
PHASE I TO THE CITY OF BENTONVILLE, ARKANSAS (PROJECT
NUMBER: FP19-0005).**

WHEREAS, pursuant to the provisions of Title 15 of the Bentonville Municipal Code, the final plat of Preston Park Phase I, to the City of Bentonville, Benton County, Arkansas, was submitted to the Bentonville Planning Commission on November 5, 2019; and,

WHEREAS, said final plat is attached hereto as Exhibit "A"; and,

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

WHEREAS, the final plat 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 final plat should be approved.

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

Section 1: That the final plat of Preston Park Phase I 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 final plat by certifying said acceptance on the approved final plat.

PASSED AND APPROVED this _____ day of _____, 2019.

APPROVED:

ATTEST:

MAYOR

CITY CLERK

REZONING STAFF REPORT



Elzey

9549 Glen Road

PC Date: 11/5/2019

Reviewer: Ali Worley, Planning Technician

Project Number	RZ19-0032
Applicant / Current Owner	Todd & Brenda Elzey 9549 Glen Road Bentonville, AR 72713
Site Area	+/- 20 acres
Current Zoning	A-1, Agricultural
Requested Zoning	R-2, Duplex & Patio-Home Residential
Future Land Use Map Designation	Medium Density Residential

Property Description

This property is located at the southwest corner of Glen Road and Been Road. The site is currently zoned A-1, Agricultural. Adjacent zonings are PRD, Planned Residential Development, to the west, R-1, Single Family Residential, to the north and east, and R-2, Duplex & Patio-Home Residential to the south.

Relationship to the General Plan

The Future Land Use Plan currently depicts this property as Medium Density Residential. These areas typically include townhouse or duplex residential properties with an inferred density of 8-12 units per acre.

Analysis

The proposed rezoning can potentially be justified due to the site's general compatibility with the Future Land Use Plan and surrounding uses.

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

Location Map





SWOPE ENGINEERING

Civil Engineering and Surveying
3511 SE J Street, Suite 9
Bentonville, AR 72712 479-685-8399

September 30, 2019

City of Bentonville Planning Department

Attn: Jon Stanley
305 SW "A" Street
Bentonville, AR 72712

**Re: Rezone Request Narrative
Glen Rd and Been Rd
A-1 to R-2
parcel 01-00828-070**

Dear Mr. Stanley,

Please accept this narrative for the subject rezone to R-2 (multi-family residential). Prior to this request we have discussed this property with many of the staff members of various departments in the city. Listed below is our response to each of the application-required topics.

Current zoning: The current zoning of these properties is A-1, Agricultural, and the land is undeveloped- other than an existing home and driveway.

Reason for zoning change request: The applicant intends to develop the land into a medium-density subdivision by extending nearby roads and utilities.

How property will relate to surrounding properties:

NORTH/EAST- The lands north and east are currently under rezone application to R-1, low-density residential. These lands will be located north of the proposed collector street (Shell Road), providing sufficient buffer between zones.

WEST- The land west of this property is the proposed Glen Arbor Subdivision, which is a PRD zoning (single family), but has a density that is closer to typical multi-family.

SOUTH- The land, that is adjacent to the south, is zoned R-2 but not yet developed.

Use: Proposed use in an R-2 zone would include duplexes and other medium-density residential uses.

Traffic: Increased traffic in this area will be accommodated through an existing and proposed network of collector streets. Both Glen Road and Been Road will be upgraded to a Collector Street on our half of the frontage, as required by code. Also, the Glen Arbor project will improve its half of frontage on Glen Road to a collector's width.

Signage: Signage is planned in order to advertise this subdivision. The specifics are not known yet, however all city codes/requirements will be followed, including size, height and material types.

Appearance: This proposed R-2 development will look like most other similar subdivisions in this area of the city. The builder is proposing an upscale duplex product.

Availability of water and sewer: Water mains are adjacent, where they will tie into new mains inside this project. For sanitary, this project relies on the upgrade to pumps in the lift station at the apartment complex. A lift station analysis was performed, and accepted, by the wastewater department.

This application is submitted to gain your support, and for the board's approval. Please let me know if you have any questions or concerns.

Regards,

A black rectangular redaction box covering the signature of Phil R Swope.

Phil R Swope, PE
President

NOTICE OF INTENT TO REZONE

Swope Engineering has requested the Bentonville Planning

Commission to set a public hearing date to consider rezoning the following property from

A1 to R-2

The legal description of the property is as follows:

Part of the E1/2 of the SE1/4 of Section 2, Township 19 North, Range 31 West described as beginning
at the NE corner of said tract, run thence South 1320 feet to a point, run thence West 660 feet to a point,
thence North 1320 feet to the North line of said tract, thence East 660 feet to the point of beginning.

The common description of the property is: SW corner of Been Rd and Glen Rd

Proposed land use: Duplexes

The public hearing will be held November 5th, 20 19 at 5:00 p.m. It will be held at 305 SW A Street.

This notification is in response to the requirement that all property owners within 200 feet of said property must be notified. If you wish to express any comments about the requested rezoning, you may respond by the following methods:

1. Attend the public hearing and express your views.
2. Express your opinion in writing to the Planning Commission. You may mail this or deliver it to the City of Bentonville Planning Department, 305 SW A Street, Bentonville, AR 72712.
3. Use the bottom of this form to express your opinion by checking the appropriate box. (This may also be delivered or mailed to the above address.)

For more information, you may call the Planning Department at (479)271-3122 extension 2.

I/We have received notice of the public hearing for the rezoning of the above described property and:

☐ I/we have no objections to the rezoning.

☒ I/we object to the rezoning because:

I do not want multi-family residence
due to property value and traffic
R-1 would be much more preferred

Carmen Larson

ORDINANCE NO. _____

AN ORDINANCE CHANGING REAL ESTATE IN THE CITY OF BENTONVILLE, ARKANSAS, FROM ITS PRESENT ZONING CLASSIFICATION OF A-1, AGRICULTURAL TO R-2, DUPLEX AND PATIO HOME RESIDENTIAL (PROJECT NUMBER: RZ19-0032).

WHEREAS, Todd & Brenda Elzey duly filed a petition with the Planning Commission requesting that the hereinafter described property situated in Benton County, Arkansas, be changed from its present zoning classification of A-1, Agricultural to R-2, Duplex and Patio Home Residential to be used in accordance with city zoning laws and state laws, which property is described as follows:

PART OF THE E1/2 OF THE SE1/4 OF SECTION 2, TOWNSHIP 19 NORTH, RANGE 31 WEST DESCRIBED AS BEGINNING AT THE NE CORNER OF SAID TRACT, RUN THENCE SOUTH 1320 FEET TO A POINT, RUN THENCE WEST 660 FEET TO A POINT, THENCE NORTH 1320 FEET TO THE NORTH LINE OF SAID TRACT, THENCE EAST 660 FEET TO THE POINT OF BEGINNING.; and,

WHEREAS, the Planning Commission duly met and considered the application and duly set the petition for public hearing to be held November 5, 2019 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 property be rezoned from its present classification of A-1, Agricultural to R-2, Duplex and Patio Home Residential.

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 zoning classification of A-1, Agricultural to R-2, Duplex and Patio Home Residential to be used in accordance with the city zoning laws and state laws.

PASSED AND APPROVED this _____ day of _____, 2019.

APPROVED:

ATTEST:

MAYOR

CITY CLERK



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

AGENDA FORM

CITY COUNCIL MEETING OF:

November 12, 2019

Submitted by:

Jon Stanley

Department

Planning

Phone

271-3122

ACTION REQUIRED:

Resolution accepting right-of-way dedication from Lot 34 of Dickson's Addition at 705 West Central Avenue. Right-of-way dedication was needed due to necessary sidewalk improvements as required by Article 1100, Section 1100.15 of the Land Development Code.

COST TO CITY:

Cost of this Request:

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



Memorandum



To: Mayor and City Council

From: Jon Stanley, Senior Planner

Date: Tuesday, November 12, 2019

Re: Right of Way Dedication for Eric Scott @ 705 West Central Ave., Lot 34 of Dickson's Addition.

Mr. Scott's development is a single-family residence located at 705 West Central Avenue, Lot 34 of Dickson's Addition. This project is currently under construction. As part of this development, public sidewalk improvements are required to be constructed along the rear lot line of the property which fronts onto SW 2nd Street. Due to the conflicts with existing electric infrastructure and the desire by Mr. Scott to save some existing trees, additional right-of-way dedication will be necessary to construct these sidewalk improvements. The City of Bentonville is not able to accept these improvements as a donated asset while part of it resides outside of the existing right-of-way.

The owners of this development have offered to donate the additional right-of-way to the City, which corrects the issue of this improvement being constructed outside of the public right-of-way. Attached is the legal description and exhibit describing the location of the proposed right-of-way to be dedicated. Staff is seeking City Council approval and acceptance of the right-of-way dedication.

Please contact me with any questions or concerns regarding this project. My telephone number is (479) 271-3122 or I can be reached via email at jstanley@bentonvillear.com.

Tract No. _____
Page 1

RIGHT OF WAY GRANT

That for and in consideration of One Dollar (\$1.00) and other good and valuable considerations to the undersigned **Grantee**, cash in hand paid, the receipt of which is hereby acknowledged, said Grantor does hereby grant, bargain, sell and convey unto the City of Bentonville, Arkansas, Grantee, their successors and assigns, a permanent easement to lay, construct, remove, enlarge, maintain, inspect and repair a City street, with public right of ingress and egress to and from the same, on over, across and under the following described real estate to-wit:

PROPERTY DESCRIPTION:

Lot 34 of Lot Line adjustment plat, filed for record at 2017-521,
And also being part of lot 34 of Dickson's Addition, as shown on plat Record Book 2017 page 521 and filed for record at the Benton County Circuit clerks office.

RIGHT OF WAY DESCRIPTION:

A 3.00 FOOT WIDE STRIP OF LAND LYING PERPENDICULAR AND ADJACENT TO THE EXISTING RIGHT-OF-WAY.

And being more particularly described as follows:

BEGINNING at the Southwest corner of Lot 34 as shown on lot line adjustment plat 2017-521; thence North 02°23'30" East a distance of 3.00 feet; thence South 87°18'16" East a distance of 101.88 feet; thence South 02°23'30" West a distance of 3.00 feet; thence North 87°18'16" West a distance of 101.88 feet to the POINT OF BEGINNING.

Grantees shall have and are hereby granted the right of constructing, reconstructing, locating, relocating, inspecting, patrolling, expanding existing facilities as may be required in the future, and maintaining said street. Grantees shall have and are hereby granted the further right at all time to remove from said lands all vegetation, undergrowth, trees, and parts thereof, or other obstructions, which in the opinion of the Grantees, restrict access, constitutes a hazard, or endangers the safety of said street, or their appurtenances and/or the public, and/or for the purpose of installing additional facilities.

Tract No. _____
Page 2

The Grantor or his successors shall not cause to be constructed any buildings, structures or other improvement (other than fences, driveways, and paved parking areas) within the above described right of way, and no trees shall be planted by Grantor or his successors on said right of way. Grantor or his successors shall not be entitled to any compensation for fences, growing crops, structures which may be removed or disturbed within this right of way by virtue of Grantees' exercise of the rights under this agreement.

Grantees agree to repair any damage to Grantor's driveways, sidewalks, parking areas, lawn or pastures that result from the exercise of rights and privileges contained within the right of way described herein. Said damage to driveways, sidewalks, parking areas, lawn or pastures shall be restored by Grantees as close as is reasonable to the original condition.

It is further understood that Grantee's easement shall be exclusive and the Grantor or his successors shall convey no parallel rights to any person, utility or corporation on, across or under said right of way without the written permission of Grantees.

TO HAVE AND TO HOLD the above described right of way unto said grantees, its successors and assigns, forever or until said right of way if finally abandoned.

Grantor also agrees to forever warrant and defend the above described right of way unto said grantees against all legal claims.

IN WITNESS WHEREOF, the hand and seal or Grantor is hereunto set this 22nd day
of October, 2019.

ERIC S. SCOTT
OWNER

ELDA E. SCOTT
OWNER

Tract No. _____
Page 3

ACKNOWLEDGEMENT

STATE OF ARKANSAS }
COUNTY OF BENTON }

BE IT REMEMBERED, that on this date, before me, a Notary Public within and for said County and State, duly commissioned and acting, personally appeared Eric Scott authorized agent of _____ and Elda Scott to me well known as the person or persons who executed the foregoing right of way grant, and that had executed the same for consideration and purpose therein mentioned and set forth.

WITNESS my hand and seal on this 22nd day of October, 2019

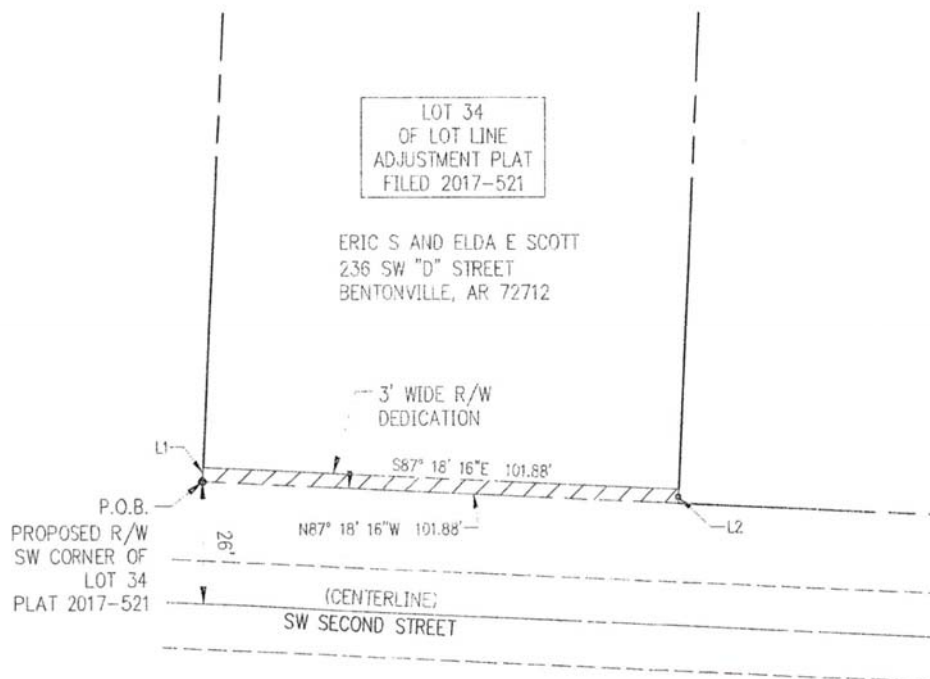
Notary Public

My Commission Expires



EXHIBIT

PARCEL LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	3.00'	N2° 23' 30"E
L2	3.00'	S2° 23' 30"W



NOTE:
THIS EASEMENT EXHIBIT IS A GRAPHICAL REPRESENTATION OF THE EASEMENT DESCRIPTION,
AND DOES NOT CONSTITUTE A BOUNDARY SURVEY.

PROJECT NO:	DRAWN BY:	DATE:	SHEET:	CHECKED:
18107400 RW DED		10/16/2019	1 OF 1	

901 N. 47th St., Suite 200
Rogers, Arkansas 72756

 **Crafton Tull**
architecture | engineering | surveying

479.636.4838 | 479.631.6224 |
www.craftontull.com

RESOLUTION NO. _____

**A RESOLUTION ACCEPTING RIGHT OF WAY
DEDICATION FROM Lot 34 OF DICKSON'S ADDITION
AT 705 WEST CENTRAL AVENUE, TO THE CITY OF
BENTONVILLE, ARKANSAS.**

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

Section 1: That the right of way donation proposed for Lot 34 of Dickson's Addition at 705 West Central Avenue, which also fronts onto SW 2nd Street is attached hereto as Exhibit A should be and the same is hereby accepted by the City of Bentonville.

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 _____, 2019.

APPROVED:

MAYOR

ATTEST:

CITY CLERK



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

AGENDA FORM

CITY COUNCIL MEETING OF:

November 12, 2019

Submitted by:

Ellen Norvell

Department

Administration

Phone

271-5993

ACTION REQUIRED:

Approval a resolution allowing the Mayor and City Clerk to enter into a contract with Flintco, LLC for Construction Management Services for the Community Development Building. Utilizing a construction management firm during the design phase has shown be be beneficial by providing periodic evaluations and recommendations with reduces overall costs and streamlines scheduling.

COST TO CITY:

Cost of this Request: \$15,000

Additional Budget Amount \$15,000

☐ One time amount

☐ Continuing O and M

Previously Budgeted	\$
Funds Expended to Date	
Remaining Budget	-
Budget Adjustment	15,000
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



BUDGET ADJUSTMENT REQUEST FORM

Budget Adjustment #
(Assigned by Admin)

Department: Administration

Date of Request: October 30, 2019

Acct Number	Account Name	Revenue + (-)	Expense + (-)	Fund Balance + (-)
101610-47210	Professional Services		\$ 15,000.00	\$ (15,000.00)
				\$ -
101610-47210	Professional Services		\$ 292,000.00	\$ (292,000.00)
101010-47210	Professional Services		\$ (292,000.00)	\$ 292,000.00
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
	Totals	\$ -	\$ 15,000.00	\$ (15,000.00)

Justification:

A budget adjustment is needed to pay for pre-bid Construction Management Services for the new Community Development Building. Hiring a construction management firm has shown to be beneficial by providing periodic evaluations of the project during the design phase which reduces overall costs and streamlines scheduling. We are also utilizing this budget adjustment to move funds that were budgeted for the architectural service portion of this project from the Administration Department to the Planning Department. This contract was amended to allow for the Community Development building design but the design of the building will be billed separately than the Administrative Services building and should be expensed from the Planning Department budget.

FOR ACCTING USE ONLY

Council Action: Approved Disapproved Other

Date: _____ Date entered: _____ By: _____

Revised 5/1/07

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712

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PLEASE RECYCLE



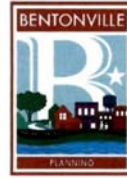
MEMO

To: Mayor Stephanie Orman and Bentonville City Council

From: Ellen Norvell, Planning and Building Services Director

CC Date: November 12, 2019

Re: Resolution and Budget Adjustment for the Construction Management Contract for the new Community Development Building



Staff is requesting approval of a resolution authorizing the Mayor to enter into a contract with Flintco, LLC of Springdale, Arkansas to provide Construction Manager Services for the construction of the new Community Development Building. The fee for the initial pre-bid phase of the project shall not exceed \$15,000. A budget adjustment is also necessary.

Utilizing a construction management firm during the design phase has shown to be beneficial by providing periodic evaluations and recommendations which reduces overall costs and streamlines scheduling.

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 12th day of November in the year 2019
(In words, indicate day, month and year.)

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

City of Bentonville, Arkansas
305 SE A Street
Bentonville, Arkansas 72712

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

Flintco, LLC
184 E. Fantinel Blvd.
Springdale, Arkansas 72756

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

City of Bentonville Community Development Building
Bentonville, Arkansas

The Architect:
(Name, legal status and address)

Hight Jackson Associates PA
5201 Village Pkwy Ste 300
Rogers, Arkansas 72758

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

Ellen Norvell, Planning & Building Services Director
305 SW A Street
Bentonville, Arkansas 72712

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

Brent Farmer, Vice President, Area Manager
184 E. Fantinel Blvd.

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.

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| Springdale, Arkansas 72756

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

| Brian Jackson, President
5201 Village Pkwy Ste 300
Rogers, Arkansas 72758

The Owner and Construction Manager agree as follows.

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- 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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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

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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 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.

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§ 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 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. The schedule for completion of the project will be provided with the Amendment to establish the Construction Manager's Guaranteed Maximum Price.

§ 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.

§ 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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§ 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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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 B103™-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:

The amount to be paid to Construction Manager for preconstruction services shall be on a "cost of the work" basis not to exceed 0.5% of the final GMP amount and shall include all costs necessary for delivery of these services, including all personnel costs (at the rates stipulated in Article 4.1.2 herein) as well as any misc. costs associated with the delivery of preconstruction services (printing, advertising, travel, etc.). An allowance of \$2,400 for reimbursable misc. costs has been included. Preconstruction Services will be invoiced on a monthly basis for services rendered each month at rates as identified in article. Total Preconstruction Fee shall not exceed \$15,000.00.

4.1.2.

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§ 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.)

The following rates shall apply and will be billed on a timecard basis for those individuals working on this project:

Division Manager/Vice President	\$120.00 /hr.
Senior Estimator	\$90.00 /hr.
Preconstruction Manager	\$82.00 /hr.
Staff Estimator	\$62.00 /hr.
Project Manager	\$92.00 /hr.
Superintendent	\$90.00 /hr.
Scheduler	\$80.00 /hr.
Safety/Environmental Manager	\$75.00 /hr.
Contracts Administrator	\$45.00 /hr.

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within seven (7) 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 thirty (30) 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.)

% maximum allowed by Arkansas Law

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.)

The Construction Manager's fee will be set at six percent (6.00%) of the initial total Guaranteed Maximum Price.

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

The Construction Manager's fee will be adjusted at the same rate established in 5.1.1 for additive changes and zero percent for deductive changes.

(Paragraph Deleted)

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed the standard rate paid at the place of the Project.

§ 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.)
shall be established in A133 Exhibit A along with the GMP.
(Table Deleted)

§ 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.)

Savings will be returned 100% to Owner.

§ 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

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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.

§ 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.)

Any offsite personnel or other offsite cost that may be charged to the job will be defined in Construction Manager's General Conditions and approved by the owner during review of the General Conditions prior to executing the GMP.

§ 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 or cost incurred 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 including transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools, which 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

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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.

§ 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 approval.

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds, including premiums for Subcontractor and Supplier Default Insurance which shall be maintained by the Construction Manager, or as 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 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.

§ 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 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, by the Owner.

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§ 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.

§ 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, with exception to items presented and approved by Owner during review of General Conditions and Project Requirements:

- .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 (except as modified in Section 4.1.2).

§ 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,

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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 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,

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the last day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 15th day of the following 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 twenty (20) 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:

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- .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 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

§ 7.1.9

§ 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.

§ 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

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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 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, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007. *(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)
Workers Compensation and Employers' Liability	Statutory Limits
Commercial General Liability	\$1,000,000 Each Occurrence \$10,000 Medical Expense (any one person) \$2,000,000 General Aggregate \$1,000,000 Personal and Advertising Injury \$2,000,000 Product-Completed Operations Aggregate
Automobile Liability (owned, non-owned and hired vehicles) for bodily injury and property damage	\$1,000,000 Combined Single Limit (each accident)
Builders Risk Insurance will be provided by Flintco.	
Owner will provide Property Insurance.	
Performance and Payment Bonds equal to 100% of the contract value will be provided by Flintco.	

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.

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§ 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)*

§ 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.)

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

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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.

§ 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:

none

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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

| (Paragraph Deleted)

| (Paragraph Deleted)

| (Paragraphs Deleted)

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

OWNER (Signature)
Stephanie Orman, Mayor

(Printed name and title)

CONSTRUCTION MANAGER (Signature)
Brent Farmer, Vice President, Area Manager

(Printed name and title)

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/

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This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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PAGE 1

AGREEMENT made as of the 12th day of November in the year 2019

...

City of Bentonville, Arkansas
305 SE A Street
Bentonville, Arkansas 72712

...

Flintco, LLC
184 E. Fantinel Blvd.
Springdale, Arkansas 72756

...

City of Bentonville Community Development Building
Bentonville, Arkansas

...

Hight Jackson Associates PA
5201 Village Pkwy Ste 300
Rogers, Arkansas 72758

...

Ellen Norvell, Planning & Building Services Director
305 SW A Street
Bentonville, Arkansas 72712

...

Brent Farmer, Vice President, Area Manager
184 E. Fantinel Blvd.
Springdale, Arkansas 72756

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Brian Jackson, President
5201 Village Pkwy Ste 300
Rogers, Arkansas 72758

PAGE 3

TABLE OF ARTICLES

PAGE 6

§ 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. The schedule for completion of the project will be provided with the Amendment to establish the Construction Manager's Guaranteed Maximum Price.

...

§ 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.

PAGE 8

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document ~~B133™~~ 2014, ~~B103™~~ 2007, Standard Form of Agreement Between Owner and Architect, ~~Construction Manager as Constructor Edition, 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.

...

The amount to be paid to Construction Manager for preconstruction services shall be on a "cost of the work" basis not to exceed 0.5% of the final GMP amount and shall include all costs necessary for delivery of these services, including all personnel costs (at the rates stipulated in Article 4.1.2 herein) as well as any misc. costs associated with the delivery of preconstruction services (printing, advertising, travel, etc.). An allowance of \$2,400 for reimbursable misc. costs has been included. Preconstruction Services will be invoiced on a monthly basis for services rendered each month at rates as identified in article. Total Preconstruction Fee shall not exceed \$15,000.00.

...

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4.1.2.

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The following rates shall apply and will be billed on a timecard basis for those individuals working on this project:

Division Manager/Vice President \$120.00 /hr.
Senior Estimator \$90.00 /hr.
Preconstruction Manager \$82.00 /hr.
Staff Estimator \$62.00 /hr.
Project Manager \$92.00 /hr.
Superintendent \$90.00 /hr.
Scheduler \$80.00 /hr.
Safety/Environmental Manager \$75.00 /hr.
Contracts Administrator \$45.00 /hr.

...

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within seven (7) 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.

...

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid thirty (30) 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.

...

% maximum allowed by Arkansas Law

...

The Construction Manager's fee will be set at six percent (6.00%) of the initial total Guaranteed Maximum Price.

...

The Construction Manager's fee will be adjusted at the same rate established in 5.1.1 for additive changes and zero percent for deductive 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:

PAGE 10

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

...

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shall be established in A133 Exhibit A along with the GMP.

...

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

...

Savings will be returned 100% to Owner.

PAGE 11

Any offsite personnel or other offsite cost that may be charged to the job will be defined in Construction Manager's General Conditions and approved by the owner during review of the General Conditions prior to executing the GMP.

...

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

...

§ 6.5.1 Costs ~~of including~~ transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools ~~not customarily owned by construction workers that tools, which~~ 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.

PAGE 12

§ 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.

...

§ 6.6.1 Premiums for that portion of insurance and ~~bonds-bonds, including premiums for Subcontractor and Supplier Default Insurance which shall be maintained by the Construction Manager, or as~~ 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.

...

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

...

§ 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.

...

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§ 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.

PAGE 13

§ 6.8.1 The Cost of the Work shall not include the items listed ~~below~~ below, with exception to items presented and approved by Owner during review of General Conditions and Project Requirements:

...

- .8 Costs for services incurred during the Preconstruction ~~Phase~~ Phase (except as modified in Section 4.1.2.

PAGE 14

§ 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 last day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 15th day of the following 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 twenty (20) days after the Architect receives the Application for Payment.

PAGE 15

- .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 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;

...

~~§ 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.~~

...

~~§ 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.~~

...

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:~~ Payment.

PAGE 16

<u>Type of Insurance or Bond</u>	<u>Limit of Liability or Bond Amount (\$0.00)</u>
<u>Workers Compensation and Employers' Liability</u>	<u>Statutory Limits</u>
<u>Commercial General Liability</u>	<u>\$1,000,000 Each Occurrence</u> <u>\$10,000 Medical Expense (any one person)</u> <u>\$2,000,000 General Aggregate</u> <u>\$1,000,000 Personal and Advertising Injury</u> <u>\$2,000,000 Product-Completed Operations Aggregate</u>
<u>Automobile Liability (owned, non-owned and hired vehicles) for bodily injury and property damage</u>	<u>\$1,000,000 Combined Single Limit (each accident)</u>
<u>Builders Risk Insurance will be provided by Flintco.</u>	
<u>Owner will provide Property Insurance.</u>	
<u>Performance and Payment Bonds equal to 100% of the contract value will be provided by Flintco.</u>	

<u>Type of Insurance or Bond</u>	<u>Limit of Liability or Bond Amount (\$0.00)</u>
----------------------------------	---

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[☒] Litigation in a court of competent jurisdiction

PAGE 18

none

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~~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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...

Stephanie Orman, Mayor

Brent Farmer, Vice President, Area Manager

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Brent Farmer, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:14:22 ET on 10/17/2019 under Order No. 7772483407 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of 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, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

V.P., Area Manager

(Dated)

10.17.19

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AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

City of Bentonville - Community Development Building
Bentonville, AR 72712

THE OWNER:

(Name, legal status and address)

City of Bentonville, Arkansas
305 SE A Street
Bentonville, AR 72712

THE ARCHITECT:

(Name, legal status and address)

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 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 will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties 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, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor 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 Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor 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

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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 Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 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 Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 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 Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

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§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

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§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall

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continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required

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submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop

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Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and 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, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a

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party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, 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 will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will 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. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed.

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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.

§ 4.2.7 The Architect will 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. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect 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. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. 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.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will 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 will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

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§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

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§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

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§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

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§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

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§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and 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 Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon

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compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the 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 to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will 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) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the

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Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

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§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract

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Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in

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whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity. Nothing contained herein shall waive any immunity the Owner has pursuant to law.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

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§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional

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insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 Reserved.

§ 11.3.1.3 If the property insurance requires deductibles, the Contractor shall pay costs not covered because of such deductibles and the same shall be included as a part of the Cost of Work under the Contract.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Owner requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Contractor shall, if possible, include such insurance, and the cost thereof shall be charged to the Owner by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment

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property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

(Paragraph deleted)

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Contractor as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Contractor's Builder Risk insurance shall be adjusted by the Contractor as fiduciary and made payable to the Contractor as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Contractor as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Contractor's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Contractor shall deposit in a separate account proceeds so received, which the Contractor shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Contractor as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Contractor's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Contractor as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

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§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

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ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract 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 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, 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.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

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§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time 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 Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

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- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

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§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

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§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims 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 Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings 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 is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 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.

§ 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim 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 the Agreement. A demand for arbitration shall be made in writing, delivered

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to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 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 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.

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

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

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 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).

§ 15.4.4.2 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.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

Additions and Deletions Report for

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Bentonville, AR 72712

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City of Bentonville, Arkansas
305 SE A Street
Bentonville, AR 72712

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Hight Jackson Associates PA
5201 Village Pkwy Suite 300
Rogers, AR 72758

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§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity. Nothing contained herein shall waive any immunity the Owner has pursuant to law.

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§ 11.3.1 Unless otherwise provided, the ~~Owner-Contractor~~ shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

...

§ 11.3.1.2 ~~If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors~~

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and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto. ~~Reserved.~~

§ 11.3.1.3 If the property insurance requires deductibles, the ~~Owner-Contractor~~ shall pay costs not covered because of such ~~deductibles-deductibles~~ and the same shall be included as a part of the Cost of Work under the Contract.

...

§ 11.3.4 If the ~~Contractor-Owner~~ requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the ~~Owner-Contractor~~ shall, if possible, include such insurance, and the cost thereof shall be charged to the ~~Contractor-Owner~~ by appropriate Change Order.

PAGE 31

~~§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.~~

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the ~~Owner-Contractor~~ as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the ~~Owner's property-Contractor's Builder Risk~~ insurance shall be adjusted by the ~~Owner-Contractor~~ as fiduciary and made payable to the ~~Owner-Contractor~~ as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the ~~Owner-Contractor~~ as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the ~~Owner's-Contractor's~~ duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The ~~Owner-Contractor~~ shall deposit in a separate account proceeds so received, which the ~~Owner-Contractor~~ shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The ~~Owner-Contractor~~ as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the ~~Owner's-Contractor's~~ exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the ~~Owner-Contractor~~ as fiduciary shall make settlement with

insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Brent Farmer, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:53:48 ET on 11/01/2019 under Order No. 7772483407 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

[Redacted Signature]

(Signed)

VP, Area Manager

(Title)

11-1-19

(Dated)

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RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER
INTO A CONTRACT WITH FLINTCO, LLC TO PROVIDE
CONSTRUCTION MANAGEMENT SERVICES FOR THE
City Of BENTONVILLE.**

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

Section 1: That the Mayor is hereby authorized to enter into a contract with Flintco, LLC to provide Construction Management Services. The fee for Preconstruction Phase Services shall not exceed \$15,000.

Section 2: That the City of Bentonville requested statements of qualifications for Construction Management Services for the new Community Development Building. Three firms submitted qualifications. A committee evaluated the qualifications and selected Flintco, Inc.

Section 3: This resolution shall be in full force and effect from and after the date of its passage.

PASSED and APPROVED this _____ day of _____, 2019.

APPROVED:

Stephanie Orman, Mayor

ATTEST:

Linda Spence, City Clerk



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

AGENDA FORM

CITY COUNCIL MEETING OF:

Submitted by: **Jake Harper**

Department: **Administration**

Phone: **271-6781**

ACTION REQUIRED:

Resolution authorizing the Mayor and City Clerk to enter into an agreement with West Plaza Investment LLC, in the amount of \$3,385,000.00 including \$25,000.00 of earnest money, for the purchase of the West Plaza building located at 1000 SW 14th Street. This building will house the Utility Billing, Accounting/Purchasing, Human Resource and Information Technology departments. See the attached memo.

COST TO CITY:

Cost of this Request: **\$3,485,000**

Additional Budget Amount: **\$3,485,000**

☐ One time amount

☒ Continuing O and M

Previously Budgeted	\$
Funds Expended to Date	
Remaining Budget	-
Budget Adjustment	3,485,000
Remaining After Adjustment	\$ 3,485,000

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





MEMORANDUM

TO: Mayor Orman
City Council

FROM: Jake Harper, Director of Finance and Administration

DATE: October 29, 2019

SUBJECT: Purchase of the West Plaza building for use as the Administrative Services Building (Utility Billing, Accounting/Purchasing, Human Resources and Information Technology)

We have been presented the opportunity to purchase the West Plaza Building (known to a lot of us as the Newell/Rubbermaid building) on the corner of SW 14th/Hwy 102 and "T" Street. If purchased this building will house four City departments including Utility Billing/Meter Reading, Accounting/Purchasing, Human Resources and Information Technology.

The purchase will allow us to repurpose an existing building in our community instead of building a new building. It will provide better visibility and traffic flow for our Utility Billing Department, adequate parking for all departments, and allow more space for current and future growth than the building in the design phase.

The contract, as presented, has a purchase price of \$3,385,000 (\$25,000 in earnest money) and will provide 60 days to perform the following tasks:

1. Feasibility Study
2. Appraisal
3. Inspection

We appreciate West Plaza Investment LLC working with us on the contract terms.

OFFER AND ACCEPTANCE

PARTIES: West Plaza Investment LLC as "Seller", and The City of Bentonville, Arkansas, as "Buyer", hereby agree that the Seller shall sell and Buyer shall buy the following property upon the following terms and conditions:

1. DESCRIPTION

a) Legal description of real estate ("Property") located in Benton County, Arkansas:

Parcel Number 01-09667-000, Benton County, Arkansas, as more particularly described in the attached Exhibit "A."

b) Street address, if any, of the Property being conveyed is:

1000 SW 14th Street, Bentonville, AR 72712

c) Personal property including all buildings and improvements on the property and all right, title and interest of Seller in and to adjacent streets, roads, alleys and rights-of-way, and:

None

2. PURCHASE PRICE \$ 3,385,000 cash on closing. Earnest money paid after City Council approval of \$25,000.

3. SURVEY & TITLE COMMITMENT; PERMITTED EXCEPTIONS.

Buyer shall obtain, at Buyer's sole expense, a preliminary title insurance commitment for the Property showing fee simple title in Seller, issued by the Escrow Agent in its capacity as a licensed agent for a nationally recognized title insurer acceptable to Buyer (the "**Title Commitment**"). At Closing, such insurer, at Buyer's sole expense, shall issue to Buyer an owner's title insurance policy in the amount of the Purchase Price (the "**Title Policy**"). The Title Commitment and the Owner's Title Policy shall be subject only to liens, encumbrances, exceptions or qualifications set forth in this Contract or otherwise acceptable to Buyer, and in the case of the Title Commitment, those items which shall be discharged by Seller at or before closing. Buyer shall have twenty (20) days from the date of receiving Title Commitment to examine it. If title is found defective, if Buyer has objections to the Survey (as defined below) or the issuer of the Title Commitment has not provided satisfactory assurances that the Title Requirements will be met, Buyer shall notify Seller in writing, within twenty (20) days from the date of receiving the Title Commitment specifying the objection(s) to the Title Commitment or Survey. If the objection(s), in Buyer's opinion, renders title unmarketable, uninsurable, or the objections affect Buyer's intended use of the Property, development of the Project, ability to obtain construction and permanent financing for the Project or contain terms Buyer deems unreasonable, Seller will have thirty (30) days from receipt of such notice within which to attempt to remove such objection(s) to the Title Commitment or Survey. Seller agrees that it shall use a diligent, good faith effort to correct any objection(s), provided,

however, Seller shall not be required to spend an amount it deems unreasonable to correct any such objections. If Seller is unsuccessful in removing such objection(s) within said time, Buyer shall have the option of (i) extending such time period, (ii) accepting the title as it then is, or (iii) rescinding this Contract and thereupon Buyer and Seller shall be released, as to one another, of all further obligations and all damages arising under this Contract.

Seller will deliver to Buyer a copy of any survey of the Property in Seller's possession. Buyer shall have the right to obtain a new or recertified survey of the Property (the "**Survey**") at Buyer's cost. Subject to approval of the Survey by Buyer, the legal description of the Property contained in the Survey will be the description of the Property used in the Deed.

4. **BUYER'S REQUIREMENTS:** Buyer shall undertake to remove the conditions to closing contained in this Contract including, but not limited to, those requirements set out in Exhibit B; provided, however, Buyer has the right to terminate this Contract for any reason or no reason so long as the right of termination is exercised in a timely manner. Seller agrees to cooperate fully with Buyer with respect to Buyer's efforts to obtain all relevant information pertaining to the Property and the permitted uses of it. In the event such conditions cannot reasonably be removed, satisfied, or met or if Buyer determines that the Property is not satisfactory for Buyer's contemplated real estate development on the Property (the "**Project**"), Buyer may terminate this Contract. In all cases, Buyer's sole opinion and judgment shall determine whether Buyer's requirements have been satisfied or met. In the event Buyer does not notify Seller in the manner set forth in paragraph 12(a) of the failure of a condition or Buyer's decision to terminate within sixty (60) days of the Council Approval Date (the "**Buyer's Inspection Period**" or the "**Inspection Period**"), all of Buyer's conditions shall be deemed satisfied

5. **ENVIRONMENTAL WARRANTIES:** Seller represents and warrants that to its actual knowledge, information, and belief, no unlawful toxic substances, hazardous substances, or hazardous waste materials regulated under any applicable federal, state, or local laws have been produced, used, stored, or disposed upon the Property in violation of applicable laws and regulations or that the Property contains or encompasses any wetlands as that term is defined under the Clean Water Act. Seller shall provide Buyer within the timeframe set forth in Paragraph 7 with copies of all environmental assessments, reports, or studies prepared for Seller's use or benefit. In addition, Buyer has permission to commission its own Phase I Environmental Site Assessment (the "**ESA**") of the Property, the scope of which will be determined by Buyer. If the ESA indicates that the Property presents matters that require remediation, Buyer shall notify Seller under the terms and conditions in Paragraph VI.

6. **OPTION TO MITIGATE:** If the ESA indicates that the Property presents any matters that require remediation, Buyer shall first advise Seller in writing ("**Buyer's Notice**") of those items identified in the ESA of which Buyer requires remediation, and allow Seller its Option to Mitigate hereunder prior to Buyer being able to exercise any right to terminate this Contract. Within ten (10) days of receipt of Buyer's Notice, Seller shall advise Buyer in writing ("**Seller's Response**") whether or not it shall remedy some or all of the items specified in Buyer's Notice. Seller shall have up to one hundred twenty (120) days to remedy those items, if it so chooses, at its sole cost and expense, during which time this Contract shall remain in effect. At the end of the

earlier of one hundred twenty (120) days or upon Seller's written notification to Buyer that it has completed the remediation, Buyer shall have twenty (20) days to either satisfy itself that the items in Buyer's Notice have been remedied or to advise Seller that it is terminating this Contract. If Seller's Response advises Buyer that it will not correct some or all of the items specified in Buyer's Notice then Buyer, within ten (10) days after receipt of Seller's Response, shall advise Seller in writing that it shall (i) accept such items "AS IS" and/or correct them itself after the Closing, all without reduction in the Purchase Price, or (ii) elect to terminate this Contract.

7. SELLER DOCUMENTS: Seller agrees to deliver to Buyer within ten (10) days of the Effective Date copies of the following: all title insurance policies and surveys; all plats, covenants, deeds, easements, development plans, construction plans, if any; any market studies; and environmental reports, studies or assessments relating to the Property (collectively, the "**Seller Documents**"). Buyer shall return all Seller Documents if the Closing does not occur and shall keep the Seller Documents confidential to the best of its ability.

Additionally Seller agrees to deliver to Buyer within ten (10) days all agreements with the property owners or leasee for property located at 1006 SW 14th St regarding parking lot use.

8. SELLER'S REPRESENTATION AND WARRANTIES: Seller represents and warrants as to following matters:

(a) there is no action, suit, or proceeding pending, or to Seller's actual knowledge and belief, threatened or contemplated against or affecting, either directly or indirectly, the Property; and

(b) the Property is not located within any wetlands area as determined under the Clean Water Act and applicable FEMA maps and there is no application currently pending regarding the same.

9. RISK OF LOSS: All risk of loss to the Property shall remain with Seller prior to Closing. If any improvements on the Property are damaged prior to Closing and Seller is either unable or unwilling to restore the Property to the condition it was as of the Effective Date, at Buyer's sole option, Buyer may (i) elect to terminate this Contract or (ii) elect to take the Property as it then is, together with any insurance proceeds payable by virtue of such loss or damage. If Buyer elects to terminate this Contract, Buyer and Seller shall be released, as to one another, of all obligations and liabilities under this Contract.

10. REPAIR AND MAINTENANCE: Between the Effective Date and the date of Closing, Seller shall maintain the Property in substantially the same condition the Property was in on the Effective Date. Further, Seller agrees not to enter into, extend, or renew beyond closing any agreement covering any portion of the Property (or real property contiguous to the Property) or which might change the status, condition, or commercial marketability of the Property without the prior written approval of Buyer.

11. PROVISIONS WITH RESPECT TO CLOSING.

a) Closing Date. The consummation of the transaction contemplated by this Agreement ("Closing") shall take place at such place as designated by Seller on or before February 12, 2020, or at such earlier date as agreed mutually, unless extended by other provisions hereof.

b) Seller's Obligation at Closing. At Closing, Seller shall furnish good and marketable title at closing and execute, acknowledge, and deliver to Buyer a Special Warranty Deed conveying the Property to Buyer subject to:

- (i) taxes and assessments for year of closing and subsequent years;
- (ii) restrictions, easements and zoning ordinances of record, if any;
- (iii) public utility easements of record, if any.

c) Buyer's Obligations at Closing. Subject to the terms, conditions and provisions hereof, and concurrently with the performance by Seller of its obligations set forth in Section IV b) above, Buyer shall deliver to Seller cashier's check or other immediate local funds in the amount set forth in Section II of this Agreement.

d) Closing Costs.

Buyer shall pay for any required survey work. Buyer and Seller shall equally share all remaining costs and expenses in connection with the Closing, including the following:

- (i) Documentary stamps which are required to be affixed to the Warranty Deed;
- (ii) The intangible tax required by law on the mortgage.
- (iii) All recording costs, including recording of the deed, mortgage, and any documents required in connection with the title insurance commitment.
- (iv) The premium payable for the title commitment and title policy issued pursuant thereto, if any.

e) Proration of Taxes. Taxes for the year of the Closing shall be prorated to the date of Closing. If the Closing shall occur before the tax rate is fixed for the then current year, the apportionment of taxes shall be upon the basis of the tax rate of the preceding year applied to the latest assessed valuation.

12. OTHER CONTRACTUAL PROVISIONS.

a) Notices. Any notice to be given or to be served upon any party hereto, in connection with this Agreement, must be in writing, and may be given by certified mail and shall be deemed to have been given and received when a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States Mail; and if given otherwise than by certified

mail, it shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Such notices shall be given to the parties hereto at the addresses stated above. Any party hereto may, at any time by giving five (5) days' written notice to the other party hereto, designate any other address in substitution of the foregoing address to which such notice shall be given and other parties to whom copies of all notices hereunder shall be sent.

b) Assignability. The Buyer is prohibited from assigning all or any part of this Agreement.

c) Entire Agreement; Modification. This Agreement embodies and constitutes the entire understanding between the parties with respect to the transaction contemplated herein. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged, or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

d) Applicable Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Arkansas.

e) Headings. Descriptive headings are for convenience and shall not control or affect the meaning or construction of any provision of this Agreement.

f) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns.

g) Counterparts. This Agreement may be executed in several counterparts, each constituting a duplicate original, but all such counterparts constituting one and the same Agreement.

h) Interpretation. Whenever the context hereof shall require, the singular shall include the plural, the male gender shall include the female gender and the neuter, and vice versa.

i) Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

j) Section 1031 Exchange. Upon request by Seller, Buyer shall cooperate with Seller in order to effectuate the goal of Seller to have this transaction qualify for a tax deferred treatment under Section 1031 of the Internal Revenue Code of 1986, as amended, provided that Buyer is put to no additional expense, in this regard, and that the closing is not materially delayed. Formal provisions detailing the exchange shall be entered into by the parties and made a part of the final contract of exchange, no later than as such time as Buyer shall acknowledge satisfaction of the contingencies to its obligation to close this transaction.

k) Time for Acceptance & Effective Date. If this offer is not executed by both parties hereto on or before November 15, 2019, this offer shall thereafter be null and void. The date of the Agreement ("Effective Date") shall be the date when the last one of the Seller and Buyer has signed this offer.

l) City Council Approval. This offer is conditioned upon the City of Bentonville receiving Approval from the Bentonville City Council to purchase this property.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Witnesses: "Buyer" (The City of Bentonville, Arkansas) by:

Attest: _____ Mayor Stephanie Orman

City Clerk Date: _____

"Seller" (West Plaza Investment LLC) by: _____
Matt Sifton - Manager

Date: 10-22-19

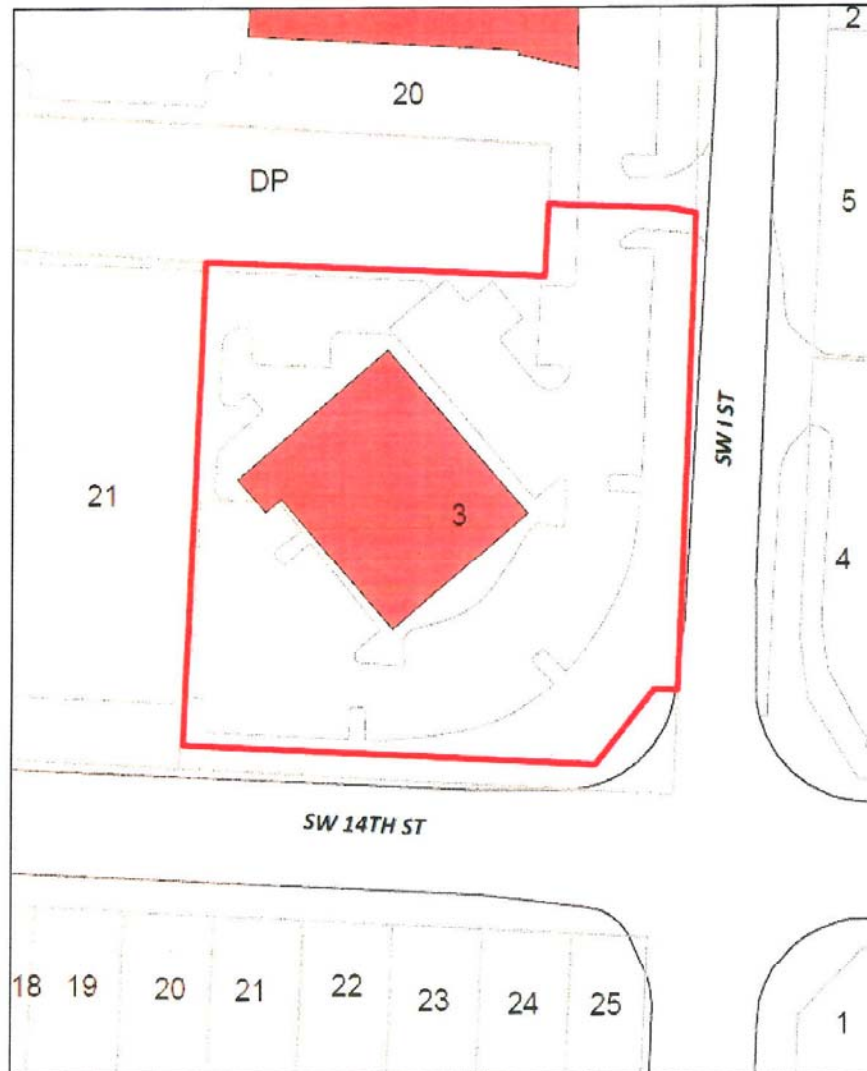
EXHIBIT "A"

Lot 3, Westpark Square Subdivision to the City of Bentonville, Arkansas, as shown on plat of record in plat book P3 at page 867, and P3 at page 942, plat records of Benton County, Arkansas.

Less & Except:

A part of Lot 3 of Westpark Square Subdivision to the City of Bentonville, Arkansas, being a replat of Mahan Subdivision, also being a part of the SE1/4 of the SE1/4 of Section 36, T-20-N, R-31-W, Benton County, Arkansas, more particularly described as follows: Starting at a Rebar Cap #1227 being used as NW corner of Lot 3 of Westpark Square; thence S 02°40'11" W, along the West line of said Lot 3 a distance of 269.92 feet to a point on the Northerly right-of-way line of State Highway 102 as established by AHTD Job #090138 for the Point of Beginning; thence S 87°15'21" E, along said right-of-way line a distance of 230.64 feet to a point; thence N 38°06'16" E, along said right-of-way line a distance of 53.23 feet to a point on the East line of Lot 3 as established by the final plat of Westpark Square also being the West line of S.W. "I" Street as established by the final plat of Westpark Square; thence S 02°49'53" W, along said right-of-way line a distance of 38.10 feet to a point on the Northerly right-of-way line of State Highway 102 as established by the final plat of Westpark Square; thence N 87°20'39" W, along said right-of-way line a distance of 261.33 feet to a point on the West line of Lot 3 Westpark Square as established by the final plat of Westpark Square; thence N 02°40'11" E, along said West line a distance of 15.10 feet to the Point of Beginning and containing 4,561 square feet more or less as shown on plans prepared by the AHTD referenced as Job 090138. Subject to easements, rights of way, reservations, restrictions, and covenants of record.

Exhibit A-1



e

EXHIBIT B

Buyer's Inspection Period

The transaction contemplated herein is conditioned upon Buyer determining, at its sole cost, the items set forth herein within Buyer's Inspection Period, except as otherwise provided or extended. Any item not objected to in writing within Buyer's Inspection Period or the extension thereto, or the period provided for herein, shall be deemed satisfied. In the event Buyer terminates this Contract because of the failure of any condition herein, subject to Seller's Option to Mitigate, Buyer and Seller shall be released, as to one another, of all further obligations and liabilities under this Contract.

(a) Buyer's determination that it can obtain all necessary governmental approvals for its intended use of the Property including satisfaction of Buyer's density requirements for the Project.

(b) Buyer's determination that the Property has full, free, and adequate ingress and egress from public highways and roads. Seller hereby warrants that it has no knowledge of any fact or condition, which would result in the termination of any existing access.

(c) Buyer's reasonable determination that all utilities necessary for Buyer's intended use are available to the Property or will be constructed and extended to a boundary line of the Property prior to the expiration of Buyer's Inspection Period.

(d) Buyer's determination that it will be able to obtain funding approval from the City Council.

(e) Buyer's determination, through the use of engineering, environmental and related tests, percolation tests, geotechnical studies and soil boiling, (the "**Site Investigation**") that the Property is satisfactory for Buyer's use and that no portion of the Property lies within any wetlands area or within a floodway or flood zone. Seller hereby grants to Buyer the right to enter the Property for the purpose of conducting, to the extent possible, the Site Investigation. Seller shall provide Buyer with copies of any environmental reports or studies for the Property in Buyer's possession. Upon Seller's request, Buyer shall provide Seller immediately with a copy of any reports or studies, which Buyer has performed on or about the Property pursuant to this Exhibit.

(f) Buyer may, but is not required to, engage the services of an engineer or other third party to inspect the Property. In the event of the purchase and sale of the Property hereunder, Seller shall sell the Property to Buyer, and Buyer agrees that is purchasing the Property from Seller "AS IS", WITHOUT ANY REPRESENTATION OR WARRANTY AS TO THE PHYSICAL CONDITION OF THE PROPERTY, OR ITS FITNESS FOR ANY PARTICULAR USE, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR HEREIN. Upon Seller's request, Buyer will promptly provide Seller with a copy of any and all reports or studies, which Buyer has performed on or about the Property under this Subparagraph.

(g) Buyer's review of the Title Commitment and any ALTA Survey of the Property whether prepared by Seller or Buyer. Notwithstanding the foregoing, Seller shall furnish Buyer with copies

of any surveys of the Property in its possession. If a survey shows an encroachment, overlap, gore or other objectionable condition, (collectively, the "**defect(s)**"), Buyer shall notify Seller in writing specifying the defect(s). Seller shall have thirty (30) days from receipt of notice within which to remove or cure the defect(s). If Seller is unsuccessful in curing such defect(s) within said time, Buyer shall have the option of (i) extending such time period, (ii) accepting the Property as the survey then shows, or (iii) rescinding this Contract.

(h) Buyer may, but is not required to, engage the services of an architect or other third party to provide a feasibility review of all renovations needed to the Property in regards to providing City Services at the property to ensure the project is feasible before closing.

(i) Buyer may, but is not required to, engage the services of an appraiser for the Property to ensure that that the property appraises at cost or higher. In the event that the appraisal comes in lower than cost, the Parties will have the opportunity to renegotiate (with a new purchase price having to be approved by City Council) or the Seller will have the opportunity to have an appraisal performed (at Seller's cost) and the Buyer will have the opportunity to accept or decline the appraisal.

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE MAYOR AND
CLERK TO ENTER INTO A REAL ESTATE CONTRACT
WITH WEST PLAZA INVESTMENT LLC.**

**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 a real estate contract with West Plaza Investment LLC for the purchase of property located at 1000 SW 14th Street, Bentonville, Arkansas in the amount of \$3,385,000.00, 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 _____, 2019.

APPROVED:

MAYOR

ATTEST:

CITY CLERK



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

AGENDA FORM

CITY COUNCIL MEETING OF:

November 12, 2019

Submitted by:

Jake Harper

Department

Administration

Phone

271-6781

ACTION REQUIRED:

Approval of a budget adjustment related to the purchase of the West Plaza building located at 1000 SW 14th Street. The budget adjustment is for the purchase price and for costs related to feasibility study, appraisal, inspection and closing costs.

COST TO CITY:

Cost of this Request: \$3,485,000

Additional Budget Amount \$3,485,000

☐ One time amount

☒ Continuing O and M

Previously Budgeted	\$
Funds Expended to Date	
Remaining Budget	-
Budget Adjustment	3,485,000
Remaining After Adjustment	\$ 3,485,000

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





Date of Request: November 6, 2019

Acct Number	Account Name	Revenue + (-)	Expense + (-)	Fund Balance + (-)
101010-47210	Plants and Building		\$ 3,385,000.00	\$ (3,385,000.00)
101010-47210	Plants and Building		\$ 25,000.00	\$ (25,000.00)
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
	Totals	\$ -	\$ 3,410,000.00	\$ (3,410,000.00)

Budget Adjustment for the purchase of West Plaza for \$3,485,000 with \$25,000 being earnest money. Additional budget adjustment for \$25,000 to allow for feasibility study, appraisal, inspection, closing costs and any other unforeseen costs.

Date: _____ Date entered: _____ By: _____

PLEASE RECYCLE





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

AGENDA FORM

CITY COUNCIL MEETING OF:

November 12, 2019

Submitted by:

Dennis Birge

Department

Engineering

Phone

271-3118

ACTION REQUIRED:

Public hearing and ordinance vacating an Alley Right of Way and establishing Utility Easement located in Bentonville Original Subdivision to the City of Bentonville, Arkansas, Benton County, Arkansas.

COST TO CITY:

Cost of this Request:

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 _____

ORDINANCE VACATING ALLEY RIGHT OF WAY AND ESTABLISHING A UTILITY EASEMENT LOCATED IN BENTONVILLE ORGINIAL SUBDIVISION TO THE CITY OF BENTONVILLE, ARKANSAS, BENTON COUNTY ARKANSAS (VAC19-0034).

WHEREAS, a petition was filed by CEI Engineering, with the City Council of the City of Bentonville, Arkansas, asking the City Council to vacate Alley Right of way and establish a public utility easement located in the City of Bentonville, Benton County, Arkansas, which portion is more particularly described as follows:

A tract of land being part of a 12' Alley between Lots 172 & 173 of the Replat of Banks Lot Split of the W1/2 of Lot 158 of Original City of Bentonville as recorded in Plat Book 2006, Page 1420 and Lot 157 of Original City of Bentonville as recorded in Plat Book 3, Page 163 in the Public Records of Benton County, Arkansas.

WHEREAS, after due notice as required by law, the Council has at the time and place mentioned the notice, heard all persons desiring to be heard on the question; that all the owners of the property abutting the easement to be vacated have joined in the petition or consented to the granting of the petition; and the public interest and welfare will not be adversely affected by the abandonment of the above described alley right of way.

NOW THEREFORE BE IT ORDAINED, by the City Council of the City of Bentonville, Arkansas:

Section 1: The City of Bentonville Arkansas releases, vacates and abandons all of its rights together with the rights of the public generally, in and to right of way subject to the condition that the public utility easement is reserved for the city designated as follows:

A tract of land being part of a 12' Alley between Lots 172 & 173 of the Replat of Banks Lot Split of the W1/2 of Lot 158 of Original City of Bentonville as recorded in Plat Book 2006, Page 1420 and Lot 157 of Original City of Bentonville as recorded in Plat Book 3, Page 163 in the Public Records of Benton County, Arkansas.

Section 2: Concurrently, The City of Bentonville Arkansas establishes a permanent utility easement to lay, construct, remove, relay, enlarge, maintain, inspect, repair and operate all municipally owned and franchised/permitted utilities including but not limited to water and sewer line or lines, manholes, sewer force main, fire hydrants, poles, electric lines and other

appurtenances thereto, with right of ingress and egress to and from the same, on over, across and under the following described real estate to-wit:

A tract of land being part of a 12' Alley between Lots 172 & 173 of the Replat of Banks Lot Split of the W1/2 of Lot 158 of Original City of Bentonville as recorded in Plat Book 2006, Page 1420 and Lot 157 of Original City of Bentonville as recorded in Plat Book 3, Page 163 in the Public Records of Benton County, Arkansas.

Section 3: A copy of this Ordinance, duly certified by the City Clerk, shall be filed in the Office of the Recorder of Benton County, Arkansas and recorded in the deed records of the County.

Section 4: This Ordinance shall take effect and be in force from and after its passage. The above and foregoing Ordinance was passed, approved, and adopted the _____ day of _____, 2019, at a regular meeting of the City Council of the City of Bentonville, Arkansas.

**LINDA SPENCE, City Clerk and
Recorder for the City of Bentonville,
Arkansas**

**STEPHANIE ORMAN, Mayor
City of Bentonville, Arkansas**



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

AGENDA FORM

CITY COUNCIL MEETING OF:

November 12, 2019

Submitted by: Mark Brightwell

Department: Engineering

Phone: 254-2026

ACTION REQUIRED:

Resolution authorizing the Mayor and City Clerk to enter into an amended agreement with McClelland Consulting Engineers, Inc., for additional design items related to the Water Tower Road expansion project.

COST TO CITY:

Cost of this Request: \$28,000.00

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



Memorandum



To: Mayor and City Council

From: Mark D. Brightwell, Staff Engineer

Date: Wednesday, October 30, 2019

Re: Water Tower Rd. Amendment #4 for McClelland Consulting Engineers, Inc.

Staff recommends City Council approval of a resolution authorizing the Mayor to enter into an amendment to the original 2015 agreement with McClelland Consulting Engineers, Inc., for the additional design required to add various items listed on the attached amendment. These additional design items will be added as a result of splitting the project into two separate phases and modifications of the design to connect to the Bekaert Trail near Hwy 102. Staff recommends implementation of this phasing strategy to prioritize and move forward expeditiously with Phase I to construct the 8th Street extension from I-49 to Water Tower Road while right of way and easement acquisition; utility relocations; and other longer duration tasks are completed for Phase II improvements to complete the project.

The additional cost to the original agreement, as amended, is \$28,000. These funds will come from the Street Bond Account.

Original 2015 Agreement	\$777,500
Previous Amendments	\$ 42,750
This Amendment	\$ 28,000
Adjusted Total	\$847,750

Please find the attached Amendment #4 for your reference.

Thank you for your consideration of this request. Please contact me at mbrightwell@bentonvillear.com or 479-254-2026 with any questions or comments.

This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 24th, 2015.

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. 4

1. *Background Data:*

- a. Effective Date of Owner-Engineer Agreement: June 24th, 2015
- b. Owner: City of Bentonville
- c. Engineer: McClelland Consulting Engineers, Inc
- d. Project: Water Tower Road and 8th Street Extension

2. *Description of Modifications:*

- a. The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as follows: shall perform or furnish the following Additional Services:

I. *Divide Water Tower Road project construction in to two separate phases;*

- a. *Phase I; 8th Street Extension from I-49 Interchange to Water Tower Road (WTR), to include construction of:*
 - i. *Roundabout*
 - ii. *Street improvements north of roundabout along WTR, including connection to 6th St.*
 - iii. *Street improvements to south of roundabout along WTR necessary to tie-in to existing street, to include temporary connection that will be removed by construction of 2nd phase.*
 - iv. *Storm water detention facility east of WTR.*
 - v. *Drainage modifications as required beyond current design to ensure adequate operation of Phase I as stand-alone project.*
- b. *Phase II; Water Tower Road from 8th Street to Hwy 102/ Hudson.*
 - i. *To include modifications to Hwy 102/ WTR intersection to accommodate Bekaert Trail. Bekaert Trail will be a 10' wide trail located on east side of Bekaert Drive.*

II. *Modify Project Manual, Specifications, Cost Estimate & Bid Documents to support bidding of two phases of project.*

5. *Agreement Summary (Reference only)*

a. Original Agreement amount:	\$ 777,500.00
b. Net change for prior amendments:	\$ 42,250.00
c. This amendment amount:	\$ 28,000.00
d. Adjusted Agreement amount:	\$ 847,750.00

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C of the original agreement.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is _____, 2019.

OWNER:

City of Bentonville

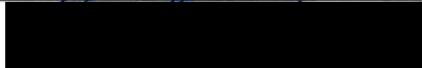
By: _____

Title: _____

Date
Signed: _____

ENGINEER:

McClelland Consulting Engineers, Inc

By: 

Title: Vice President

Date Signed: 10.29.2019

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY
CLERK TO ENTER INTO AN AMENDED AGREEMENT
WITH MCCLELLAND CONSULTING ENGINEERS, INC.
FOR PROFESSIONAL SERVICES FOR THE DESIGN OF
THE WATER TOWER ROAD PROJECT.**

**NOW, THEREFORE, BE IT RESOLVED 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 amended agreement with McClelland Consulting Engineers, Inc. for professional services for additional design items related to the Water Tower Road expansion project, as set forth in the proposal 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 _____, 2019.

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:

June 26, 2018

Submitted by:

Bryan Wick

Department

Engineering

Phone

(479) 696-0227

ACTION REQUIRED:

Resolution allowing the Mayor to enter into an amended agreement with Morrison Shipley Engineers to update the fee schedule and add additional construction observation to the PIIP18-0002 - Town Vu Bridge Replacement project.

COST TO CITY:

Cost of this Request: \$24,900.00

Additional Budget Amount

☒ One time amount

☐ Continuing O and M

Previously Budgeted	Bond Account
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



Memorandum



To: Mayor and City Council
From: Bryan Wick, Project Manager
Date: Thursday, October 31st, 2019
Re: PIIP18-0002 – Town Vu Bridge Replacement – MSE Amendment 1

The amendment proposed will update the existing fee schedule of the original contract and add additional Morrison Shipley construction observation hours to the project. Currently, the original contract with this firm is for \$125,400, which includes all elements of design and engineering need for the development of the project. Amendment 1 will add \$24,900 to the original contract making the new contract amount \$150,300.

Staff is seeking City Council approval for a resolution allowing the Mayor to enter into an amended agreement with Morrison Shipley Engineers.

Please contact me with any questions or concerns regarding the proposed contract or the project as a whole. My telephone number is (479) 696-0227 or I can be reached via email at bwick@bentonvillear.com



September 18, 2019

Honorable Stephanie Orman
Mayor, City of Bentonville Arkansas
117 West Central Avenue
Bentonville, Arkansas 72712

RE: *Replacement of Town Vu Road Bridge at McKisic Creek*
Engineering Contract Amendment No. 1

Dear Mayor,

The purpose of this correspondence is to formalize engineering contract revisions for the subject project, henceforth known as Contract Amendment No. 1. A copy of the effective contract dated July 13, 2016 is attached for your reference.

The amendments to the effective contract shall be as follows:

1. Section 9.01 "Payment" shall be amended as follows: the hourly budget for Construction Phase Services shall be increased from \$20,600.00 to \$45,500.00. As noted in the effective contract, "...hourly budgets will be billed based on the actual number of hours expended and the attached billing rates; the actual cost of work under these items may be more or less than the budgeted amounts."
2. Section 10.01, "Total Agreement" shall be amended to include new appendices. The Schedule of Hourly Billing Rates (effective January 1, 2016) shall be replaced by the attached Schedule of Hourly Billing Rates (effective June 1, 2019). The Insurance Certificates shall be replaced by the attached updated Insurance Certificates.

Except as noted above, all other provisions of the effective contract shall remain in effect.

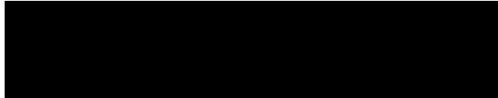
Morrison-Shipley Engineers

www.morrisonshipley.com

Honorable Stephanie Orman
September 18, 2019
Page 2 of 2

We look forward to continuing work with the City of Bentonville and on this project. If you have any questions or require additional information, please let me know.

Respectfully Submitted,
Morrison-Shipley Engineers, Inc.



Travis L. Brisendine, P.E., Principal

Accepted by,
City of Bentonville Arkansas

Stephanie Orman, Mayor

Attachment: Schedule of Hourly Billing Rates Effective June 1, 2019
Insurance Certificates



SCHEDULE OF HOURLY BILLING RATES

(Effective June 1, 2019)

Principal Engineer	\$ 190.00/Hour
Senior Project Manager	\$ 150.00/Hour
Project Manager	\$ 130.00/Hour
Project Engineer (P.E.)	\$ 120.00/Hour
Project Engineer (E.I.)	\$ 95.00/Hour
Engineering Technician	\$ 75.00/Hour
CAD Senior Designer	\$ 100.00/Hour
CAD Designer	\$ 85.00/Hour
CAD Technician	\$ 70.00/Hour
Senior Construction Observer	\$ 95.00/Hour
Construction Observer	\$ 85.00/Hour
Professional Surveyor (P.S.)	\$ 120.00/Hour
Survey Coordinator	\$ 100.00/Hour
Survey Intern (S.I.)	\$ 85.00/Hour
Survey Crew Chief	\$ 75.00/Hour
Survey Rodman	\$ 60.00/Hour
Survey Field Crew (1-person)	\$ 125.00/Hour
Survey Field Crew (2-person)	\$ 150.00/Hour
Survey Field Crew (3-person)	\$ 185.00/Hour
3D Laser Scanning Field Crew (1-Person)	\$ 225.00/Hour
3D Laser Scanning Project Manager	\$ 130.00/Hour
3D Laser Scanning Technician	\$ 85.00/Hour
Ground Penetrating Radar Field Crew	\$ 185.00/Hour
Aerial Mapping Manager – Field (<i>Flight Ops</i>)	\$ 200.00/Hour
Aerial Mapping Manager – Office (<i>Travel Time/Data Processing</i>)	\$ 100.00/Hour
Aerial Mapping Technician	\$ 85.00/Hour
Administrative Assistant	\$ 45.00/Hour

Schedule of Hourly Billing Rates
Effective June 1, 2019
Page 2 of 2

EXPENSES

Mileage & Per Diem	IRS-allowed rates
Reimbursable Expenses	Cost + 10%

PRINTING

Plan Binders			\$4.00 Each
Black & White Copies			
8.5x11:	\$0.12 Each	18x24:	\$1.00 Each
8.5x14:	\$0.18 Each	22x34:	\$1.75 Each
11x17:	\$0.25 Each	24x36:	\$2.00 Each
Custom XL:	\$0.30/SF	30x42:	\$3.00 Each
Color Copies			
8.5x11:	\$0.60 Each	11x17:	\$2.00 Each
8.5x14:	\$0.80 Each	Custom XL:	\$1.30/SF

BILLING TERMS

1. Hourly charges will be billed in 0.25-hour minimum increments. Some services may be subject to minimum charges.
2. Hourly rates include charges for personnel, equipment, and supplies, but do not include vehicle mileage charges and per diem.
3. Travel time and mileage will be billed portal to portal from MSE's office.
4. Work requested between the hours of 7:00 PM and 6:00 AM and on Saturdays, Sundays, or holidays will be charged at 125% of the noted rates.
5. Services rendered for legal proceedings, including pre-trial hearings, depositions, expert report preparation, and trial testimony, among others, will be charged at 200% of the noted rates.

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE MAYOR TO
ENTER INTO AN AMENDED AGREEMENT WITH
MORRISON SHIPLEY ENGINEERS FOR THE TOWN VU
BRIDGE REPLACEMENT PROJECT.**

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

Section 1: That the Mayor be and are hereby authorized to enter into an amended agreement with Morrison Shipley Engineers for the Town Vu Bridge Replacement project in an amount of \$24,900.00 as set forth in the proposal 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 _____, 2019.

APPROVED:

MAYOR

ATTEST:

CITY CLERK



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

AGENDA FORM

CITY COUNCIL MEETING OF:

November 12, 2019

Submitted by:

Charles Chadwick

Department

Engineering/Airport

Phone

418-8675

ACTION REQUIRED:

A resolution for the Mayor and City Clerk to execute approval of assignment of an airport ground lease from TAR & DOK Development, LLC to Effectual Assets, LLC. Said lease is known as 2505 SW "I" Street, Bentonville, Arkansas.

COST TO CITY:

Cost of this Request:

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



**This Instrument Prepared by and,
after recording, to be returned to:**

Jill R. Grimsley, Esq.
MITCHELL, WILLIAMS, SELIG,
GATES & WOODYARD, P.L.L.C.
4206 South J.B. Hunt Drive, Suite 200
Rogers, Arkansas 72758

**ASSIGNMENT AND ASSUMPTION AGREEMENT
(Land Lease for Aircraft Hangar)**

This **ASSIGNMENT AND ASSUMPTION AGREEMENT** is made and entered into effective as of 12:01 A.M. on October 23, 2019 (the "**Effective Time**"), by and between **TAR & DOK DEVELOPMENT, LLC**, an Arkansas limited liability company ("**Assignor**"), and **EFFECTUAL ASSETS, LLC**, an Arkansas limited liability company ("**Assignee**").

RECITALS:

A. The City of Bentonville, Arkansas, as Lessor, ("**Lessor**") and Assignor, as Lessee ("**Lessees**") are parties to a Bentonville Municipal Land Lease Agreement dated March 7, 2017, as amended by an addendum to Land Lease Agreement dated February 13, 2018 (together, the "**Lease**").

B. The Lease covers certain real property consisting of approximately 7,200 square feet marked and identified as 2505 S.W. "I" Street, Bentonville, Benton County, Arkansas, and being more particularly described on Exhibit A hereto (the "**Leased Land**"). Assignor constructed an aircraft hangar on the Leased Land (the "**Hangar**"). The Leased Land and the Hangar constructed thereon are together referred to as the "**Premises**".

C. A Memorandum of Land Lease Agreement (Bentonville Municipal Airport) was recorded on February 23, 2018 as Document No. 201809388 in the records of the County Clerk of Benton County, Arkansas.

D. Pursuant to Lease Sale Agreement dated effective as of 12:01 A.M. on October 23, 2019, by and between Assignor and Assignee (the "**Purchase Agreement**"), and subject to the terms and conditions of the Purchase Agreement, Assignor has agreed to assign to Assignee all of Assignor's right, title and interests in and to the Lease (as amended, modified or extended from time to time) and the Hangar, and Assignee has agreed to assume, pay, perform and discharge certain liabilities and obligations of Assignor under the Lease.

E. The City of Bentonville, Arkansas, has consented to Assignor's assignment to Assignee of Assignor's right, title, interests, obligations and duties as lessee under the Lease, and Assignee's assumption of such right, title, interests, obligations and duties under the Lease.

7103418.1

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in the Purchase Agreement, and for other good and valuable consideration, the receipt of which is hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Assignor hereby assigns, conveys, transfers and sets over to Assignee all of Assignor's right, title, interests, obligations and duties as Lessee (collectively, the "**Leasehold Estate**") under the Lease, as amended or extended from time to time, together with, all and singular, the right, privileges, advantages, and appurtenances belonging or in any way appertaining to such, including, all buildings, driveways, parking lots, and other improvements located thereon, and all surface rights, privileges, rights of way and easements appurtenant thereto, and Assignee hereby undertakes, assumes and agrees, subject to the limitations contained herein, to perform, pay or discharge all unperformed and unfulfilled obligations which are required to be performed and fulfilled by Assignor under the terms of the Lease, as amended or extended from time to time (collectively, the "**Assumed Obligations**").

2. Notwithstanding anything to the contrary contained herein or in the Purchase Agreement, the Assumed Obligations shall not include any debts, liabilities or obligations of Assignor, direct or indirect, fixed, contingent or otherwise, which are due and payable with respect to periods up to the Effective Time or that relate to a breach or default by Assignor with respect to any of the Assumed Obligations to the extent that such breach or default occurred prior to the Effective time, whether or not known, due or payable as of the Effective Time; *provided*, that Assignee does assume responsibility for (a) all real estate and ad valorem or personal property taxes due and owing on the Premises and (b) the developer's allocated portion of the cost of utility installations running west-to-east on the south side of the Premises in the amount of \$3,333.33.

3. Assignee fully agrees to and accepts all terms and conditions of the Lease. Assignee agrees to honor and comply to all of the terms and conditions for the duration of the Lease, and further agrees to honor and comply with all Bentonville Municipal Airport Rules and Regulations, minimum standards and FAA Advisory Circulars and mandates, as all may exist, be adopted and/or amended from time to time

4. Assignor does hereby covenant with Assignee that Assignor will forever warrant and defend the title to the Lease, together with the improvement thereon, and all rights, privileges and appurtenances thereunto belonging.

5. This Assignment and Assumption Agreement is made pursuant to, and subject to the terms of, the Purchase Agreement.

IN WITNESS WHEREOF, the parties have executed this Assignment and Assumption
(Land Lease for Aircraft Hangar) on the date and year first above written.

ASSIGNOR:

TAR & DOK DEVELOPMENT, LLC
An Arkansas limited liability company

By: [Redacted]
Timothy E. Oelke, Manager

STATE OF Arkansas)
) ss:
COUNTY OF Benton)

ACKNOWLEDGMENT

On this day, personally appeared before the undersigned, a Notary Public within and for the County and State aforesaid, duly qualified, commissioned and acting, **TIMOTHY E. OELKE**, to me well known, who acknowledged that he was the Manager of **TAR & DOK DEVELOPMENT, LLC**, an Arkansas limited liability company, and stated and acknowledged that he was duly authorized as such officer to execute the foregoing instrument for and in the name and behalf of said limited liability company and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 10th day of October, 20 19.

[Redacted]
Notary Public

My commission expires:

11-15-19
(SEAL)

OFFICIAL SEAL
TRACI WEVER
NOTARY PUBLIC, ARKANSAS
BENTON COUNTY
COMMISSION # 12373239
COMMISSION EXP. 11/15/2019

Signature Page

7103418.1

IN WITNESS WHEREOF, the parties have executed this Assignment and Assumption
(Land Lease for Aircraft Hangar) on the date and year first above written.

ASSIGNEE:

EFFECTUAL ASSETS, LLC,
An Arkansas limited liability company

By: [REDACTED]
Christopher Townsley, Member & Manager

ACKNOWLEDGMENT

STATE OF ARKANSAS

COUNTY OF BENTON

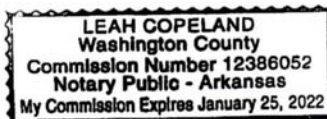
On this day personally appeared before the undersigned, a Notary Public within and for the County and State aforesaid, duly qualified, commissioned and acting, the within named **CHRISTOPHER TOWNSLEY**, to me personally well known, who stated that he was the Member and Manager of **EFFECTUAL ASSETS, LLC**, an Arkansas limited liability company, and stated and acknowledged that he was duly authorized in that capacity to execute the foregoing instrument for and in the name and behalf of such limited liability company and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal this 10 day of Oct, 2019.

[REDACTED]
Notary Public

My Commission Expires:

Jan 25, 2022
(SEAL)



Signature Page

7103418.1

IN WITNESS WHEREOF, the undersigned has consented to the foregoing Assignment and Assumption (Land Lease for Aircraft Hangar) as of the Effective Date.

CONSENTED TO BY:

CITY OF BENTONVILLE, ARKANSAS

By: _____
Stephanie Orman, Mayor

Attest:

Linda Spence, City Clerk

APPROVED:

**BENTONVILLE AIRPORT ADVISORY
BOARD**

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF ARKANSAS

COUNTY OF BENTON

On this day personally appeared before the undersigned, a Notary Public within and for the County and State aforesaid, duly qualified, commissioned and acting, the within named **STEPHANIE ORMAN and LINDA SPENCE**, to me personally well known, who stated that they were the Mayor and City Clerk, respectively, of the **CITY OF BENTONVILLE, ARKANSAS**, and stated and acknowledged that they were duly authorized in that capacity to execute the foregoing instrument for and in the name and behalf of the city and further stated and acknowledged that they had so signed, executed and delivered said foregoing instrument for the consideration and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal this ____ day of _____, 20__.

Notary Public

My Commission Expires:

ACKNOWLEDGMENT

STATE OF ARKANSAS

COUNTY OF BENTON

On this day personally appeared before the undersigned, a Notary Public within and for the County and State aforesaid, duly qualified, commissioned and acting, the within named _____, to me personally well known, who stated that he/she was the Chairman of the **BENTONVILLE AIRPORT ADVISORY BOARD**, and stated and acknowledged that he/she was duly authorized in that capacity to execute the foregoing instrument for and in the name and behalf of the board and further stated and acknowledged that he/she had so signed, executed and delivered said foregoing instrument for the consideration and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal this ____ day of _____, 20__.

Notary Public

My Commission Expires:

Signature Page

| 7103418.3

EXHIBIT A

Legal Description of Leased Premises

A hangar building at 2505 SW "I" Street, being a portion of Lot 1 of Thaden Addition to the City of Bentonville as recorded in Plat Book 2010, Page 188 in the public records of Benton County, Arkansas, being described by metes and bounds as follows:

COMMENCING at the Northwest corner of said Lot 1; **THENCE** along the East Right-of-Way of "I" Street as shown on said Thaden Addition, the following six courses:

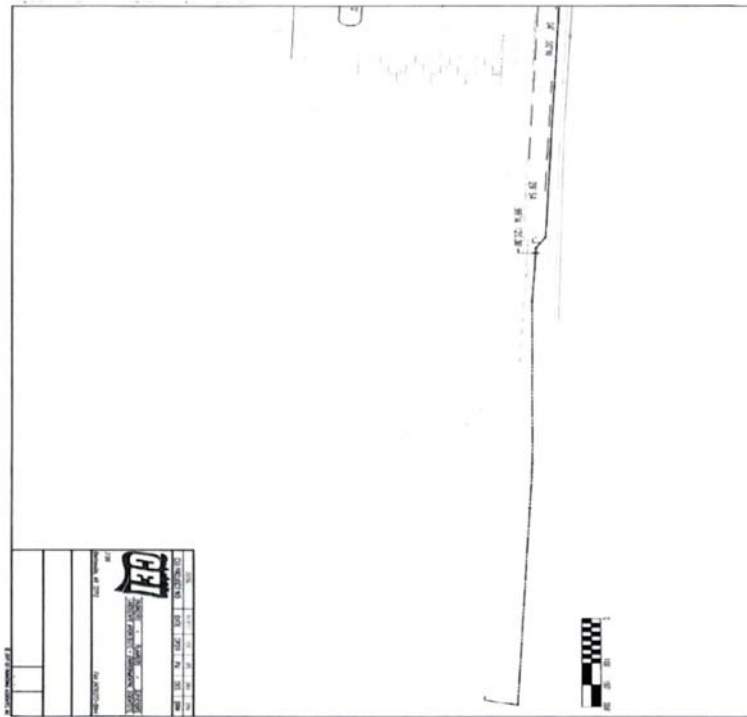
1. South 02°08'39" West 442.52 feet;
2. South 02°04'27" West 99.37 feet;
3. South 00°04'59" West 364.10 feet;
4. South 02°28'26" West 120.30 feet;
5. South 27°29'55" West 27.51 feet;
6. South 02°04'27" West 617.05 feet;

THENCE leaving said Right-of-Way, South 87°35'36" East a distance of 185.55 feet more or less, to a point on the most exterior wall being the Southwest corner of said hangar building to be constructed, also being the **POINT OF BEGINNING**; **THENCE** along the Westerly exterior wall, North 02°24'24" East a distance of 90.00 feet to the Northwest corner of said hangar building to be constructed; **THENCE** along the Northerly exterior wall, South 87°35'36" East a distance of 80.00 feet to the Northeast corner of said hangar building to be constructed; **THENCE** along the Easterly exterior wall, South 02°24'24" West a distance of 90.00 feet to the Southeast corner of said hangar building to be constructed; **THENCE** along the Southerly exterior wall, North 87°35'36" West a distance of 80.00 feet the **POINT OF BEGINNING**, containing 7,200 square feet, or 0.16 acres more or less.

The basis of bearing used for this description is based on said Thaden Addition to the City of Bentonville as recorded in Plat Book 2010, Page 188. Bearings along the exterior walls are based on the orientation of the hangar building to be constructed according to the Large Scale Development plans provided by CEI Engineering Associates, Inc., Job No. 29706, Site Plan - Sheet 2 and the distances along the exterior walls of the hangar building to be constructed are based on drawing plans provided by Burris Architecture, Job No. 16074, Sheet A1.O.

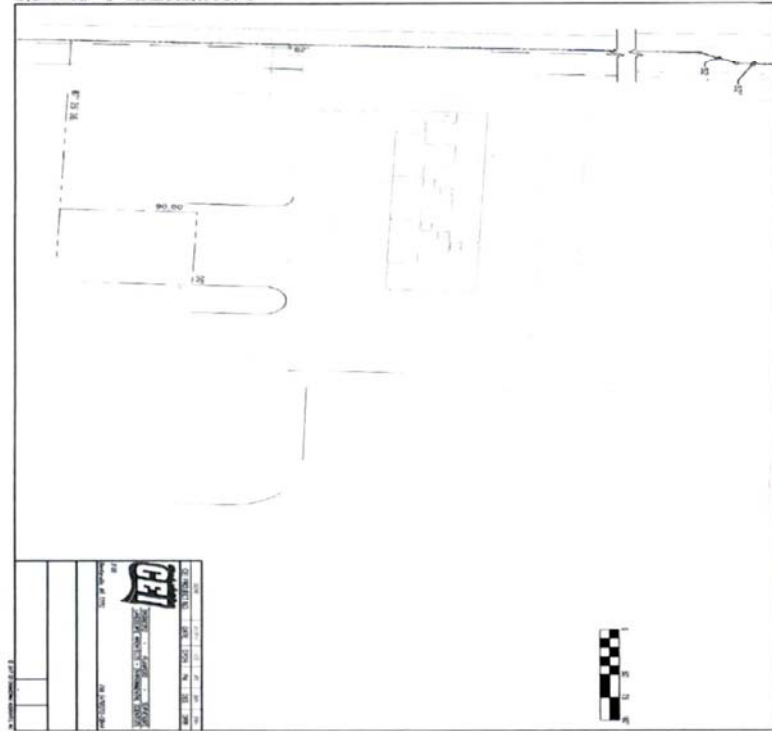
Exhibit A-1

| 7103418.3



| [7103418.3](#)

Signature Page



| [7103418.3](#)

Signature Page

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE MAYOR AND
CITY CLERK TO EXECUTE APPROVAL OF
ASSIGNMENT OF AN AIRPORT LAND LEASE
AGREEMENT FOR A HANGAR SITE LOCATED AT
THE BENTONVILLE MUNICIPAL AIRPORT.**

Whereas: the City of Bentonville entered into a ground lease for an airplane hangar located at 2505 SW "I" Street on or about March 7, 2017, as amended;

Whereas: said lease contains a provision to assign the lease to a new lessee;

Whereas: a request has been made by Effectual Assets, LLC to be assigned the lease currently held by TAR & DOK Development, LLC;

Whereas: the Airport Advisory Board has considered said assignment and unanimously recommends;

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

Section 1: That the Mayor and City Clerk be and are hereby authorized to execute approval of a Land Lease Assignment with TAR & DOK, Development, LLC and Effectual Assets, LLC for a hangar located at the Bentonville Municipal Airport. The provisions of the existing land lease, as amended, shall be transferred in its entirety.

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 _____, 2019

APPROVED:

MAYOR

ATTEST:

CITY CLERK



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

AGENDA FORM

CITY COUNCIL MEETING OF:

November 12, 2019

Submitted by:

Chuck Chadwick

Department

Airport

Phone

418-8675

ACTION REQUIRED:

A resolution seeking Council approval to accept the proposed Bentonville Municipal Airport/Louise M. Thaden Field, Amended Turf (Grass) Runway 17/35 Written Operations Procedures.

COST TO CITY:

Cost of this Request:

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



MEMORANDUM

DATE: October 30, 2019

TO: City Council, Mayor Orman

FROM: Chuck Chadwick, Airport Manager

RE: A resolution adopting the Amended written procedures concerning the turf runway operations located at the Bentonville Municipal Airport.

The document sets forth in written form along with a visual exhibit, the proper operational procedures when using the turf runway 17/35 at the Bentonville Municipal Airport.

The FAA requires this documentation and is prudent for the safe operations when using the turf runway. This document is the result of many hours of work involving the FBO, the flight school, The Tailwind Aviation Foundation, Inc., city staff, the Airport Advisory Board, and many concerned pilots.

A PREVIOUS VERSION OF THE TURF RUNWAY OPERATIONS PROCEDURES WAS PREVIOUSLY PRESENTED TO THIS COUNCIL AND APPROVED. HOWEVER, IT WAS BROUGHT TO STAFF ATTENTION BY THE FAA THAT CERTAIN INFORMATION ABOUT SIMULTANEOUS OPERATIONS SHOULD BE DELETED TO CLARIFY THAT NO SIMULTANEOUS OPERATIONS SHALL OCCUR ON THE TURF RUNWAY 17/35 AND THE PAVED RUNWAY 18/36. THIS AMENDED VERSION DELETES CERTAIN LANGUAGE TO CLARIFY THAT POINT.

I have approved said document and support the adoption of said written procedures. I am an Arkansas licensed attorney and the contracted Airport Manager for the City of Bentonville.

By the time this matter comes before the Council, the Airport Advisory Board will have approved and recommended adoption of the said amended written procedures or an addition memorandum from me will be provided to the City Council explaining otherwise.

Bentonville Municipal Airport/Louise M Thaden Field Turf (Grass) Runway 17/35 Operations

Purpose: Establish procedures to safely operate on the Turf/Grass Runway 17/35 at Bentonville Municipal Louise Thaden Municipal Airport (VBT).

General: The Turf/Grass Runway 17/35 is a cooperative project between the City of Bentonville Arkansas, Private Parties, and the Tailwind Aviation Foundation, a charitable organization. The vision of the Turf/Grass Runway is to accommodate appropriate GA aircraft and antique aircraft that would normally use turf or grass surfaces and other aircraft to practice soft field landing or takeoff operations. The Turf/Grass Runway may also be used during appropriate emergency situations that may arise such as:

- Gear up landing
- The main landing surface, Runway 18/36, is unavailable or closed due to Foreign Object Damage (FOD) or other emergency situations.

Definitions/Terms/Descriptions

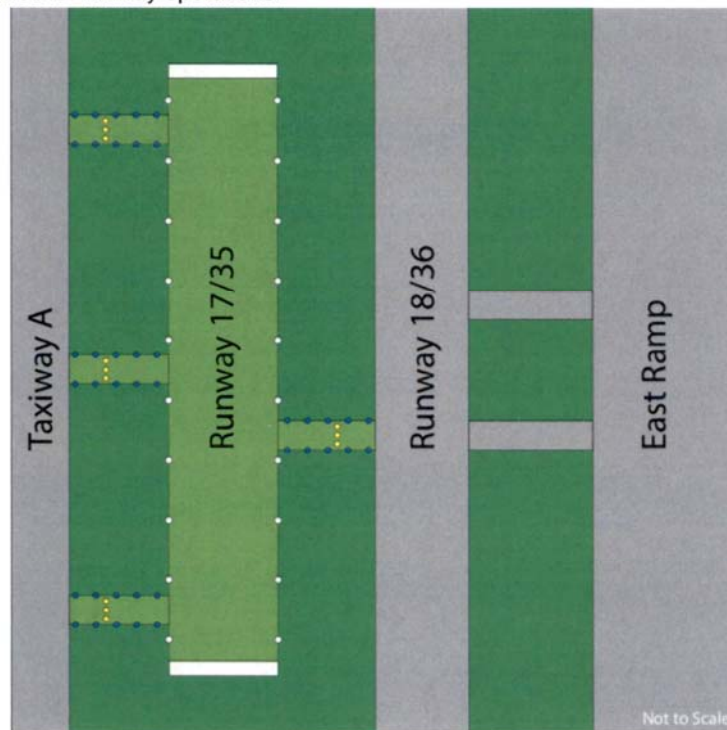
- **Operations:** A *Take Off* or *Landing* of an aircraft to or from a runway
- **Ground Movement:** Activities involving aircraft taxiing on a runway, taxiway, or apron
- **Turf/Grass Runway Edge Markers:** Circular markers used to identify the edge of the turf runway, running North - South, generally spaced 200' apart, size to be approximately 30" diameter and colored white.
- **Turf/Grass Taxiway Edge Markers:** Circular markers used to identify entrance and exit points on the turf runway. Size approximately 10 - 12" diameter and blue in color.
- **Turf/Grass Runway Threshold:** Each end of the turf runway is marked by a concrete threshold. Note: the concrete threshold was not designed for takeoff or landing.
- **Turf/Grass Runway Access:** Access to the turf runway is provided by turf taxiways that have been constructed and maintained with appropriate grade and grass height to allow safe access to the runway.
 - The turf taxiways on the west side of the turf runway provide access to Taxiway A and facilities on the west side of the airport.
 - The turf taxiway on the east side of the turf runway has been constructed to allow access to and from the East Ramp by crossing at the mid-field high-point of Runway 18/36. This was done to enhance runway safety by providing an access point that does not require back-taxiing on Runway 18/36. As taxiways on the east side of airport are constructed, allowing pilots to cross Runway 18/36 without back-taxiing, the continued maintenance and use of this taxiway will be reevaluated, and this document will be updated accordingly.

Operations

I. Communications: Pilots shall self-announce on the published CTAF frequency, coordinating arrivals and departures on Runways 17/35 and 18/36.

II. Procedures:

- A. Standard Traffic Pattern is Left Traffic to both runways.
- B. Aircraft shall exit and enter the Turf/Grass Runway only at defined areas. (See diagram)
- C. Use of airstrips:
 - 1. *No Simultaneous Operations* - When an aircraft/pilot is landing or departing on either runway, no landings or departures are permitted on the adjacent runway.
 - 2. *Ground Activities* - When an aircraft is landing or departing on one of the two runways, no ground movement is permitted on the opposite runway.
 - 3. *Day/VFR use only* - No operations permitted at night or during IFR conditions.
- D. Turf/Grass Runway 17 and hard surface Runway 18 are designated as Calm Wind runways.
- E. West side of the airport: Hold short on Taxiway A or Circular Apron at the designated hold short lines for runway operations.
- F. East side of the airport: Hold short on the East Ramp at designated hold short lines for runway operations.



RESOLUTION NO. _____

**A RESOLUTION ADOPTING AMENDED WRITTEN
PROCEDURES CONCERNING THE TURF (GRASS) RUNWAY
17/35 OPERATIONS LOCATED AT THE BENTONVILLE
MUNICIPAL AIRPORT.**

Whereas: the City of Bentonville is the owner and operator of the Bentonville Municipal Airport (KVBT) located in Benton County, Arkansas; and,

Whereas: the Federal Aviation Administration requires and it is prudent to have written procedures concerning the turf (grass) runway 17/35 operations located at the Bentonville Municipal Airport; and,

Whereas: that the established procedures to safely operated on the turf (grass) runway 17/35 at the Airport has now been memorialized in written form along with a proper visual exhibit; and, same being amended to reflect requirements set forth in the amended procedures attached hereto;

Whereas: the Airport Advisory Board has considered said written procedures, and recommended same;

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

Section 1: That the attached amended written procedures concerning the turf (grass) runway 17/35 operations located at the Bentonville Municipal Airport are hereby adopted and passed.

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 _____, 2019.

APPROVED:

MAYOR

ATTEST:

CITY CLERK



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

AGENDA FORM

CITY COUNCIL MEETING OF:

November 12, 2019

Submitted by:

Debbie Griffin

Department

Administration

Phone

254-2028

ACTION REQUIRED:

Approval of a resolution supporting Movista Inc. participation in the Tax Back Program (The Consolidated Incentive Act of 2003, Section 15-4-2706(d)). The City's support of the resolution will have no fiscal impact on the City, but is required by the State of Arkansas as a component of Movista Inc. participation.

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





Consolidated Incentive Act of 2003 Incentive Application

OFFICE USE ONLY

Project #

Project Manager

Date Received

Incentive Program

Please select which of the following program(s) are applicable to this application:

Job Creation:

☒ **Advantage Arkansas** (Income Tax Credit program)

Investment: (construction, expansion, modernization)

Applicants may only select one of the following programs:

☒ **Tax Back** (Sales and Use Tax Refund program)
For new or expanding businesses with a \$100,000 minimum investment

Applicant

Movista, Inc

Local Operating Name of Company

406 SE 5th St #12

Bentonville/AR 72712

Mailing Address

City/State

Zip

406 SE 5th St #12

Bentonville/AR/72712

Benton

Physical Location of Project

City/State/Zip

County

Eric Fay - Finance Manager

888-686-6245

Name and Title of Local Company Contact

Phone

Fax

efay2014@gmail.com

http://www.movista.com

Company Contact e-mail address

Company Website

Complete Company Name, if company is filing for tax credit under a different name

**Project
Cost
Estimate**

Land \$ _____
Building (a) New construction \$ _____
 (b) Existing building..... \$ 251,695.00
Equipment..... \$ 152,126.41

TOTAL \$ 403,821.41

Employment

Present employment: 74

Number of new employees resulting from this project: 34

Average Hourly wage of new employees hired for this project: \$ 38.79

Total annual payroll of new employees hired for this project: \$ 2743240

NOTE: To qualify for the income tax credits provided by the Advantage Arkansas program, the company must be an eligible business and meet the minimum payroll requirements for the Tier (county) in which the project is located. The Tier Map is available on line at www.ArkansasEDC.com.

**NAICS
Classification
Code**

511210

Software as a Service

Description of principal business activity, products manufactured, etc.

What percentage of the applicant's gross sales are retail sales to the public? 0 %
(An eligible company must not derive more than 10% of its revenue from sales to the general public)

If the applicant is a computer-related company, a distribution center, office sector business, motion picture company or a scientific and technical services business, 75% of the applicant's sales revenue must be derived from out of state.

What percentage of the applicant's sales is derived from out of state? 83 %

NOTE: Information contained in this application is subject to audit by the Arkansas Department of Finance and Administration. If any of the above information is found to be inaccurate and does not qualify, the business will be decertified and shall not receive any benefits and may be required to repay any benefits received, plus penalty.

I.D. Numbers

Employer's Federal I.D. Number

Arkansas Sales or Consumer Use Tax Number 82036471-SLS**Information
for Income Tax
Credit****Ownership of Company** (Please check the appropriate box.)☐ Individual☐ Partnership☐ LLC☒ Taxable Corporation
(C Corporation)☐ Small Business Corporation
(Sub S Corporation)

If ownership of company is Individual, Partnership, LLC or Small Business Corporation, please provide the following information (a separate attachment may be submitted if necessary):

Name(s) of Owner(s)	Percent Ownership	Social Security Number or Federal Tax I.D. Number
Stan Zylowski	16.47%	
April Seggebruch	16.68%	

When does your tax year end? 12 31
Month Date**Consultant
Information**
(If Applicable)

Name of Consultant filing this application Phone Fax

Consultant Firm Name

Mailing Address City/ State/ Zip

Consultant E-mail address

Project Plan

Please indicate the activity planned by the company associated with this application.
(Check all that apply)

☐ New Construction ☒ Expansion of existing business ☐ Modernization

Estimated Start Date of Project: 7/26/2018 Estimated Completion Date of Project: 7/26/2019

Project Description:

Expansion build-out of space for Movista departments including: IT, Customer Care Agents, Quality Assurance, Meeting space, etc. Including outfitting with necessary work equipment

Project Cost Estimates: 403,821.41

Land:	Description:	
		\$
<i>Land Total:</i>		\$
Building:	New construction:	\$
	Expansion or Purchase of existing facility: Expansion of: IT, Customer Care, Quality Assurance, Meeting Space	251,695.00
		\$
<i>Building Total:</i>		\$ 251,695.00
<i>New Square Footage</i>		
Machinery and Equipment:	Description: Computers, computer hardware, infrastructure, desks, chairs, etc.	
		\$
<i>Machinery & Equipment Total:</i>		\$ 152,126.41
Total Estimated Project Cost:		\$ 403,821.41

Certification

The undersigned authority, Eric Fay acknowledges that he/she is
Company Official (Printed Name)
the owner or authorized official of the applicant company that has the authority to act on behalf of
the applicant.

This affidavit is made for the specific purpose of verifying that the information contained in this application is true and correct. The applicant acknowledges that only those eligible project costs incurred and/or employees hired after the date this application is received by the Commission will be considered for refund or credit. The Advantage Arkansas program requires a separate financial incentive agreement, signed by the applicant company and the Commission, before hiring any new, full-time, permanent employees. **The applicant company does hereby agree to report new job creation and investment figures annually to the Arkansas Department of Finance and Administration for the term of the incentive agreement and to the Arkansas Economic Development Commission upon request.**

 Finance Manager

Title

07/25/2019

Date

Contract Disclosure

Any individual contracting with the State of Arkansas must make full disclosure if he or she is a current or former: member of the General Assembly, Constitutional Officer, Board or Commission member, State employee, or the spouse or immediate family member of any of the persons described herein; or if such persons having any position of control or any ownership interest of ten percent (10%) or greater in the entity currently applying to contract with the State. Please indicate if this disclosure is required for this application. Failure to disclose such information is a criminal offense and shall render any contract with the State of Arkansas null and void.

Disclosure Required?: ☐ Yes or ☒ No

Press Release Disclosure

I ☒ do ☐ do not authorize the Arkansas Economic Development Commission to release to the press the new job creation and investment figures.

(Signing this authorization to release job creation and investment numbers is not mandatory. However, information about benefits received is public information and may be obtained through a Freedom of Information request filed with the Arkansas Department of Finance and Administration.)

 COO

Title

7/25/2019

Date

If you have questions about the incentive programs included in this application, please call the Arkansas Economic Development Commission at 501-682-7675 or visit the Commission's website at www.ArkansasEDC.com.

Submit this application to:
Business Development Division
Arkansas Economic Development Commission
900 West Capitol, Suite 400
Little Rock, AR 72201

AEDC APPROVAL

The Commission's approval of this application is based upon its content. The eligibility provisions of the individual incentive programs will be administered by the Arkansas Department of Finance and Administration upon audit at a later date.

Signature of AEDC Incentives Manager

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF BENTONVILLE, ARKANSAS
CERTIFYING LOCAL GOVERNMENT ENDORSEMENT OF BUSINESS TO
PARTICIPATE IN THE TAX BACK PROGRAM (THE CONSOLIDATED INCENTIVE
ACT OF 2003, SECTION 15-4-2706(d)).**

WHEREAS, the local government must endorse a business to participate in the Tax Back Program and benefit from the refunds/tax credits as provided in the Consolidated Incentive Act of 2003, Section 15-4-2706(d); and

WHEREAS, said endorsement must be made on specific form available from the Arkansas Department of Economic Development; and

WHEREAS, Movista Inc. located at 406 SE 5th Street, Bentonville, Arkansas has sought to participate in the program and more specifically has requested benefits accruing from expansion and/or construction of the specific facility; and

WHEREAS, Movista Inc. has agreed to furnish the local government all necessary information for compliance.

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

Section 1. Movista Inc. be endorsed by the City of Bentonville for benefits from the refunds/tax credits as provided in the Consolidated Incentive Act of 2003, Section 15-4-2706(d).

Section 2. The Department of Finance and Administration be authorized to refund local sales and use taxes to Movista Inc..

Section 3. That this resolution shall be in full force and effect from and after the date of its passage.

PASSED and APPROVED this _____ day of _____ 2019.

APPROVED:

Mayor Stephanie Orman

ATTEST:

City Clerk



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

AGENDA FORM

CITY COUNCIL MEETING OF:

November 12, 2019

Submitted by: David Wright

Department: Parks and Rec

Phone: 271-6813

ACTION REQUIRED:

Change order approval from City Council for Parks and Recreation, in the amount of \$22,508.00, for additional fencing and fall safe material at the Citizens Park Playground.

COST TO CITY:

Cost of this Request: \$22,508

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



Memo



To: City Council, Mayor Orman
From: David Wright, Parks and Recreation Director
Date: October 24, 2019
Re: Council approval of a change order, in the amount of \$22,508 for the Citizens Park Playground.

Parks and Recreation is seeking City Council's approval of a change order, in the amount of \$22,508 for the Citizens Park Playground.

When the playground equipment was initially installed and we created the real-life diagram of the fence layout, Parks and Recreation Staff was not comfortable with the amount of space between certain exit points and the fence. Although technically, the distance were in compliance with safety design standards, we felt the final produce would create uncomfortable scenarios for our future users. For example, a wheelchair could technically fit through the opening, but it might be a difficult fit. Or it may even cause multiple attempts to come through. That created a level of difficulty we were trying to avoid in our first inclusive playground.

Our team worked close with the contractor to reevaluate the spaces and design. However, the extra space created the need for additional fencing, concrete and fall safe material.

If you have any questions regarding this item, please call me at 696.0204, or email dwright@bentonvillear.com

Attachments:

Change Order Request Form



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

AGENDA FORM

CITY COUNCIL MEETING OF:

November 12, 2019

Submitted by:

David Wright

Department

Parks and Rec

Phone

271-6813

ACTION REQUIRED:

Budget adjustment approval from City Council for Parks and Recreation, in the amount of \$22,508.00, to recognize the expenses for change order for the Citizens Park Playground.

COST TO CITY:

Cost of this Request: \$22,508

Additional Budget Amount: \$22,508

☒ One time amount

☐ Continuing O and M

Previously Budgeted	\$
Funds Expended to Date	
Remaining Budget	-
Budget Adjustment	22,508
Remaining After Adjustment	\$ 22,508

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 Orman
From: David Wright, Parks and Recreation Director
Date: October 24, 2019
Re: Council approval of a budget adjustment, in the amount of 22,508 for the Citizens Park Playground.

Parks and Recreation is seeking City Council's approval of a budget adjustment, in the amount of \$22,508, for the Change Order for the Citizens Park Playground.

As explained in the previous memo, the Change Order was to provide additional space between playground exit points and the fence. The funding should come from Parks And Recreation Impact Fees.

This is the first – and only change order associated with the project. If you have any questions regarding this item, please call me at 696.0204, or email dwright@bentonvillear.com

Attachments:

Budget Adjustment Request Form



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

AGENDA FORM

CITY COUNCIL MEETING OF:

November 12, 2019

Submitted by:

David Wright

Department

Parks and Rec

Phone

271-6813

ACTION REQUIRED:

Change order approval from City Council for Parks and Recreation, in the amount of \$10,000.00, for design work for the McCollum Sidepath Trail.

COST TO CITY:

Cost of this Request: \$10,000

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



Memo



To: City Council, Mayor Orman
From: David Wright, Parks and Recreation Director
Date: October 25, 2019
Re: Council approval of a change order, in the amount of \$10,000, for additional design work for the McCollum Trail.

Parks and Recreation is seeking City Council's approval of a change order, in the amount of \$10,000 for the McCollum Trail project.

The City of Bentonville has multiple grants awarded for the construction of the McCollum Trail. The design, which the City is responsible for, is being managed by CEI Engineering. The Transportation and Parks Departments have worked with CEI to bring the project to a bid ready project.

There have been multiple challenges during the project. These challenges included Right of Way issues, extensive reviews by City / ARDOT. These reviews have caused us to make changes to the design of the project. Because these revisions, we are causing additional person-hours to CEI. They have requested an Extra Work Authorization (EWA) because of this. Dennis Birge and I recommend the request be approved be considered by City Council.

If you have any questions regarding this item, please call me at 696.0204, or email dwright@bentonvillear.com

Attachments:

EWA Request from CEI



EXTRA WORK AUTHORIZATION

☒ ADDITIONAL WORK

☐ CHANGE IN SCOPE OF SERVICES

WORK WILL BE PERFORMED UNDER THE SAME TERMS & CONDITIONS AS IN ORIGINAL AGREEMENT: UNLESS OTHERWISE STATED

THESE SERVICES WERE VERBALLY DIRECTED AND/OR APPROVED BY: City of Bentonville / Dennis Birge ON: 7/19/19

DATE: 9/16/19
CLIENT: City of Bentonville
PROJECT NAME: McCollum Side Path
CLIENT CONTACT: David Wright
PROJECT NO.: 30092.0
PROJECT MANAGER: Jacob Shy
DATE OF CURRENT CONTRACT: 3/16/17

Description of Services: CEI has been asked to remove portions of McCollum Side Path design and complete redesign of the portion of trail between E Central Ave and Garden Trail. Changes to the Sidepath were directed by the City to CEI as a direct result of ARDOT comments. ARDOT comments would not allow for current designed portions of proposed side path north of Garden Trail to be located within the street ROW. Additionally, the portion of trail between E Central and Garden Trail will not be allowed to remain within DOT clear zone and must be outside limits of the drainage way. The portion of trail located north of Garden Trail will be on hold, pending negotiations between the City and ARDOT. Change order to cover additional design and permitting with the Arkansas Department of Transportation and additional coordination with project team.

Compensation: \$10,000.00

If this Authorization is not executed within 30 days, it becomes null and void. This Authorization is only valid if addressed and executed by the authorized signature of the original contracted entity or its assignment as approved per the original contract Terms and Conditions.

Agreed to by CEI ENGINEERING ASSOCIATES, INC.

Agreed to on this date: _____

(Signature)

(Company Name)

(Date)

(Company Authorized Representative & Title)

Distribution:

(Signature)

PLEASE SIGN & RETURN ORIGINAL

☐ CALIFORNIA
7543 N. Ingram Avenue
Suite 107
Fresno, CA 93711
(559) 447-3119
(559) 447-3129 FAX

☐ TEXAS – DALLAS
TriWest Plaza
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