



BENTONVILLE CITY COUNCIL AGENDA

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

**Monday, February 10, 2020 6:00 p.m.
305 SW "A" Street**

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

**Tuesday, February 11, 2020 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: January 28, 2020**

AGENDA

1. City Council Procedure Discussion – Mayor Stephanie Orman. **(Monday Night Only)**
2. Public Hearing Presentation – Tony Davis, Street Department Manager. **(Monday Night Only)**
3. Discussion concerning City Council terms based on population changes. **(Monday Night Only)**
4. NACA Update – Mike Bender, Public Works Director and George Spence, City Attorney. **(Monday Night Only)**
5. Planning:
- 5a. **Ordinance accepting a property line adjustment of Lot 17, Block 3 of Spinnaker Ridge at Woods Creek Phase II, Bourquin, 7 Edgewater Lane, R-1, Single Family Residential.**

(Pages 9-12)

The Planning Commission voted 6-0, recommending approval.

A property line adjustment of Lot 5, Block 3 and the Common Lot of Spinnaker Ridge at Woods Creek Phase II, creating new Lot 17, Block 3 (+/- .38 acres). The plat dedicates 5-foot utility easements along the adjusted western and northern lot lines.

- 5b. **Ordinance accepting a property line adjustment of Lot 16, Block 19 of Deming's 2nd Addition, Rusch, 308 NW 6th Street, R-1, Single Family Residential.**

(Pages 13-15)

The Planning Commission voted 6-0, recommending approval.

A property line adjustment of Lots 7, 8, and the west 20-feet of Lot 9, Block 19 of Deming's 2nd Addition to create new Lot 16 (+/- 0.39 acres). The plat dedicates a 15-foot utility easement along NW 6th Street and NW C Street. The plat also dedicates additional right-of-way along NW C Street to meet the requirements of the Master Street Plan.

- 5c. **Ordinance accepting a property line adjustment of Lot 31, Block 10 of WA Burks Addition, Community Development Corporation of Bentonville/Bella Vista, Fillmore Street, R-1, Single Family Residential.**

(Pages 16-19)

The Planning Commission voted 6-0, recommending approval.

A property line adjustment of Lot 18, Block 10 of WA Burks Addition, creating new Lot 31 (+/- 0.18 acres). The plat dedicates a 15-foot utility easement along Fillmore Street & NE Monroe Street. The plat also dedicates additional right-of-way along Fillmore Street to meet the requirements of the Master Street Plan.

- 5d. **Ordinance changing real estate from R-1, Single Family Residential to R-2, Duplex & Patio Home Residential, Jampana, 3406 SE K Street.**

(Pages 20-31)

The Planning Commission voted 5-1, recommending approval.

The applicant originally requested a rezoning from R-1, Single Family Residential to R-4, High Density Residential. The Future Land Use Map depicts this property as High Density Residential. These areas include apartments, condominium buildings, senior housing, and other special types of group living. According to the applicant's narrative, the intention is to build a duplex on this site. Although the proposed zoning district is compatible with the Future Land Use Plan, it does not align with the zoning of surrounding properties nor current development trends within the area. As this is an area in transition, Planning Commission should consider a less intensive zoning district as a transitional measure. At Planning Commission, the applicant requested to amend the rezoning request from R-4, High Density Residential to R-2, Duplex & Patio Home Residential.

- 5e. **Ordinance changing real estate from R-3, Medium Density Residential to DN-4, Downtown Mixed-Use Residential, Sample, 527 SE 6th Street.**

(Pages 32-34)

The Planning Commission voted 6-0, recommending approval.

The Future Land Use Map depicts this property as Downtown Commercial. These areas include traditional mixed-use developments with a focus on design character and pedestrian access. Ground-floor uses should include restaurants,

retail, and services, while upper-floor uses could include residential units or offices. According to the applicant's narrative, their intent is to allow the buildings to serve as a mixed-use development, with services on the ground floor and residential uses above. Staff recommends approval of the rezoning due to the site's compatibility with the Future Land Use Plan and surrounding uses.

- 5f. **Ordinance changing real estate from DN-2, Downtown Medium-Density Residential to PRD, Planned Residential Development, Roth Family, Inc., 806 NW A Street.**

(Pages 35-43)

The Planning Commission voted 6-0, recommending approval.

The Future Land Use Plan currently depicts this property as Medium Density Residential. These areas typically include a mix of housing types, including single-family, two-family, and townhouse units with a typical density of 8-12 units per acre. The proposed density and character of this planned residential development is compatible with the Future Land Use Plan. Because the proposed Planned Residential Development is compatible with surrounding single-family uses in the neighborhood and the Future Land Use Plan, staff recommends approval.

- 5g. **Ordinance accepting a lot split of Lot 14, Block 6 of Railroad Addition, Kotyanker, 209 SE B Street, R-1, Single Family Residential.**

(Pages 44-47)

The Planning Commission voted 6-0, recommending approval.

A lot split of the western half of existing Lots 3 & 4, Block 6 of Railroad Addition, creating Lot 14 (+/- 0.23 acres). The plat dedicates 20 feet of right-of-way along SE Henry Street and 26 feet of right-of-way along SE B Street.

- 5h. **Ordinance amending Chapter 14 Zoning Code of the Bentonville Municipal Code.**

(Pages 48-66)

The Planning Commission voted 6-0, recommending approval.

An ordinance to amend the zoning code for clarification, corrections, and updates to meet current conditions.

6. Approval of an ordinance amending the noise regulations established in Ordinance No. 2006-69. The amendments address outdoor activities, establish details on sound measurement, time limits and decibel levels in commercial zones, and the process for variances from the ordinance. (Pages 67-75)

7. Approval of the relocation of the artwork, titled "Sassy the Sasquatch" by artist Amanda Wilshire, from the current location in Park Springs Park at the southwest corner of the Tiger Boulevard and NW A Street intersection to an area near the parking lot at NE Cub Circle and NE A Street. The Public Art Advisory Committee and the Parks and Recreation Advisory Board have approved the relocation. (Pages 76-77)

8. Council approval of Mayor Orman's recommendation to reappoint Lee Culpepper to the City of Bentonville's Advertising & Promotion Commission. Mr. Culpepper's term will expire on December 31, 2024. **(Pages 78-82)**
9. City Council approval of Mayor's recommendation to appoint Jon Terlouw to the City of Bentonville's Tree and Landscape Committee. Mr. Terlouw will be filling Chris Sooter's unexpired term in the City Council Member position on the Committee. Term will expire on 12/31/2021. **(Pages 83-85)**
10. Resolution requested by Staff for Council approval authorizing the Mayor and City Clerk to amend a professional services agreement with Hight-Jackson Associates, PA to provide professional services associated with the design and construction of the Public Works Maintenance Facility located on SW 24th and SW Aviation Streets in an amount equal to 7.25% of construction costs and discounted 25% for previous services rendered. **(Pages 86-89)**
11. Resolution requested by Staff for Council approval authorizing the Mayor and City Clerk to enter into a professional services agreement with CR Crawford Construction, LLC to provide pre-construction services for the development of the Public Works Maintenance Facility located at 2401 SW Aviation Street for an amount not to exceed \$35,000.00. Services include construction cost estimating, constructability analysis, value engineering, scheduling, and clash analysis. CR Crawford Construction, LLC will collaborate with Hight-Jackson Associates and their team to prepare construction drawings and associated documents. This agreement allows the amendment to move to construction services. Such change will require additional City Council action. **(Pages 90-153)**
12. Bid award IFB-20-01 to Titan Lawn & Landscape for the weekly finish mowing of city facilities in an amount not to exceed \$45,000.00. This is a 2020 budgeted item. This agreement may be extended up to 3 years upon mutual agreement of both parties. **(Pages 154-177)**
- 13a. Bid Award to Southard Construction Company in the amount of \$424,804.20 for utility relocations associated with ARDOT project BB0903-Interstate 49 and Hwy 71B (SE Walton Blvd) interchange improvements. This amount includes Southard's bid of \$384,804.20 plus a \$40,000 contingency. **(Pages 178-198)**
- 13b. Budget Adjustment recommended by Staff for Council approval revising the original estimated amount of \$112,090.18 to the revised amount of \$160,580.38 to cover the non-reimbursable amount plus contingency for the water utility relocations associated with ARDOT Project No. BB0903 – Interstate 49 Improvements at Hwy 71B interchange. This budget adjustment represents a change of an additional \$48,490.20 from the original budget adjustment. **(Pages 199-219)**
14. Resolution requested by Parks and Recreation for City Council approval of an amendment to an existing contract with Sarah Gwin for the service of teaching instructional swim lessons for Parks and Recreation. **(Pages 220-223)**
15. A resolution setting a public hearing for February 25, 2020 for an Alley ROW Vacation at 540 SE A Street of Mauck-Black Subdivision. **(Pages 224-226)**

16. A resolution setting a public hearing for February 25, 2020 for a Utility Easement Vacation requested for 3811 US 71 HWY of Lowes Addition. **(Pages 227-229)**
17. Ordinance requesting a waiver of bid (sole source provider) allowing for a purchase from Axon Enterprises Inc. for law enforcement tasers, specifically a less lethal Conducted Electrical Weapon or CEW. Tasers for law enforcement use are only manufactured and available for purchase from Axon Enterprises Incorporated. Axon is the sole distributor of all TASER brand products in several states, including AR, CT, DE, FL, GA, HI, IA, IL, IN, KS, LA, MA, MD, ME, MI, MN, MO, MS, NC, ND, NE, NH, NJ, NY, OK, OR, PA, RI, SC, SD, VA, VI, VT, WI, WV, and the District of Columbia and Guam. The purchase would allow for replacements of previously purchased tasers and keep our department's equipment within a 5-year product cycle life as recommended by the manufacturer. This agreement would be for the purchase of sixteen (16) X26P tasers, sixteen (16) spare APPM batteries, and thirty-two (32) 25 ft. standard cartridges. The purchase would include a 5-year warranty, and be in the amount of \$28,272.90. See attached documentation and sole source letter. **(Pages 230-242)**
18. Resolution to declare two (2) no longer in service police department vehicles as surplus property. The vehicles include City of Bentonville Unit 2010-01, a 2011 Chevrolet Police Tahoe PPV, VIN number 1GNLC2E00BR317629, mileage: 95902, and Unit 2010-97, a 2011 Chevrolet Police Tahoe PPV, VIN number 1GNLC2E06BR321880, mileage: 84827. Both of these vehicles were previously used as marked patrol cars and scheduled for replacement in 2020. Both vehicles are equipped with lightbars, sirens, consoles, gun racks, prisoner containment systems, and other law enforcement specific items that would ordinarily require removal prior to any transfer of ownership. However, upon being approved and declared as surplus, these vehicles will be traded to Superior Automotive Group in Siloam Springs for an approximate credit of \$8,000 each. Superior offers a unique trade-in program for emergency vehicles, which allows used police vehicles to be refurbished and sold to other law enforcement agencies at a reduced cost of ownership. Additionally, this credit will be applied toward the three Chevrolet Tahoe PPV's approved in the 2020 budget. Surplus of these two vehicles in the form of a trade represents a responsible and safe disposition of police equipped vehicles and also saves the city the costs associated with the removal, storage, and proper disposal of law enforcement only equipment that cannot be transferred to another vehicle. **(Pages 243-244)**
19. Bid award to Superior Auto Group in the amount of \$207,093.64, Bid IFP-20-02 (4 Chevrolet Police Pursuit Vehicles). See attached bid tabulation and bid submission forms. Note: This purchase will complete 4 of 9 vehicles budgeted in 2020. The remaining 5 vehicles will be purchased via Bid/State Bid. **(Pages 245-262)**
20. Resolution authorizing the Mayor and City Clerk to consent to the assignment of a land lease agreement for an existing hangar footprint located at the Bentonville Municipal Airport. **(Pages 263-271)**



City Council Agenda Items
For City Council Meeting of February 11, 2020
From the February 4, 2020 Planning Commission Meeting

- a. Ordinance accepting a property line adjustment of Lot 17, Block 3 of Spinnaker Ridge at Woods Creek Phase II, Bourquin, 7 Edgewater Lane, R-1, Single Family Residential.**

The Planning Commission voted 6-0, recommending approval.

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- b. Ordinance accepting a property line adjustment of Lot 16, Block 19 of Deming's 2nd Addition, Rusch, 308 NW 6th Street, R-1, Single Family Residential.**

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- c. Ordinance accepting a property line adjustment of Lot 31, Block 10 of WA Burks Addition, Community Development Corporation of Bentonville/Bella Vista, Fillmore Street, R-1, Single Family Residential.**

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- d. Ordinance changing real estate from R-1, Single Family Residential to R-2, Duplex & Patio Home Residential, Jampana, 3406 SE K Street.**

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of surrounding properties nor current development trends within the area. As this is an area in transition, Planning Commission should consider a less intensive zoning district as a transitional measure. At Planning Commission, the applicant requested to amend the rezoning request from R-4, High Density Residential to R-2, Duplex & Patio Home Residential.

- e. Ordinance changing real estate from R-3, Medium Density Residential to DN-4, Downtown Mixed-Use Residential, Sample, 527 SE 6th Street.**

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- f. Ordinance changing real estate from DN-2, Downtown Medium-Density Residential to PRD, Planned Residential Development, Roth Family, Inc., 806 NW A Street.**

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- g. Ordinance accepting a lot split of Lot 14, Block 6 of Railroad Addition, Kotyanker, 209 SE B Street, R-1, Single Family Residential.**

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- h. Ordinance amending Chapter 14 Zoning Code of the Bentonville Municipal Code.**

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An ordinance to amend the zoning code for clarification, corrections, and updates to meet current conditions.



Consent Agenda Items

For Planning Commission meeting of February 4, 2020

Reviewer: Tyler Overstreet, Senior Planner, AICP

- ❖ At the Technical Review meeting held on January 28, 2020 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.

Property Line Adjustment: Lot 17, Block 3, Spinnaker Ridge at Woods Creek, Phase II, Douglas & Bourquin, 7 Edgewater Lane, R-1, Single-Family Residential, LS19-0046

A property line adjustment of Lot 5, Block 3 and the Common Lot of Spinnaker Ridge at Woods Creek Phase II, creating new Lot 17, Block 3 (+/- .38 acres). The plat dedicates 5-foot utility easements along the adjusted western and northern lot lines.

(Please click on this link to access the vicinity map for this item: <https://arcg.is/08HvK8>)

Property Line Adjustment: Lot 16, Block 19, Deming's 2nd Addition, Rusch, 308 NW 6th Street, R-1, Single-Family Residential, PLA19-0043

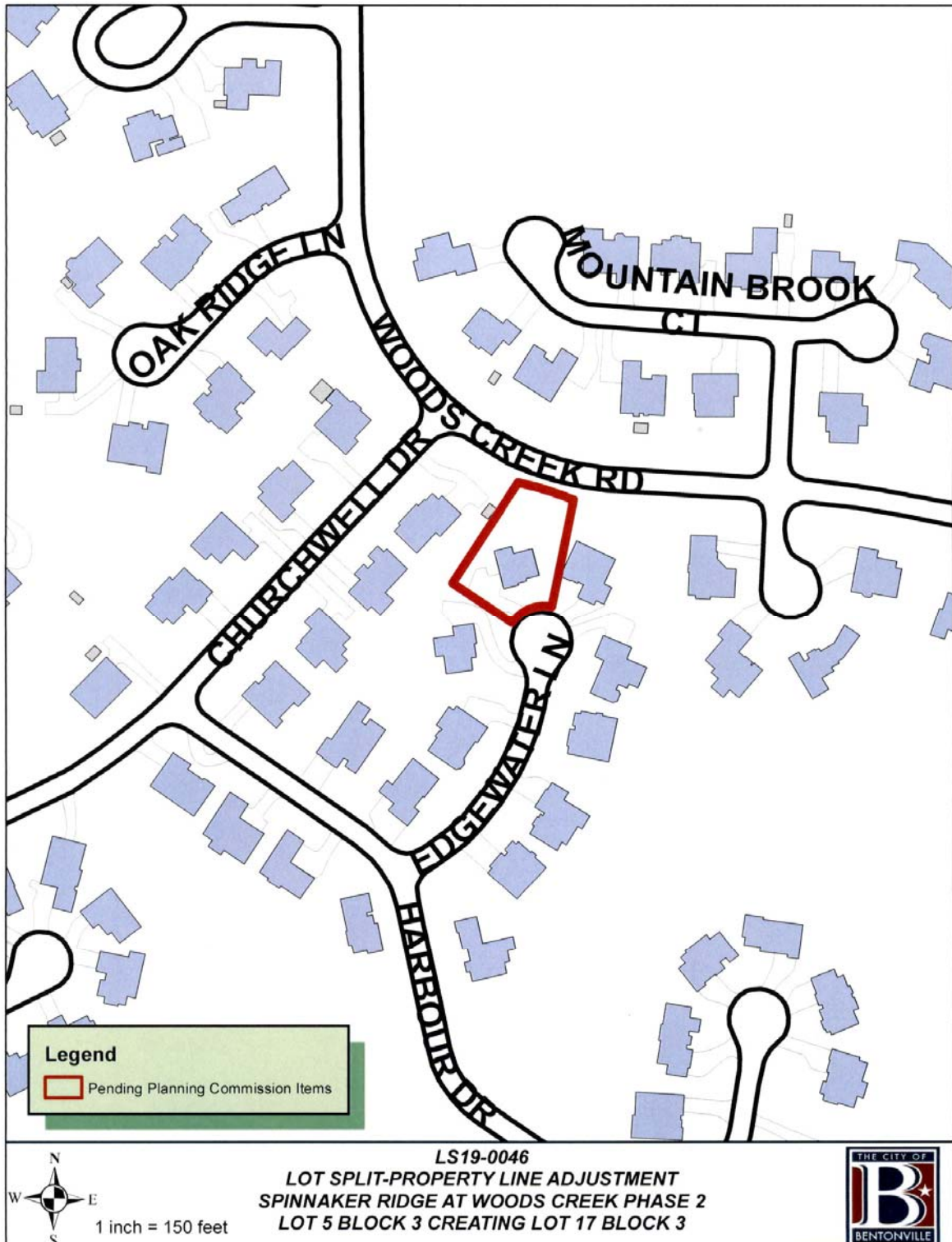
A property line adjustment of Lots 7, 8, and the west 20-feet of Lot 9, Block 19 of Deming's 2nd Addition to create new Lot 16 (+/- 0.39 acres). The plat dedicates a 15-foot utility easement along NW 6th Street and NW C Street. The plat also dedicates additional right-of-way along NW C Street to meet the requirements of the Master Street Plan.

(Please click on this link to access the vicinity map for this item: <https://arcg.is/08HvK8>)

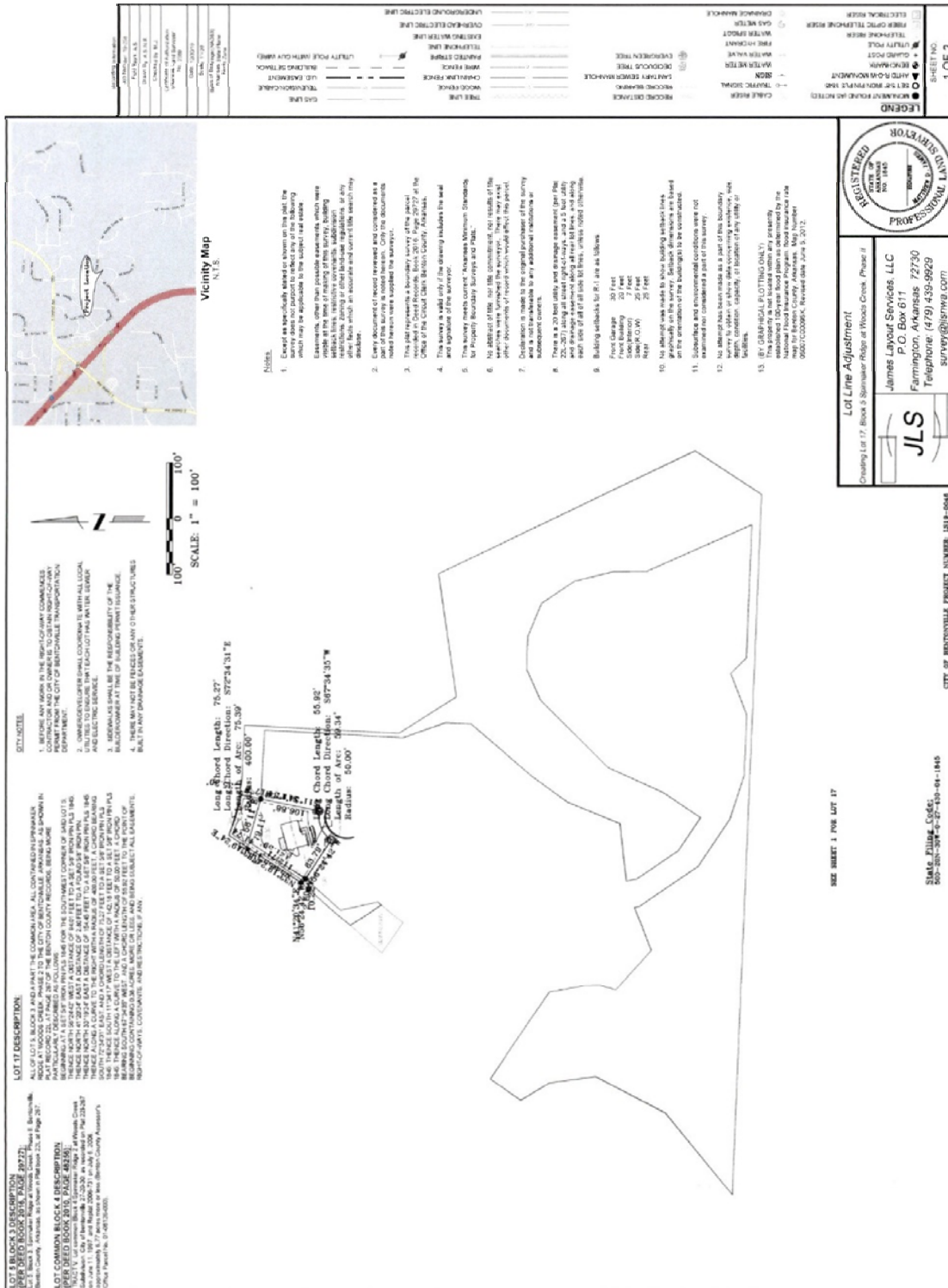
Property Line Adjustment: Lot 31, Block 10, W.A. Burks Addition, Community Development Corporation of Bentonville/Bella Vista, Fillmore Street, R-1, Single-Family Residential, PLA19-0044

A property line adjustment of Lot 18, Block 10 of WA Burks Addition, creating new Lot 31 (+/- 0.18 acres), Block 10 of WA Burks Addition. The plat dedicates a 15-foot utility easement along Fillmore Street & NE Monroe Street. The plat dedicates additional right-of-way along Fillmore Street to meet the requirements of the Master Street Plan.

(Please click on this link to access the vicinity map for this item: <https://arcg.is/08HvK8>)



~ 10 ~



ORDINANCE NO. _____

**AN ORDINANCE ACCEPTING A PROPERTY LINE ADJUSTMENT OF LOT
17, BLOCK 3 OF SPINNAKER RIDGE AT WOODS CREEK PHASE II TO THE
CITY OF BENTONVILLE, ARKANSAS (PROJECT NUMBER: LS19-0046).**

WHEREAS, pursuant to the provisions of Title 15 of the Bentonville Municipal Code, the property line adjustment of Lot 17, Block 3 of Spinnaker Ridge at Woods Creek Phase II of the City of Bentonville, Benton County, Arkansas was submitted to the Bentonville Planning Commission on February 4, 2020; and,

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

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

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

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

Section 1: That the property line adjustment of Lot 17, Block 3 of Spinnaker Ridge at Woods Creek Phase II to the City of Bentonville, Arkansas, should be and the same is hereby accepted and approved for all purposes.

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

PASSED AND APPROVED this _____ day of _____, 2020.

APPROVED:

ATTEST:

MAYOR

CITY CLERK



ORDINANCE NO. _____

**AN ORDINANCE ACCEPTING A PROPERTY LINE ADJUSTMENT OF LOT
16, BLOCK 19 OF DEMING'S 2ND ADDITION TO THE CITY OF
BENTONVILLE, ARKANSAS (PROJECT NUMBER: PLA19-0043).**

WHEREAS, pursuant to the provisions of Title 15 of the Bentonville Municipal Code, the property line adjustment of Lot 16, Block 19 of Deming's 2nd Addition of the City of Bentonville, Benton County, Arkansas was submitted to the Bentonville Planning Commission on February 4, 2020; and,

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

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

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

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

Section 1: That the property line adjustment of Lot 16, Block 19 of Deming's 2nd 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 property line adjustment by certifying said acceptance on the approved property line adjustment.

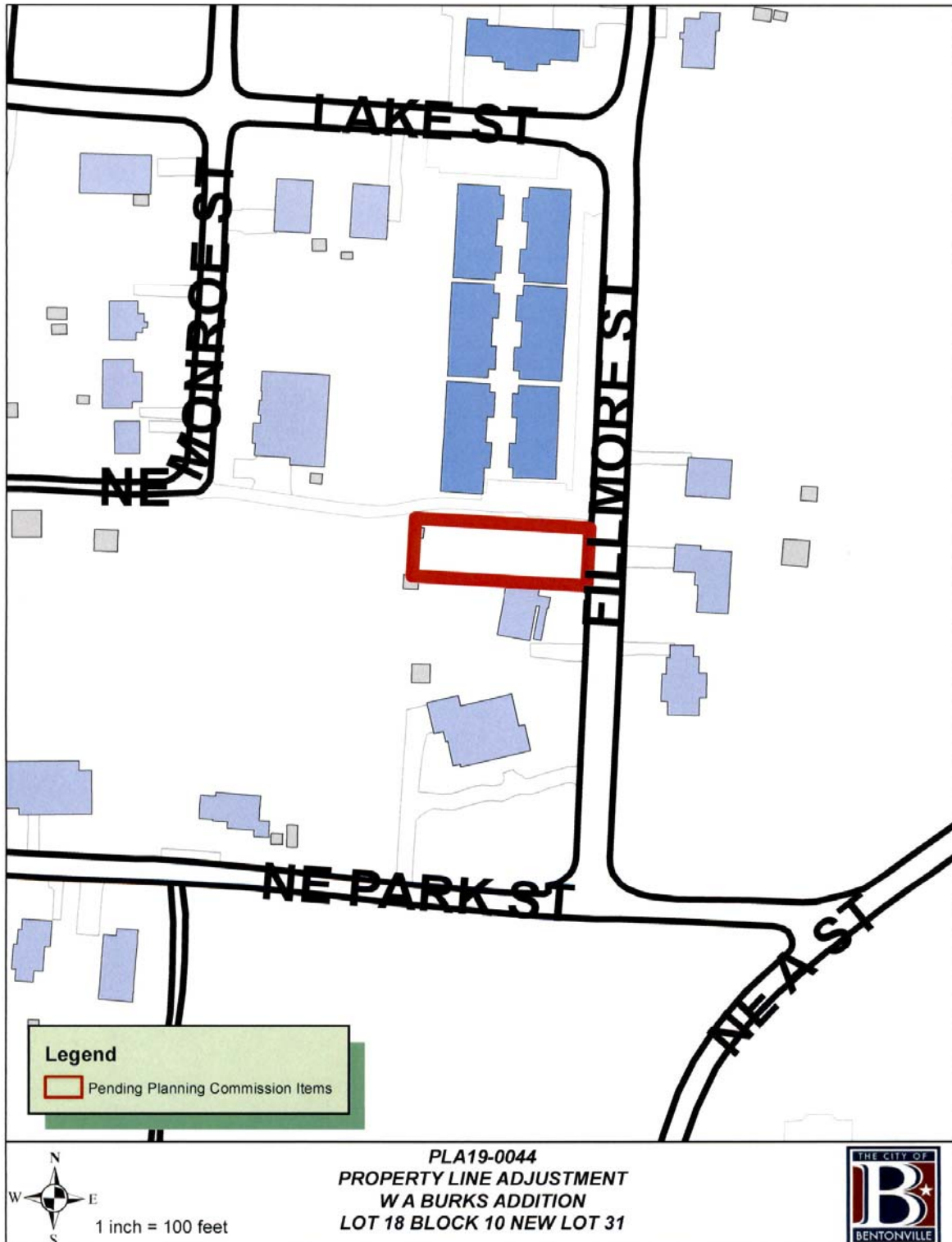
PASSED AND APPROVED this _____ day of _____, 2020.

APPROVED:

ATTEST:

MAYOR

CITY CLERK



ORDINANCE NO. _____

**AN ORDINANCE ACCEPTING A PROPERTY LINE ADJUSTMENT OF LOT
31, BLOCK 10 OF WA BURKS ADDITION TO THE CITY OF BENTONVILLE,
ARKANSAS (PROJECT NUMBER: PLA19-0044).**

WHEREAS, pursuant to the provisions of Title 15 of the Bentonville Municipal Code, the property line adjustment of Lot 31, Block 10 of WA Burks Addition of the City of Bentonville, Benton County, Arkansas was submitted to the Bentonville Planning Commission on February 4, 2020; and,

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

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

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

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

Section 1: That the property line adjustment of Lot 31, Block 10 of WA Burks 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 property line adjustment by certifying said acceptance on the approved property line adjustment.

PASSED AND APPROVED this _____ day of _____, 2020.

APPROVED:

ATTEST:

MAYOR

CITY CLERK

REZONING STAFF REPORT



Jampana

3406 SE K Street

PC Date: 2/4/2020

Reviewer: Ali Worley, Planning Technician

Project Number	RZ19-0050
Applicant / Current Owner	Muni Jampana 1500 SW Liberty Avenue Bentonville, Arkansas 72713
Site Area	+/- 0.21 acres
Current Zoning	R-1, Single Family Residential
Requested Zoning	R-4, High Density Residential
Future Land Use Map Designation	High Density Residential (HDR)

Property Description

This property is located at 3406 SE K Street. Adjacent zonings are R-1, Single Family Residential, to the north, south, and west, and A-1, Agricultural, to the east.

Relationship to the General Plan

The Future Land Use Map depicts this property as High Density Residential. These areas include apartments, condominium buildings, senior housing, and other special types of group living.

Public Comment

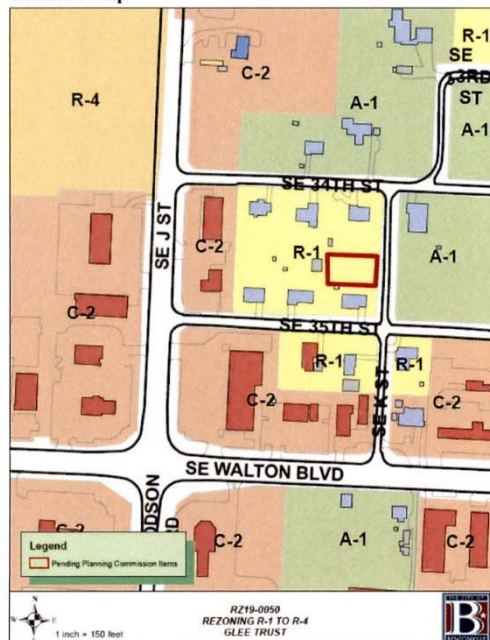
Staff has received public comment regarding this request.

Conclusion

According to the applicant's narrative, the intention is to build a duplex on this site. Although the proposed zoning district is compatible with the Future Land Use Plan, it does not align with the zoning of surrounding properties nor current development trends within the area. As this is an area in transition, Planning Commission should consider a less intensive zoning district as a transitional measure.

<https://arcg.is/08HvK8>

Location Map



Re-zoning NARRATIVE

Date: 12/31/19

Hello,

I am Muni Jampana who is the current owner of the parcel # 01-04479-004. I would like to request the Bentonville City Planning Department to rezone this particular property to Duplex ~~zoning~~ zoning. Current zoning on this parcel is R1.

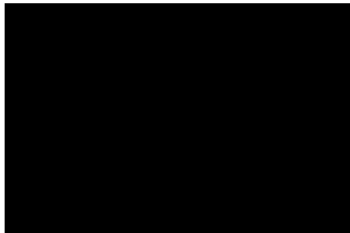
MS. *R4*
Currently with the growing city needs, the city's Future master plan is to plan this area to be high density residential area. To start in that direction, re-zoning this land will be a good start. My plan is to build a very good duplex.

Usage: Duplex

Traffic: Low

Appearance: 2 story with single car garages

Utilities are available at the street. Sewer line has to be brought to this property via 34th Street.



Scanned with CamScanner

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:

The Senior Center is at this corner.

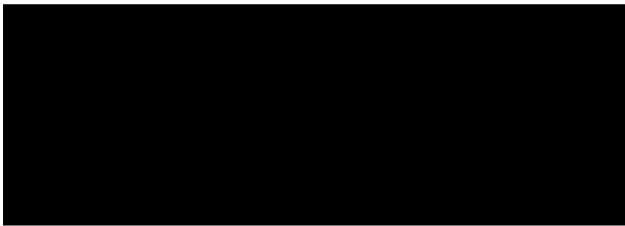
It will lower the cost to sell homes in this area.

Will add traffic to this area, when the warehouse change shifts.

car now turn down this street to miss the stop sign.

Signature and Physical Address

Signature and Physical Address



Scanned with CamScanner

NOTICE OF INTENT TO REZONE

MUNI JAMPANA has requested the Bentonville Planning Commission to set a public hearing date to consider rezoning the following property from

R-1 to R4

The legal description of the property is as follows: Parcel # 01-04479-004

Lot 10, Twin city heights second revision, as shown on plat record 2014 at page 554, and being a part of Lot 1, Block 3, twin city heights second revision, a part of the SW 1/4 of the NE 1/4 of Section Township 19 North, Range 30 West, Bentonville, Arkansas as shown on plat record H-134 in then REPLAT 11/03/2014 2014-554 Benton County

The common description of the property is: 3406 SE Kst; Bentonville AR-72712

Proposed land use: DUPLEX

The public hearing will be held FEB. 4th 2020 at 5:00 p.m. It will be held at 305 S.W. "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 and deliver it to the City of Bentonville Planning Department, 305 S.W. 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.

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:

WE DO NOT WANT APARTMENTS IN THE
NEIGHBORHOOD

Signature and Physical Address

Bentonville, AR
Signature and Physical Address

Scanned with CamScanner

**Written Objections
to the Rezoning Project RZ 19 – 0050
Application re Parcel #01-04479-004
3406 S.E. K Street, Bentonville, AR 72712
Filed by Applicant Muni Jampana**

Hearing: Scheduled February 4, 2020

Objections Submitted on: January 31, 2020 by:

[REDACTED], Bentonville, AR 72712
[REDACTED], Bentonville, AR 72712
[REDACTED]
[REDACTED]
[REDACTED]

I. INTRODUCTION

The Neighbors of Twin City Heights have a common interest in the growth and development of our neighborhood consistent with the City of Bentonville's amended 2018 Master Plan. All the neighbors would like to see the neighborhood continue to improve, evolve and increase in economic value while at the same time preserving the character, safety and other common concerns of the neighborhood. Applicant Muni Jampana seeks to rezone property that he recently purchased on December 23, 2019 from R-1 to R-4, but failed to provide any specific description on what he is planning to build in association with this Rezoning Application, as specifically required under Sec. 301.08(b) of the Zoning Code, and demonstrate **why the proposed use will not conflict with the existing land uses.**

Jampana has not had any discussions with his adjacent neighbors and those within the 200 feet vicinity of his property regarding his plans for the property. The Neighbors simply seek to understand his plans for the use of the property, and to ensure that any development, construction or future intended use of the property does not impede their safety or quiet enjoyment of their respective properties, that adequate light, air and space are maintained, and that the general character of the neighborhood is maintained or positively improved. We would welcome Mr. Jampana to sit down with the Neighbors and share the specific details of his plans.

II. BACKGROUND

On or about Dec. 30, 2019 Jampana submitted a Notice of Intent to Rezone Parcel #01-04479-004, common property description 3406 S.E. K Street, Bentonville, AR 72712, Rezoning Project RZ 19 -0050. Jampana's application seeks a rezoning from R-1 single family residential to **R-4 high density residential**. Jampana purchased the land on Dec. 23, 2019 which is 0.21 acres and 9108 square feet.

In the Rezoning Narrative (dated 12/31/19 but filed Jan. 6, 2020) he states that he intends to rezone the property to R-4 duplex based upon "the city's Future master plan is to plan this area to be high density residential area. To start in that direction, re-zoning this land will be a good start." Moreover, Jampana's description of the proposed building merely states, "My plan is to build a very good duplex." He described the Appearance of the property as: "2 story with single car garages." There were no other filings, documents, descriptions, renderings, drawings or architectural plans that provided specificity with respect to the subject property in any detail whatsoever.

IV. INTERESTED PARTIES

For example, Michael Downs and Stephanie Chin own the property at 1110 S.E. 34th Street which is immediately north and adjacent to Applicant's parcel and which is 0.48 acres. James Clark and Denise Clark own the property adjacent to the northwest corner of Applicant's parcel, 1108 S.E. 34th Street, and which is 0.48 acres. Jean Brooks' property at 1105 S.E. 35th Street is located west of applicant's parcel and her property is 0.44 acres. All these are single story residential homes located by Applicant's property, and all are more than twice the size of Jampana's parcel. Currently every home in the neighborhood, including those on the same block, those across the street, and those within a two hundred feet radius, are all R-1 single story family homes.

In contrast to the current neighborhood aesthetic, Jampana proposes to build a two story duplex, and without any additional information regarding design, location of setbacks, yard space, impact on the neighboring properties, or any other information.

V. APPLICANT HAS FAILED TO DEMONSTRATE WHY THE PROPOSED CHANGES WILL NOT CONFLICT WITH THE SURROUNDING LAND USES

Bentonville Zoning Code Sec. 301.08(b)(1) requires that the rezoning petition:

shall provide the legal description of the property involved, the zoning classification requested for the property, and a statement and diagram explaining why the proposed changes will not conflict with the surrounding land uses.

Jampana has failed to meet the basic requirements of this Section. Merely stating that his "plan is to build a very good duplex" is insufficient to satisfy the requirements of the Zoning Code. He must provide details as required in his statement as well as a diagram or other descriptive drawings, plans or renderings that demonstrate why the proposed zoning change will not conflict with current land uses or negatively impact the Neighbors.

VI. R-4 ZONING IS DISALLOWED WHEN THE PROPERTY DOES NOT ACT AS A BUFFER ZONE TO COMMERCIAL OR SHOPPING CENTER DEVELOPMENTS

Under Sec. 401(a)(6), R-4 Districts allow for high-density residential development that serve as a "buffer zone" and "Such a district may be developed adjacent to, or in conjunction with neighborhood commercial or shopping center development." The definition of a "buffer zone", under Art. 201

describes any zone that separates two unlike zones such as a multi-family zone between a single-family zone and a commercial zone.”

Jampana’s property does not serve as a buffer zone between the single family homes and any commercial space or shopping center development. Every property adjacent to, across from, or within 200 feet is a single family home, but there are presently no commercial properties that Jampana’s property can help serve as a buffer zone.

The R-4 designation should be disallowed because it is impossible for Jampana’s property to physically serve as a buffer zone between all the single family homes and any commercial properties, since there are none.

VII. THE APPLICATION IS INCONSISTENT WITH THE 2018 BENTONVILLE COMMUNITY PLAN

The Bentonville Community Plan, adopted on Oct. 23, 2018, is intended to cover land use planning and development over the next 10 to 20 years (Plan at p. 3). The Plan (at p. 38) specifically recognizes that the neighborhood is in an “Area of Stability” and which is “likely to remain as they are in terms of use and character..... Stable Areas where existing land use, built character, and land use context suggest that they will generally remain the same over the horizon of this plan.”

Moreover, “High Density Residential” is defined by the Plan (at p. 40) to include “apartments, condominium buildings, senior housing, and special types of group living.” Duplexes are generally considered medium-density residential. Therefore, Jampana’s intent to build a duplex is inconsistent with rezoning to R-4 “high density”.

VIII. CONCLUSION

In conclusion and for the reasons stated, the Neighbors hereby respectfully request the Planning Commission to reject Applicant’s proposed rezoning from R-1 to R-4.

Respectfully Submitted,

By:
Michael Downs and Stephanie Chin
James Clark and Denise Clark
Jean Brooks
Nathan Bowens
Jerry Casey
Robin Ramsey

via Email on January 31, 2020

NOTICE OF INTENT TO REZONE

MUNI JAMPANA has requested the Bentonville Planning Commission to set a public hearing date to consider rezoning the following property from

R-1 to R4

The legal description of the property is as follows: Parcel # 01-04479-004

Lot 10, Twin city heights second revision, as shown on plat record 2014 at page 554, and being a part of Lot 1, Block 3, twin city heights second revision, a part of the SW 1/4 of the NE 1/4 of Section Township 19 North, Range 30 West, Bentonville, Arkansas as shown on plat record H-134 in then REPLAT 11/03/2014 2014-554 Benton County

The common description of the property is: 3406 SE Kst; Bentonville AR-72712

Proposed land use: DUPLEX

The public hearing will be held FEB. 4th 2020 at 5:00 p.m. It will be held at 305 S.W. "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 and deliver it to the City of Bentonville Planning Department, 305 S.W. 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.

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:

This section of the neighborhood is R-1 Single Family Residential. R-4 or R-2 either one is not compatible with existing structures of this neighborhood.

Scanned with CamScanner

NOTICE OF INTENT TO REZONE

MUNI JAMPANA has requested the Bentonville Planning Commission to set a public hearing date to consider rezoning the following property from

R-1 to R4

The legal description of the property is as follows: Parcel # 01-04479-004

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

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:

NOT COMPATABLE WITH THE NEIGHBORHOOD


Signature and Physical Address

Signature and Physical Address

Scanned with CamScanner

NOTICE OF INTENT TO REZONE

MUNI JAMPANA has requested the Bentonville Planning Commission to set a public hearing date to consider rezoning the following property from

R-1 to R4

The legal description of the property is as follows: Parcel # 01-04479-004

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The common description of the property is: 3406 SE Kst; Bentonville AR-72712

Proposed land use: DUPLEX

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1. Attend the public hearing and express your views.
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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.

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:

Applicant failed to provide a statement or diagram explaining why the proposed zoning change will not conflict with current land uses, as required by Zoning Code Sec. 301.08(C)(1).

Scanned with CamScanner

NOTICE OF INTENT TO REZONE

MUNI JAMPANA has requested the Bentonville Planning Commission to set a public hearing date to consider rezoning the following property from

R-1 to R4

The legal description of the property is as follows: Parcel # 01-04479-004

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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.

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:

Do not want apartments to mix in single family homes.

Signature and Physical Address

Scanned with CamScanner

ORDINANCE NO. _____

AN ORDINANCE CHANGING REAL ESTATE IN THE CITY OF BENTONVILLE, ARKANSAS, FROM ITS PRESENT ZONING CLASSIFICATION OF R-1, SINGLE FAMILY RESIDENTIAL TO R-2, DUPLEX & PATIO HOME RESIDENTIAL (PROJECT NUMBER: RZ19-0050).

WHEREAS, Muni Jampana 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 R-1, Single Family Residential to R-2, Duplex & Patio Home Residential to be used in accordance with city zoning laws and state laws, which property is described as follows:

LOT 10 BLOCK 3 TWIN CITY HEIGHTS SUBDIVISION SECOND REVISION TO BENTONVILLE, BENTON COUNTY, AR AS SHOWN ON PLAT RECORD BOOK 2014 PAGE 554, RECORDED IN THE BENTON COUNTY CLERK'S OFFICE, BENTONVILLE, ARKANSAS.; and,

WHEREAS, the Planning Commission duly met and considered the application and duly set the petition for public hearing to be held February 4, 2020 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 R-1, Single Family Residential to R-2, Duplex & 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 R-1, Single Family Residential to R-2, Duplex & Patio Home Residential to be used in accordance with the city zoning laws and state laws.

PASSED AND APPROVED this _____ day of _____, 2020.

APPROVED:

ATTEST:

MAYOR

CITY CLERK

REZONING STAFF REPORT



Sample

527 SE 6th Street

PC Date: 2/4/2020

Reviewer: Ali Worley, Planning Technician

Project Number	RZ20-0002
Applicant / Current Owner	Rodney & Mary Sample 11701 Alconbury Court Bentonville, Arkansas 72712
Site Area	+/- 0.21 acres
Current Zoning	R-3, Medium Density Residential
Requested Zoning	DN-4, Downtown Mixed-Use Residential
Future Land Use Map Designation	Downtown Commercial (DT)

Property Description

This property is located at the northwestern corner of SE E Street and SE 6th Street. Adjacent zonings are R-3, Medium Density Residential to the north and south, DN-4, Downtown Mixed-Use Residential to the west, and C-2, General Commercial to the east.

Relationship to the General Plan

The Future Land Use Map depicts this property as Downtown Commercial. These areas include traditional mixed-use developments with a focus on design character and pedestrian access. Ground-floor uses should include restaurants, retail, and services, while upper-floor uses could include residential units or offices.

Public Comment

Staff has NOT received public comment regarding this request.

<https://arcg.is/08HvK8>

Location Map



Analysis & Recommendation

According to the applicant's narrative, their intent is to allow the buildings to serve as a mixed-use development, with services on the ground floor and residential uses above. Staff recommends approval of the rezoning due to the site's compatibility with the Future Land Use Plan and surrounding uses.

Narrative for corner property at SE E and SE 6th Street

Owners: Rodney & Mary K. Sample

Subject Property: 527 SE 6th Street, Bentonville, AR 72712 (previous address 511 SE 6th Street)

Parcel #01-03592-000

The applicant seeks to work with the city to continue to add to the growth and economic development of the downtown area. The subject property is currently zoned R-3 is seeking a zoning change to DN-4.

The property is located on the corner of SE E Street and SE 6th Street with the Momentary directly across the street to the east and Austin-Baggett park across the street to the south. 6th and E Street are both corridors to The Momentary. We expect to see a lot of growth in this area.

With the recent rezoning across from Austin-Baggett Park and the opening of The Momentary, we feel this rezoning is most compatible with the future land use of the City of Bentonville.

Plans of the space include, but are not limited to, operating a small financial business office out of current structure. Future development includes a multilevel building complimenting the other structures around the park. Main level business open to the public i.e. coffee house, boutique shop, etc. Upper levels serving as offices, with a few residential spaces. Our goal is to add to the walkability



of the neighborhood and the residents who live here. We will request signage in the future in accordance with existing or future sign ordinances.

Traffic counts and parking will not be adversely affected, or vary from the current use. Water and sewer exist and we will reuse sewer. 8" water lines to the south on 6th Street.

ORDINANCE NO. _____

AN ORDINANCE CHANGING REAL ESTATE IN THE CITY OF BENTONVILLE, ARKANSAS, FROM ITS PRESENT ZONING CLASSIFICATION OF R-3, MEDIUM DENSITY RESIDENTIAL TO DN-4, DOWNTOWN MIXED-USE RESIDENTIAL (PROJECT NUMBER: RZ20-0002).

WHEREAS, Rodney & Mary Sample 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 R-3, Medium Density Residential to DN-4, Downtown Mixed-Use Residential to be used in accordance with city zoning laws and state laws, which property is described as follows:

EAST 100 FEET OF LOTS 12 AND 13, BLOCK J, ORCHARD ADDITION, BENTONVILLE, BENTON COUNTY, ARKANSAS, AS SHOWN IN PLAT RECORD "A" AT PAGES 4 AND 89, AND IN PLAT RECORD "B" AT PAGE 27; and,

WHEREAS, the Planning Commission duly met and considered the application and duly set the petition for public hearing to be held February 4, 2020 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 R-3, Medium Density Residential to DN-4, Downtown Mixed-Use 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 R-3, Medium Density Residential to DN-4, Downtown Mixed-Use Residential to be used in accordance with the city zoning laws and state laws.

PASSED AND APPROVED this _____ day of _____, 2020.

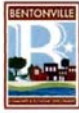
APPROVED:

MAYOR

ATTEST:

CITY CLERK

REZONING STAFF REPORT



OZ Village

806 NW A Street

PC Date: 2/4/2020

Reviewer: Jon Stanley, Senior Planner

Project Number	PRD19-0006
Applicant / Current Owner	Applicant: Yellow Brick Road, LLC Harry D Marley, Jr. 15602 Putnam Rogers, AR 72756 Owner: Roth Family Inc. 6077 SW Regional Airport Blvd. Bentonville, AR 72713
Site Area	1.36 acres
Current Zoning	DN-2, Downtown Medium-Density Residential
Requested Zoning	PRD, Planned Residential Development
Future Land Use Map Designation	Medium Density Residential (MDR)

<https://arcg.is/08HvK8>

Location Map



Property Description

A planned residential development to develop 11 individual single-family homes on 1.36 acres with a maximum density of eight units/acre. The proposed development incorporates common areas to be utilized by its residence. These spaces include community-seating areas, an outdoor fire-pit and pergola. In addition to the common greenspace, each unit will have a private side yard and outdoor patio space. Each unit has a two-car garage to accommodate parking for the residence. The PRD will be compatible with surrounding homes in regards to scale, lot coverage and setbacks.

Adjacent zonings are R-1 Single Family Residential to the west, east and south, DN-2, Downtown Medium Density Residential and R-3, Medium Density Residential to the north.

Relationship to the General Plan

The Future Land Use Plan currently depicts this property as Medium Density Residential. These areas typically include a mix of housing types, including single-family, two-family, and townhouse units with a typical density of 8-12 units per acre. The proposed density and character of this planned residential development is compatible with the Future Land Use Plan.

Public Comment

Staff has received public comment. See attached.

Conclusion

Because the proposed planned residential development is compatible with surrounding single-family uses in the neighborhood and the Future Land Use Plan, staff recommends approval.

1. Planned Residential Development (PRD) Design Statement

Oz Village is a 136-acre proposed residential infill development site located at 800 NW A St. on parcel #0100451000. The parcel is located on NW A Street mid-block between NW 9th Street to the north and NW 7th Street to the south. The site is bounded by newly constructed small lot single-family homes on the north, N. Main Street on the east, NW A Street Park on the south, and NW A Street on the west.

Oz Village is envisioned to be a contextually-sensitive pocket home community with eleven (11) single-family homes that share a central common green. The green space opens up to NW A Street on the west and N. Main Street on the east. The central community green is designed with gateway markers at both ends of the development that serve as a welcome into the community and provide sidewalks, large trees, and attractive landscaping that leads to the front doors of each unit. In order to promote community gathering and neighborly interactions, each unit within Oz Village has been designed with large front porches that face the central community green. Designed within the central community green are seating areas, an outdoor fire-pit, and a pergola that provides residents a space for everyday relaxation as well as special events. Additional green space includes private side yards and a private outdoor patio space for each unit within the development. Oz Village is intended to be planned as one lot with units for individual sale as a Horizontal Property Regime (HPR).

2. Comprehensive Plan Conformance

Oz Village is located in Priority Area 1, Downtown Intensification of the City of Bentonville's Comprehensive Plan and is designated as downtown medium-density residential development future land use. Medium-density residential areas include townhomes, duplex units, and/or clustered single-family housing on properties with a typical density of 8-12 units per acre. This area of downtown is identified as an area of neighborhood transformation and acknowledges that in order to support affordability, aging in place, downtown intensification, and increased walkability, that new development within the downtown medium-density residential areas should anticipate that some large single-family properties will be subdivided into smaller single-family properties that increasing the density of the neighborhood while maintaining neighborhood compatibility and integrity.

Oz Village supports and promotes these Comprehensive Plan policies by increasing downtown density in an attractive and comparable way. The units are intended to be sold at an affordable price point in comparison to other properties in the area, thus increase downtown affordability. Units will be single-family detached homes cluster around central community open space which provides adds to the variety of housing types within the downtown area.

3. Description of Land Uses

Oz Village consists of 136 acres with eleven (11) single-family homes. The community is designed with two rear, one-way private driveways located along the north and south perimeter of the site. The private driveways allows for fire truck access and will be signed with no parking to ensure drive-ables remain unobstructed. The rear private driveways also provide vehicular access to rear facing garages that are provided with each unit. Each garage will accommodate parking for two cars and will have an additional eighteen (18) foot minimum depth drive apron outside the garage with two additional parking spaces.

4. Description of Compliance with PRD Criteria

The PRD shall not modify the following zoning and development standards:

1. Sign Requirements
2. Grading and drainage
3. Access management
4. Outdoor lighting
5. Landscaping & Screening: EXCEPT Approved Waiver 19-0007 to reduce perimeter landscaping strip to a width of six (6) feet.
6. Residential lighting standards
7. Flood damage protection

5. Development Standards

Total Acreage

136 acres

Density

PRD - Zone DN-2: 136 acres

Building Height Max.

11 individual single-family homes (8 units/acre max.)
30'-0" (per existing zoning)
30'-0" to eaves of the structure

Overall Site Setbacks

NW A Street
NW Main Street
North Side
South Side
Side Interior
*Garages rear facing

Parking

*Fire lane & no parking signage to be placed along rear private drives.

Open Space

Garage: 22 (one two-car garage/unit)
Out of Garage: 22
Guest Surface: 4
Total: 48
Total Open Space: .63 acres
Common: .29 acres / 46%
Private: .17 acres / 27%
Easement/Perimeter Landscaping: .17 acres / 27%
7.4 acre / 54.4 %

Lot Coverage

Phasing

Phase 1 to include up to 3 dwelling units, all utility infrastructure, paving, stormwater, and grading. Future phases by individual permit as needed.

OZ VILLAGE

PRD 19-0006 SUBMITTAL
City of Bentonville, AR
December 30, 2019
Updated January 21, 2020

Prepared By:
Planning Design Group

Project Team:

Developer:

Yellow Brick Road, LLC.
Harry D. Morley, Jr.
16602 Futum
Rogers, AR 72756
dmorley7@gmail.com

Master Planning:

Planning Design Group, Inc.
Kary O'Malley, P.A., LEED AP
3304 S. Yale Ave., Suite 310
Tulsa, OK 74103
Phone: 918.628.0255
komalley@pdgusa.com

Civil Engineer:

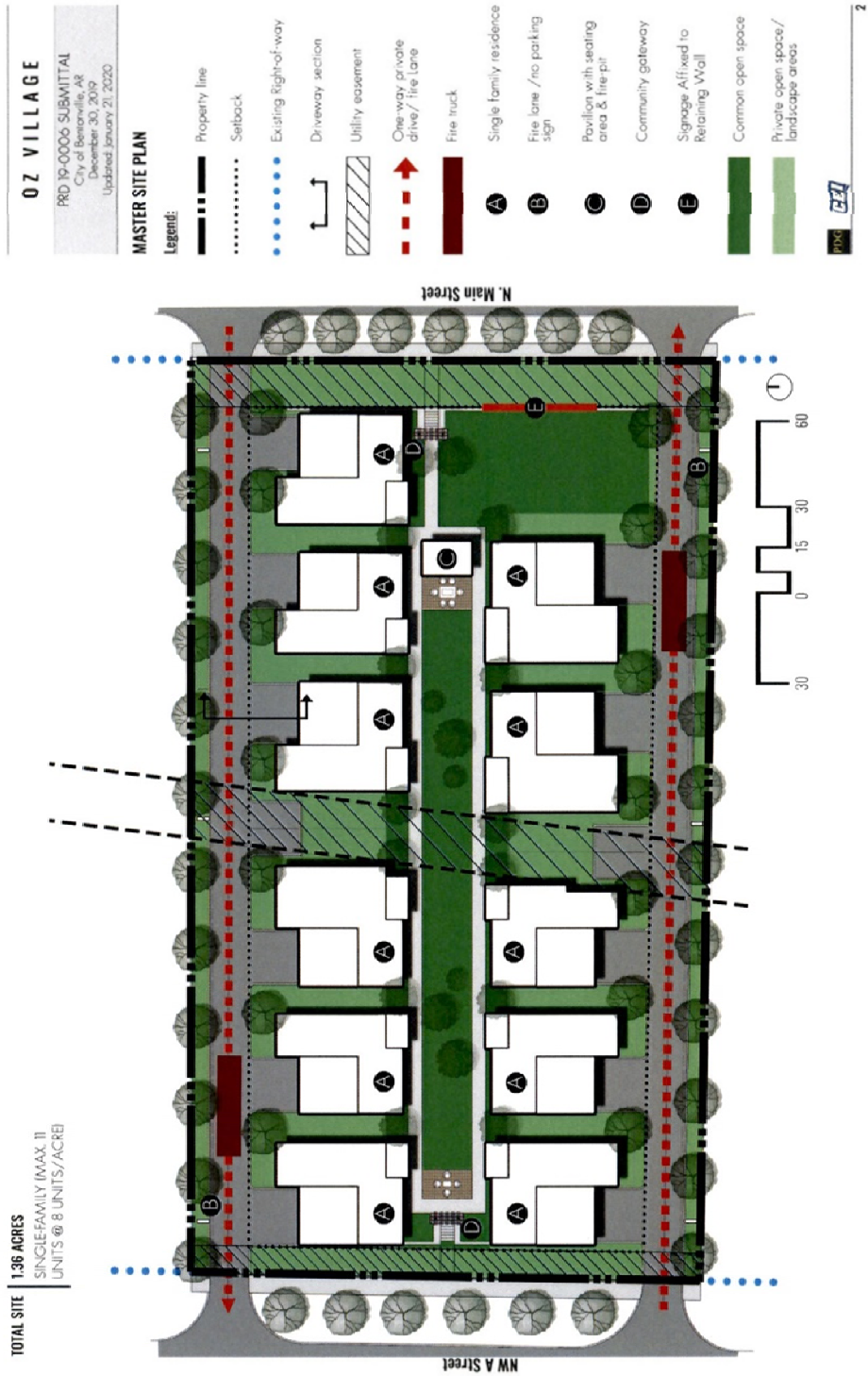
CEI Engineering Associates, Inc.
Nate Bachelor, P.E.
3108 SW Regency Parkway,
Suite 2
Bentonville, AR 72712
Phone: 479.273.9472
nbachelor@ceieng.com

Architect:

Jason West, AIA



TOTAL SITE | 1.36 ACRES
SINGLE-FAMILY (MAX. 11
UNITS @ 8 UNITS/ACRE)



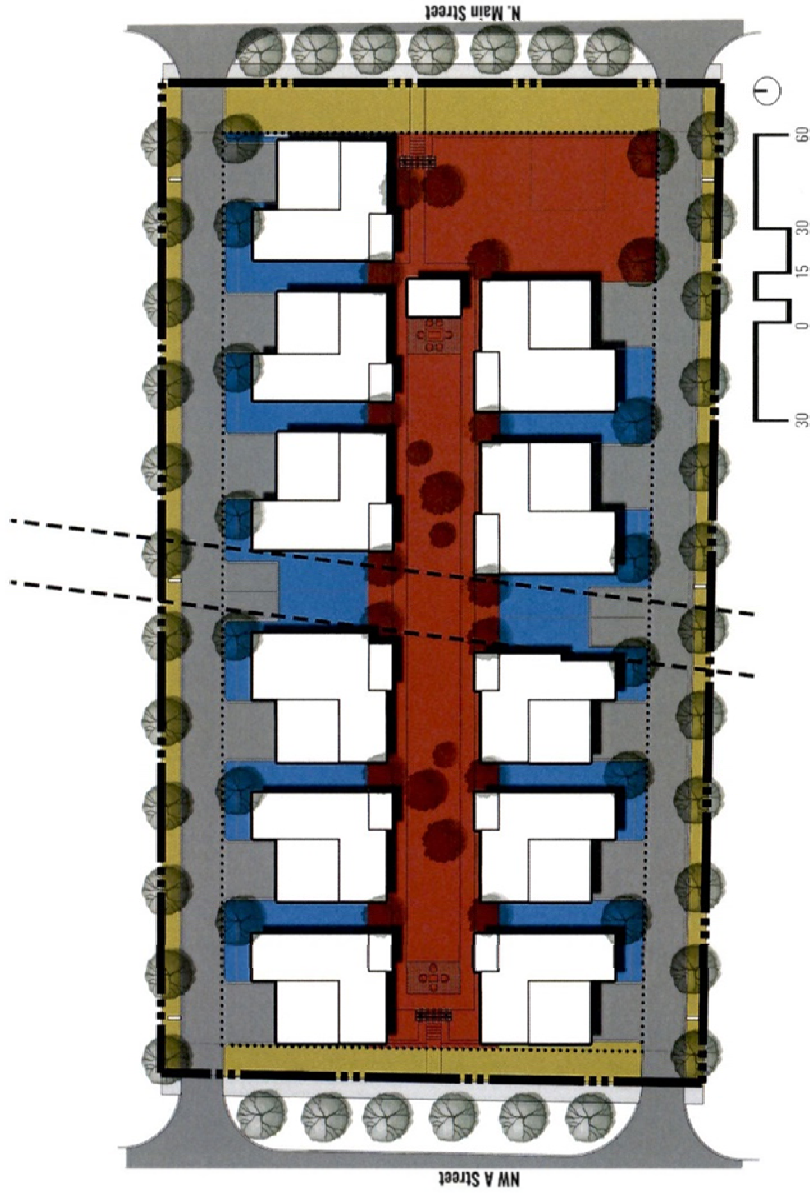
07 VILLAGE

PRD 19-0006 SUBMITTAL
City of Bennington
December 30, 2019
Updated January 21, 2020

OPEN SPACE DIAGRAM

Legend:

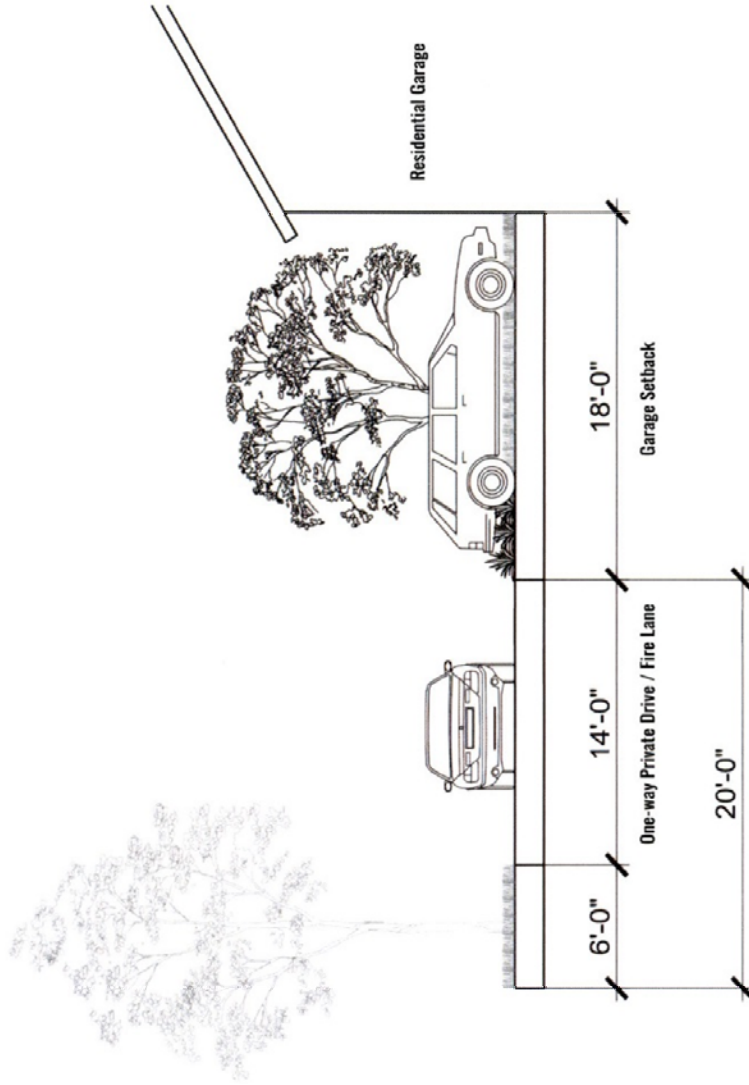
- Property Line
- Setback
- Existing Right-of-way
- Common Open Space
- Private Landscape/
Open Space
- Utility Easement/Open
Space



OZ VILLAGE

PRD 19-0006 SUBMITTAL
City of Bentonville, AR
December 30, 2019
Updated January 21, 2020

PRIVATE DRIVE CROSS SECTION



1. PROPOSED PRIVATE DRIVE STREET SECTION

07 VILLAGE

PRD 19-0006 SUBMITTAL
City of Bernville, AB
December 30, 2019
Updated January 21, 2020

ARCHITECTURAL ELEVATIONS OF SINGLE FAMILY DWELLING TYPE

The style for the development will be a modern craftsman style architecture that utilizes predominantly cementitious board cladding on the building facades with additional stone or brick masonry that will serve as architectural detailing and accents.

Building Materials

For all building facades that face public streets and/or the central common green shall adhere to the following building materials and percentages.

5% min. Accent Material (stone, brick, stucco, wood and/or concrete are all considered material)

95% min. Cementitious Board Siding

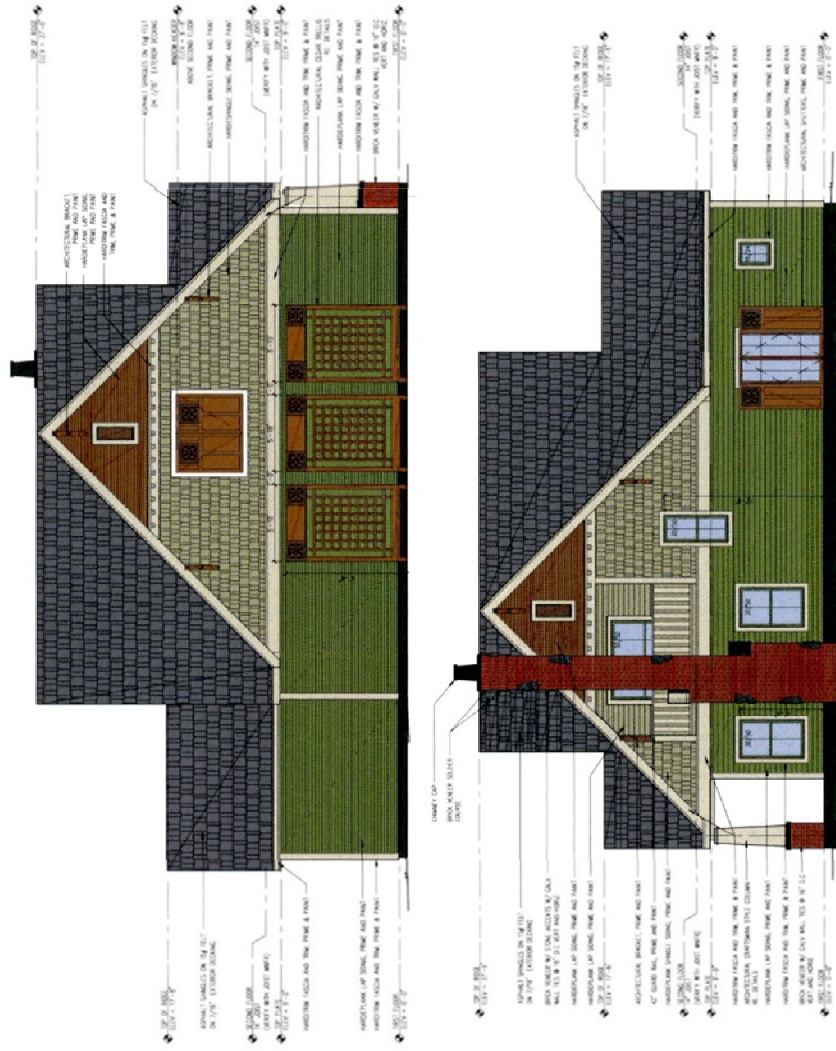


Front Elevation

Note: Elevations provided depict the model home unit for the development. Each subsequent unit built will be custom designed for the owner but will maintain the same quality, style, and material percentages represented and required in the PRD submittal.

[illegible]

Note: Elevations provided depict the model home unit for the development. Each subsequent unit built will be custom designed for the owner but will maintain the same quality, style, and material percentages represented and required in the PRD submittal.

ARCHITECTURAL ELEVATIONS OF
SINGLE FAMILY DWELLING TYPE

Side Elevations

Note: Elevations provided depict the model home unit for the development. Each subsequent unit built will be custom designed for the owner but will maintain the same quality, style, and material percentages represented and required in the RPD submittal.

ORDINANCE NO. _____

AN ORDINANCE CHANGING REAL ESTATE IN THE CITY OF BENTONVILLE, ARKANSAS, FROM ITS PRESENT ZONING CLASSIFICATION OF DN-2, DOWNTOWN MEDIUM-DENSITY RESIDENTIAL TO PRD, PLANNED RESIDENTIAL DEVELOPMENT (PROJECT NUMBER: PRD19-0006).

WHEREAS, Roth Family, Inc. duly filed a petition with the Planning Commission requesting that the hereinafter described property situated in Benton County, Arkansas, be changed from its present zoning classification of DN-2, Downtown Medium-Density Residential to PRD, Planned Residential Development to be used in accordance with city zoning laws and state laws, which property is described as follows:

LOT'S 1, 2 & 3 PRESLEY PLACE SUBDIVISION TO BENTONVILLE, BENTON COUNTY, AR AS SHOWN ON PLAT RECORD BOOK & PAGE L201926790, RECORDED IN THE BENTON COUNTY CLERK'S OFFICE, BENTONVILLE, ARKANSAS.; and,

WHEREAS, the Planning Commission duly met and considered the application and duly set the petition for public hearing to be held February 4, 2020 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 DN-2, Downtown Medium-Density Residential to PRD, Planned Residential Development.

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 DN-2, Downtown Medium-Density Residential to PRD, Planned Residential Development to be used in accordance with the city zoning laws and state laws.

PASSED AND APPROVED this _____ day of _____, 2020.

APPROVED:

ATTEST:

MAYOR

CITY CLERK

LOT SPLIT STAFF REPORT



Lot 14, Block 6, Railroad Addition

209 SE B Street

PC Date: 1/21/2020

Reviewer: Jon Stanley, Senior Planner

Project Number	LS19-0043
Applicant / Current Owner	Santosh & Elizabeth Kotyankar 209 SE B Street Bentonville, AR 72712
Site Area	+/- 0.23 acres
Current Zoning	R-1, Single Family Residential
Future Land Use Map Designation	High Density Residential

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



Property Description

This approximately 0.23-acre property is located at 209 SE B Street and is currently zoned R-1, Single Family Residential.

Project Details

A lot split of the western half of existing Lots 3 & 4, Block 6 of Railroad Addition, creating Lot 14 (+/- 0.23 acres).

The plat dedicates 20 feet of right-of-way along SE Henry Street and 26 feet of right-of-way along SE B Street.

Waivers

There is one waiver request to the Land Development Code Article 1100.16.b Right-of-Way Dedication. The applicant requests a waiver to allow the dedication of 20 feet of right-of-way verses the 26 feet required by the current Master Street Plan along SE Henry Street.

Conclusion

This lot split does not meet the minimum requirements of the subdivision regulations due to the waiver request however, the amount right-of-way that is being dedicated by the plat appears sufficient for any future improvements that might occur, therefore staff recommends approval.

Standard Conditions of Approval

1. Provide a digital copy of the plat.
2. Address all technical review comments prior to filing or requesting a building permit.

NOTES

- **Sidewalks.** Sidewalk installation will be the responsibility of individual lot owners at the time of building permit.



1702 Beth Dr. Rogers, AR 72758 • 479-899-3943 • 479-531-9119

City of Bentonville

1-24-20

To whom it may concern,

This letter is concerning the property located at 209 SE B ST, Bentonville. The property owners, Santosh and Elizabeth Kotyankar, and the builder Beekman Builders LLC are asking for a variance to the city's request from the street department's right of way of 26' to be reduced to 20'.

Previously a variance letter (VAR19-0020) was given to the owners granting them their request to build on Henry and not meet the required driveway length code. This was due to the fact that the older subdivision layout didn't have these setback requirements when developed and that the new structure to be built would be too close to the existing road.

Now the city is strong arming the owners into giving them additional land so that they can have a right of way to increase their street if they find it necessary, thus decreasing the owner's driveway to a mere 10' in length.

I don't see the logic in this. First, the city wants their driveway to meet new code set backs of 30' but will grant them a variance to not do so, but then turn around and ask for a right of way that would reduce their driveway to 10'.

If you didn't want any new construction to take place in an old subdivision so that you could have nice big wide streets and tiny, short, unusable driveways, the why did you give the approval and permit to proceed with construction? This project would have been in the framing stage by now if the weather had cooperated. But as it is the owner's old garage has been demoed, footings dug and holes cut in the old slab to accommodate new construction.

Thank you,

Christopher Beekman
Beekman Builders LLC

ORDINANCE NO. _____

**AN ORDINANCE ACCEPTING A LOT SPLIT OF LOT 14, BLOCK 6 OF
RAILROAD ADDITION TO THE CITY OF BENTONVILLE, ARKANSAS
(PROJECT NUMBER: LS19-0043).**

WHEREAS, pursuant to the provisions of Title 15 of the Bentonville Municipal Code, the lot split of Lot 14, Block 6 of Railroad Addition, Benton County, Arkansas, was submitted to the Bentonville Planning Commission on February 4, 2020; 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 14, Block 6 of Railroad 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 _____, 2020.

APPROVED:

ATTEST:

MAYOR

CITY CLERK

ORDINANCE STAFF REPORT



Zoning Ordinance Amendments

PC Date: 2/4/2020

Reviewer: Shelli Kerr, AICP, Comprehensive Planning Manager

<http://www.bentonvillear.com/198/Code-Amendments>

From time to time, staff reviews the existing zoning code for clarification, corrections, or updates to meet current conditions. The following outline is a summary of the key issues and the recommended changes. Staff requests approval of the proposed ordinance to amend Chapter 14 Zoning Code.

1. Definitions (Attachment A, Sec. 201.02)

- a. Add new definitions for: ““block”, “block, mid-”, “block, end-”, “outdoor music venue”, and “fence”m “restaurant, drive-through”, “restaurant, microbrewery”, and “packaged liquor.”
- b. For “convenience store,” remove the statement “and which may or not include fuel sales.” Fuel sales are separately defined and regulated.
- c. Remove definition of building height. It includes regulations for measurement inconsistent with the regulations in Sec. 401.03.
- d. Clarify definition for varying types of restaurants: drive-in, drive-through and microbrewery.

2. Building height calculations (Attachment B, Sec. 401.03)

Revised methodology for measuring building height and add illustration.

3. Table of Uses (Attachment B, Sec. 401.05)

- a. Add convenience store as an accessory use in DN-4. Those selling alcohol near a trail are required to get a conditional use permit as well.
- b. Add outdoor music venue as a conditional use in A-1, C-2, C-3, DC, I-1 and I-2.
- c. Add a drive through restaurant and allowed by right in C-2 and C-3 and with a conditional use in C1.

4. Density regulations (Attachment B, Sec. 401)

Eliminate density regulations in all districts. The lot sizes, setbacks and height will determine density.

5. Townhouse unit lot coverage (Attachment B, Sec. 401.07 and 07-B)

Eliminate lot coverage for the townhouse unit and leave the lot coverage for the entire structure until the drainage study is complete.

6. Townhouse and multifamily lot and area standards (Attachment B, Sec. 401.07(c))

- Townhouse and multi-family lot and area standards are inconsistent across various zoning districts. Reduce townhouse lot sizes in the R-2, R-3 and R-4 districts. Those in the R-3 and R-4 align with the DN-2 district.
- Multi-family is an allowed use in R-3 and R-4, however, is lot listed in the table with lot and area standards. Establish a 10,000 minimum lot sizes for multifamily structures in R-3 and R-4, consistent with multifamily in DN-3.

ORDINANCE STAFF REPORT

7. RC-2 & RC-3 lot coverage (Attachment B, Sec. 401.07)

Increase lot coverage by 5% on corner lots for RC-2 & RC-3 for consistency with all other districts.

8. Townhouse height (Attachment B, Sec. 401.07-B)

Change height for townhouses in DN-2 district from 35' to 36' for consistency with other zones.

9. DN lot coverage and setbacks (Attachment B, Sec. 401.07-B)

- Reduce rear setbacks in DN-3 and DN-4 districts from 25' to 15'. The 25' rear setback makes it difficult to reach higher densities as intended for these districts.
- Eliminate the maximum lot coverage requirement for the individual unit in single-family attached and townhouse structures. The minimum lot coverage requirement for the structure still applies.

10. C-3 lot and area standards (Attachment B, Sec. 401.08)

Remove the 14' lot width for townhouse and 25' lot width for all other uses in the C-3 district. The 14' lot width is impractical and the 25' lot width creates challenges for creating a truly mixed-use districts, for which C-3 has been established. This brings the C-3 lot and area standards consistent with the DC district, the mixed-use district for downtown.

11. Accessory garage setback (Attachment C, Sec. 601.01)

Add a 20' rear setback for an accessory alley loading garage to allow a vehicle to be parked in front of the garage without impeding the alley.

12. Outdoor music venues (Attachment C, Sec. 601)

Require a conditional use for outdoor music venues and require a noise impact assessment and proposed sound attenuation as part of the conditional use application.

13. Short-term temporary uses (Attachment C, Sec. 601.25)

Revise the three day regulation for short term temporary uses to read "3 *consecutive* days."

14. Alcohol sales (Attachment C, Sec. 601.29)

Eliminate the districts where alcohol sales are allowed. This is redundant with the Table of Uses where all other uses are regulated.

15. Sign regulations (Attachment D, Sec. 801.15)

- a. Revise so that all non-residential freestanding signs are treated similarly in low-intensity districts, including agriculture, residential, R-O, C-1 and C-3.
- b. Revise so that all non-residential freestanding signs are regulated by street frontage, not entrance.
- c. Revised so that all non-residential wall signs are treated the same in all residential districts and treated the same in all commercial and industrial districts.
- d. Add "window" and "door" signs as part of the wall coverage calculation in the table for consistency with the text.

ORDINANCE NO. _____

**AN ORDINANCE AMENDING CHAPTER 14 ZONING CODE OF THE
BENTONVILLE MUNICIPAL CODE.**

WHEREAS, the City of Bentonville periodically reviews the Zoning Code to identify needs for clarification or updates to meet current conditions.

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

Section 1. That within this ordinance, except section headings, all underlined text shall be added and strikethrough text shall be deleted.

Section 2. That the following sections of the Bentonville Municipal Code, Chapter 14 Zoning Code, shall be and are hereby amended with the respective attachment, an electronic copy and paper copy of which are on file with the City Clerk, and are hereby adopted by reference as though they were copied herein fully:

- Attachment A: Art. 201 Definitions Amendments
- Attachment B: Art. 401 Zoning District Regulations Amendments
- Attachment C: Art. 601 Use Regulations Amendments
- Attachment D: Art. 801 Sign Ordinance – Private Property Amendments.

Section 6. This Ordinance shall be in full force and effect 30 days from the date of its passage and approval.

PASSED and APPROVED this ____ day of _____, 2020.

Approved:

ATTEST:

Mayor Stephanie Orman

City Clerk

Attachment A
Article 201 Definitions Amendments

*Underlined text to be added and strikethrough text to be deleted.
Only code sections with amendments are shown.*

Sec. 201.02 Definitions of terms and uses.

For the purpose of these regulations, certain terms and words are to be used and interpreted as defined hereinafter. Where any words are not defined, the standard dictionary definition shall apply. In addition some definitions listed restrict and define the meaning and intent of permitted uses set forth in this ordinance.

Block: A parcel of land, intended to be used for urban purposes, that is entirely surrounded by public streets, highways, railroad rights-of-way, public walks, parks, drainage channels or a combination thereof.

Block, mid-: A parcel of land located in the middle of a block.

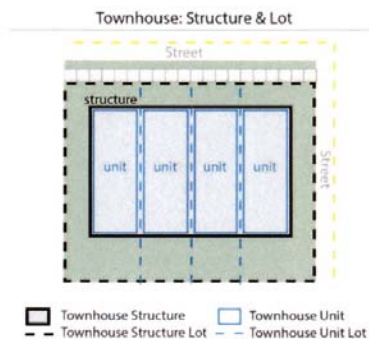
Block, end-: A parcel of land located at the end of block with at least two intersecting property lines adjacent to public streets, highways, railroad rights-of-way, public walks, parks, drainage channels or a combination thereof.

Convenience Store: A retail commercial establishment, not exceeding 2,500 square feet in gross floor area, supplying a limited range of food items, magazines, toiletries, and tobacco products to meet the day-to-day needs of residents in the immediate neighborhood ~~and which may or may not include fuel sales.~~

Drive-Through: A business establishment so developed that its retail or service character is dependent on providing a driveway approach ~~or parking spaces~~ and window serving for motor vehicles to take and deliver orders ~~serve to~~ patrons while in the motor vehicle, rather than within the building or structure.

Dwelling, Townhouse unit: A single dwelling unit in a townhouse structure attached to the adjoining dwelling unit by a common wall extending from the ground to the roof with all exits opening directly to the outside, and located on, or capable of being located on, a separate lot.

Dwelling, Townhouse structure: A dwelling structure consisting of three or more attached townhouse dwelling units.



Event Center: A multi-purpose commercial facility with single or multiple assembly rooms or spaces and related support facilities, such as catering kitchens, indoor/outdoor seating and stage or event area for the primary purpose of hosting special events such as graduations, weddings, anniversaries, holiday gatherings, corporate functions or parties, concert settings, and general get-togethers. This does not include outdoor music venues that are separately defined and regulated.

Art. 201 Definitions

Fence: An artificially constructed barrier or enclosure of wood, masonry, stone, wire, metal or other manufactured material or combination of materials used as a boundary, means of protection, privacy screening, separation of areas, or confinement, but not including hedges, shrubs, trees or other natural growth.

Height: The vertical distance as measured through the central axis of the building from the elevation of the lowest finished floor level to the high point of the roof for flat roofs; to the deck line of mansard roofs; and to the average height between eaves and the ridge for gable, hip and gambrel roofs.

Outdoor Music Venue: An outdoor area used to accommodate musical performances, including live music, the presentation of music played on sound equipment operated by the owner or by an employee, an agent or a contractor of the venue commonly known as a “disc jockey” or “DJ”, and karaoke. An outdoor music venue may be a stand alone use or may be associated with another use. This does not include “event center or “bars, taverns or lounges” which are separately defined and regulated.

Packaged Liquor Store: A retail establishment with the primary purpose of selling beer, light wine and spirits for off-site consumption. This definition does not include a convenience store when the sale of beer, light wine and/or spirits for off-site consumption is not the primary retail product.

Restaurant: An establishment in which food or beverages are cooked or prepared and offered for sale and where consumption is permitted ~~allowed~~ on the premises, whether or not entertainment is offered, and includes establishments commonly known as grills, ~~and~~ cafes, drive-through and any fast food establishment permitting consumption on the premises. This definition does not include drive-in restaurants or restaurants that offer drive-through service, which are separately defined and regulated.

Restaurant, Drive-in: Any restaurant whose primary business is designed to permit or facilitate the serving of meals, sandwiches, ice cream, beverages or other food, served directly to, or permitted to be consumed by, patrons in automobiles or other vehicles parked on the premises ~~for on-site consumption~~, or permitted to be consumed by patrons elsewhere on the site, outside the main building. This does not include restaurants with drive-through service, which is separately defined and regulated.

Restaurant, Drive-through: A restaurant that provides a driveway approach and window for taking and/or delivering orders to patrons while in their motor vehicle, rather than within the building or structure, for off-site consumption. This definition does not include a drive-in restaurant, which is separately defined and regulated.

Restaurant, Microbrewery: As defined by the Division of Alcoholic Beverage Control of the State of Arkansas and defined generally as any establishment in which beer, malt, and hard cider are brewed and sold at retail in a restaurant setting under the same ownership in the same building or attached buildings.

Attachment B
Art. 401 Zoning District Regulations Amendments

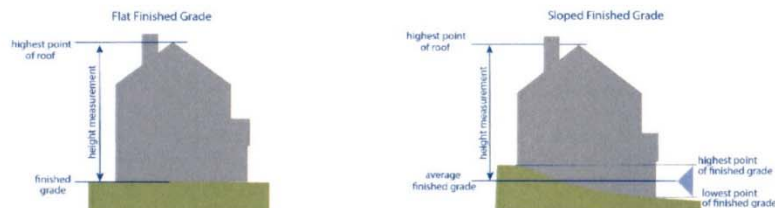
*Underlined text to be added and strikethrough text to be deleted.
Only code sections with amendments are shown.*

Sec. 401.03 Calculations and measurements.

- (a) *Measuring lot width.* Lot width is measured from side lot line to side lot line along the front building setback line.
- (b) *Measuring lot depth.* The minimum lot depth is measured at its shallowest point measured at right angles or radial to the street right-of-way line.
- (c) *Measuring building height.*

(1) *Measuring height.* Building height shall be measured as the vertical distance from the elevation of the ~~natural~~ finished grade level to the highest point of the roofline or parapet wall. For sloped sites, building height is measured as the vertical distance from the elevation of the average of the highest and lowest finished grade level to the highest point of the roofline or parapet wall.

(2) *Exceptions.* Chimneys, elevators, poles, spires, tanks, towers, and other projections not used for human occupancy may extend above the height limit.



(d) *Measuring setbacks.* Setbacks shall be measured as the horizontal distance between the property line and/or right-of-way line and the structure's foundation.

~~(e) *Computing density.* When computing gross density of a tract of land, any and all common open space may be used in said calculation.~~

(Ord. No. 2012-58, § 2, 07-24-2012; Ord. No. 2018-62, § 6, 03-27-2018; Ord. No. 2019-160, § 3, 10-22-2019)

Attachment B
Art. 401 Zoning District Regulations Amendments

*Underlined text to be added and strikethrough text to be deleted.
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Sec. 401.05 Table of uses for zoning districts.

TABLE OF USES

	Use Regs.	A1	RE	R1	R2	R3	R4	R-C2	R-C3	R-MH	R-ZL	RO	DN-1	DN-2	DN-3	DN-4	C1	C2	C3	DC	DE	I1	I2
Recreation, education, public assembly																							
outdoor music venue		C																C	C	C		C	C
Retail																							
convenience store that sells beer and/or light wine for off-site consumption	601.29														C	A	•	•	•	C			
convenience store that sells beer and/or light wine for off-site consumption within 500' of a city owned park or trail	601.29															A	C	C	C	C			
convenience store that sells beer, light wine and/or spirits for off-site consumption	601.29															A	•	•	•				
convenience store that sells beer, light wine and/or spirits for off-site consumption within 500 ft. of a city owned park or trail	601.29															A	C	C	C				
packaged liquor store	601.29																	•					
package liquor store within 500 ft. of a city owned & maintained park or trail	601.29																	C					
restaurant									C							A	C	•	•	•	C		
restaurant, drive-in																		•	•				
restaurant, drive-through																	C	•	•				
restaurant, microbrewery	601.29															A	C	C		C		C	C

Sec. 401.06 A-1, Agricultural district regulations.

(a) *Description and purpose.* The regulations for the A-1 Agricultural District are designed to preserve and protect prime agricultural lands and to protect undeveloped areas from intensive uses until a use pattern is approved.

(b) *Bulk and area regulations.*

(1) *Density.* The table below establishes the maximum density for agricultural districts:

AGRICULTURAL (A) DISTRICT DENSITY STANDARDS	
Zoning district	Maximum density allowed
A-1	1 dwelling unit per 5 acres

City of Bentonville ♦ Zoning Code

Attachment B
Art. 401 Zoning District Regulations Amendments

*Underlined text to be added and strikethrough text to be deleted.
Only code sections with amendments are shown.*

Sec. 401.07 Residential (R) districts regulations.

(b) *Residential (R) districts density standards.* The table below establishes the maximum density allowed for each residential zoning district.

RESIDENTIAL (R) DISTRICTS
DENSITY STANDARDS

Zoning district	Maximum density allowed
R-E	1 dwelling unit per 2 acres
R-1	6 dwelling units per acre
R-2	9 dwelling units per acre
R-3	12 dwelling units per acre
R-4	24 dwelling units per acre
R-MH	6 dwelling units per acre
R-ZL	9 dwelling units per acre
R-O	6 dwelling units per acre
R-C2	18 dwelling units per acre
R-C3	36 dwelling units per acre

(c) *Residential (R) districts lot and area standards.*

(1) *Standards.* The table below establishes minimum residential lot and area standards.

District	Building type	Min. lot area (sq. ft.)	Min. land area / dwelling unit (sq. ft.)	Min. lot width	Max. lot coverage	
					Interior lot	Exterior / corner lot
R-E	All	87,120 (2 acres)	-	100'	10%	15%
R-1	All	6,000	-	60'	40%	45%
R-2	Single-family	6,000	-	60'	40%	45%
	Two-family	7,000	-	70'	50%	55%
	Townhouse unit	3,000	-	30'	50%	55%
	Townhouse structure	10,500 9,000	3,500 3,000	40.5' 90'	65%	70%
	All others <u>not listed</u>	6,000	6,000	60'	40%	45%

Attachment B

Art. 401 Zoning District Regulations Amendments

Underlined text to be added and strikethrough text to be deleted.

Only code sections with amendments are shown.

District	Building type	Min. lot area (sq. ft.)	Min. land area / dwelling unit (sq. ft.)	Min. lot width	Max. lot coverage	
					Interior lot	Exterior / corner lot
R-3	Single-family	6,000	-	60'	40%	45%
	Two-family	7,000	-	70'	50%	55%
	Townhouse unit	2,500	-	25'	50% --	55% --
	Townhouse structure	9,000 <u>7,500</u>	3,000 <u>2,500</u>	90' <u>75'</u>	50% <u>65%</u>	55% <u>70%</u>
	<u>Multi-family</u>	<u>10,000</u>	<u>800</u>	<u>100'</u>	<u>50%</u>	<u>55%</u>
	All others <u>not listed</u>	6,000 <u>10,000</u>	6,000 --	60' <u>100'</u>	40% <u>50%</u>	45% <u>55%</u>
R-4	Single-family	6,000	-	60'	40%	45%
	Two-family	7,000	-	65'	50%	55%
	Townhouse unit	2,500	-	25'	50% --	55% --
	Townhouse structure	9,000 <u>7,500</u>	3,000 <u>2,500</u>	90' <u>75'</u>	50% <u>65%</u>	55% <u>70%</u>
	<u>Multi-family</u>	<u>10,000</u>	<u>800</u>	<u>100'</u>	<u>50%</u>	<u>55%</u>
	All others <u>not listed</u>	<u>10,000</u>	-	65' <u>100'</u>	<u>50%</u>	<u>55%</u>
R-MH	Manufactured home lots	4,500	4,500	50'	30%	35%
	Manufactured home parks	11,000	3,500	60'	30%	35%
	All others <u>not listed</u>	7,000	7,000	65'	40%	45%
R-ZL	Zero lot line	4,000	-	40'	60%	65%
R-O	Single-family	6,000	-	60'	40%	45%
	Two-family	7,000	-	70'	50%	55%
	All others <u>not listed</u>	6,000	6,000	60'	60%	65%
R-C2	Single-family and all others not specifically listed	4,000	-	35', rear access via alley or private drive; 50', no rear access via alley or private drive	--	--
	Two-family / duplex Townhomes – end block	--	2,000	20', rear access via alley or private drive; 25', no rear access via alley or private drive	--	--
R-C3	Single-family	3,000	-	15'	70%	70% <u>75%</u>
	Two-family / Duplex	7,000	-	15'	70%	70% <u>75%</u>
	Townhomes <u>Structure</u> (attached)	-	1,200	15' per unit	No max.	No max.
	Multi-family (4+ units)	-	1,200	No minimum	No max.	No max.
	All others <u>not listed</u>	4,000	--	15'	70%	70% <u>75%</u>

Attachment B

Art. 401 Zoning District Regulations Amendments

Underlined text to be added and strikethrough text to be deleted.

Only code sections with amendments are shown.

(d) *Residential (R) districts setback standards.*

(1) *Standards:* The table below establishes the minimum residential setback standards.

RESIDENTIAL (R) DISTRICTS
MINIMUM SETBACK STANDARDS

District	Building Type	Front	Side		Rear
			Interior	Exterior	
R-E	All	30'	30'	30'	30'
R-1	All	20'	7'	20'	25'
R-2	All	20'	7'	20'	25'
R-3	All	20'	10'	20'	25'
R-4	All	20'	10'	20'	25'
R-MH	Manufactured home lots	20'	10'	20'	25'
	Manufactured home park	25'	15'	25'	25'
R-ZL	Zero lot line	20'	12'/0'	20'	25'
R-O	Single-family	20'	7'	20'	25'
	Two-family	20'	10'	20'	25'
	Office with parking in front	50'	10'	50' parking; 20' no parking	25'
	Office w/o parking in front	20'	10'	20'	25'
R-C2	Single-family and all others not specifically listed	20'	7'	20'	15'
	Two-family- duplex	20'	7'; 0' where attached	20'	15'
	Townhome structure - end block	10'	7'; 0' where attached	10	15
R-C3	Single-family	0'	0'	5'	7'
	Duplex Two-family	0'	0'	5'	7'
	Townhome structure	10'	0'	10'	10'
	Multi-Ffamily	0'	0'	10'	7'
	All others not listed	0'	7'	5'	7'

Attachment B
Art. 401 Zoning District Regulations Amendments

*Underlined text to be added and strikethrough text to be deleted.
Only code sections with amendments are shown.*

Sec. 401.07-B Downtown Neighborhood (DN) districts regulations.

(c) *DN districts lot and area standards.*

- (1) *Standards.* The table below establishes the lot and area standards for all development in the Downtown Neighborhood districts. Accessory dwelling units (ADUs) are permitted in DN-1 and DN-2 on lots with single-family structures and do not require additional land area per the table below, but are subject to additional standards in *Article 601.02 Accessory dwelling units.*

DOWNTOWN NEIGHBORHOOD (DN) DISTRICTS
LOT AND AREA STANDARDS

District	Building Type	Min. Lot Area (sq. ft.) Ⓐ	Min. Land Area / Dwelling Unit (sq. ft.)	Lot Width		Max. Lot Coverage Ⓒ	
				Min. Lot Width Ⓑ	Max. Lot Width	Interior lot	Exterior /corner
DN-1	Single-family	6,000	-	60'	-	40%	45%
	Single-family, alley access	4,000	-	40'	-	50%	55%
	Single-family, no alley access	5,000	-	50'	-	50%	55%
	Single-family attached unit	2,000	-	20'		50%	55%
DN-2	Single-family attached structure, alley access	4,000	-	40'	-	50%	55%
	Single-family attached structure, no alley access	5,000	-	50'	-	50%	55%
	Two-family, alley access	4,000	-	40'	-	50%	55%
	Two-family, no alley access	5,000	-	50'	-	50%	55%
	Townhouse unit	2,000	-	20'	-	60%	65%
	Townhouse structure	7,500	2,500	75'	-	60%	65%
	Single-family, alley access	4,000	-	40'	-	50%	55%
	Single-family, no alley access	5,000	-	50'	-	50%	55%
DN-3	Single-family attached unit	2,000	-	20'		50%	55%
	Single-family attached structure, alley access	4,000	-	40'	-	50%	55%
	Single-family attached structure, no alley access	5,000	-	50'	-	50%	55%
	Two-family, alley access	4,000	-	40'	-	50%	55%

Attachment B
Art. 401 Zoning District Regulations Amendments

*Underlined text to be added and strikethrough text to be deleted.
Only code sections with amendments are shown.*

District	Building Type	Min. Lot Area (sq. ft.) Ⓐ	Min. Land Area / Dwelling Unit (sq. ft.)	Lot Width		Max. Lot Coverage Ⓒ	
				Min. Lot Width Ⓑ	Max. Lot Width	Interior lot	Exterior /corner
	Two-family, no alley access	5,000	-	50'	-	50%	55%
	Townhouse unit	2,000	-	20'	-	65%	70%
	Townhouse structure	7,500 <u>6,000</u>	2,500 <u>2,000</u>	75' <u>60'</u>	-	65%	70%
	Multi-family and all others not listed	10,000	800	125' <u>100'</u>	-	65%	70%
DN-4	Single-family, alley access	4,000	-	40'	50'	50%	55%
	Single-family, no alley access	5,000	-	50'	-	50%	55%
	Single-family attached unit	2,000	-	20'		50%	55%
	Single-family attached structure, alley access	4,000	-	40'	-	50%	55%
	Single-family attached structure, no alley access	5,000	-	50'	-	50%	55%
	Two-family, alley access	4,000	-	40'	50'	50%	55%
	Two-family, no alley access	5,000	-	50'	-	50%	55%
	Townhouse unit	2,000	-	20'	-	65%	70%
	Townhouse structure	7,500 <u>6,000</u>	2,500 <u>2,000</u>	75' <u>60'</u>	-	65%	70%
	Multi-family	10,000 <u>8,000</u>	800	125' <u>80'</u>	-	75%	80%
	Mixed-use and all others not listed	10,000	800	75' <u>80'</u>	-	75%	80%

Attachment B

Art. 401 Zoning District Regulations Amendments

Underlined text to be added and strikethrough text to be deleted.

Only code sections with amendments are shown.

(d) *DN districts setback standards.* The table below establishes the setback standards for the Downtown Neighborhood districts.

DOWNTOWN NEIGHBORHOOD (DN) DISTRICTS
MINIMUM SETBACK STANDARDS

District	Building type	Front Yard		Side Yard				Rear Yard (R)
				Exterior /Corner Side Yard (CS)		Interior Side Yard (S)		
		Min. (F1)	Max. (F2)	Min.	Max.	Detached Yard	Attached Yard	
DN-1	All	15'	25'	15'	-	7'	0'	25'
DN-2	Single-family and Two-family	12'	25'	12'	25'	7'	0'	25'
	Townhouse block-end and all others not listed	12'	25'	12'	25'	10'	0'	25'
DN-3	Single-family and Two-family	10'	20'	10'	20'	7'	0'	25'
	Townhouse	10'	20'	10'	20'	10'	0'	25'
	Multi-family block-end and others not listed	10'	20'	10'	20'	10'	0'	25' <u>15'</u>
DN-4	Single-family and Two-family	8'	15'	8'	15'	7'	0'	25'
	Townhouse	8'	15'	8'	15'	10'	0'	25'
	Multi-family	8'	15'	8'	15'	10'	0'	25' <u>15'</u>
	Mixed-use and others not listed	0'	15'	0'	15'	0', 12'if adjacent to a non mixed-use building	0'	25' <u>15'</u>

(e) *DN districts height standards.* The table below establishes the maximum height allowed in the Downtown Neighborhood districts.

DOWNTOWN NEIGHBORHOOD (DN) DISTRICTS
HEIGHT STANDARDS

District	Single-family and two-family	Townhouse	Multi-family	Mixed-use
DN-1	36'	--	--	--
DN-2	36'	35' <u>36'</u>	--	--
DN-3	40'	40'	40'	--
DN-4	40'	40'	50'	50'

Attachment B
Art. 401 Zoning District Regulations Amendments

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Sec. 401.08 Commercial (C) districts regulations.

(b) *Commercial (C) districts density standards.* The table below establishes the maximum density when residential is allowed in a commercial district.

COMMERCIAL (C)-DISTRICTS
DENSITY STANDARDS

District	Maximum density allowed
C-1	—
C-2	—
C-3	48 dwelling units per acre

(c) *Commercial (C) districts lot and area standards.* The table below establishes the lot and area standards for all development in commercial (C) districts.

District	Building Type	Min. lot area (sq. ft.)	Min. land area / dwelling unit (sq. ft.)	Lot width		Max. lot coverage	
				Min. lot width	Max. lot width	Interior lot	Exterior / corner lot
C-1	All	7,000	-	70'	-	50%	50%
C-2	All	7,000	-	70'	-	60%	60%
C-3	All except townhouses	None	-	25'	-	100%	100%
	Townhouses	None	-	14'	-	100%	100%

Attachment B

Art. 401 Zoning District Regulations Amendments

Underlined text to be added and strikethrough text to be deleted.

Only code sections with amendments are shown.

Sec. 401.8-B Downtown (D) districts regulations.

(c) Downtown (D) districts density standards. The table below establishes the density standards for the downtown (D) districts:

DOWNTOWN (D) DISTRICTS DENSITY STANDARDS	
Zoning district	Maximum density allowed
DC	48 du/acre
DE	48 du/acre

Attachment C

Art. 601 Use Regulation Amendments

*Underlined text to be added and strikethrough text to be deleted.
Only code sections with amendments are shown.*

Uses permitted or subject to a Conditional Use Permit in any district under this Ordinance shall be subject to the requirements of the district provisions as supplemented or modified by this Article.

Sec. 601.01 Accessory buildings.

(a) *Setbacks.*

(1) *Standards.* The table below establishes the minimum setback standards for accessory structures.

	Detached Accessory Nonresidential	Detached Accessory Dwelling	Attached Accessory Dwelling
Front setback	As required by zoning district	As required by zoning district	As required by zoning district
Side setback	7'	7'	As required by zoning district
Rear setback	7'	7'	As required by zoning district

(2) *Corner lots.* In the case of a corner lot, said accessory structure shall not project beyond the building line of the primary structure or existing primary structure on the adjacent lot.

~~(3) *Accessory garage setback.* An accessory garage that accesses from a rear alley and the garage door faces the alley shall have a minimum setback of 20' between the alley right-of-way and the garage door.~~

~~(3)~~(4) *Distance from primary structure.* Any detached accessory structure in excess of 200 square feet shall be located a minimum of 10' from the primary structure.

~~(4)~~(5) *Size variance.* An accessory structure footprint in excess of 720 square feet as approved through a variance shall conform to the required setbacks of the zoning district.

(5) *Exception.* Any accessory non-residential structure less than 200 square feet and not attached to a permanent foundation, shall have a minimum side and rear yard setback of five feet (5') and shall meet the front setback as required by the zoning district.

Attachment C

Art. 601 Use Regulation Amendments

*Underlined text to be added and strikethrough text to be deleted.
Only code sections with amendments are shown.*

Sec. 601.16 Outdoor music venue.

(a) Conditional use permit required. No person or business shall operate a music venue within the city limits without a valid conditional use permit, except on those properties for which such use were established prior to adoption of these regulations.

(b) Applicability. An outdoor music venue conditional use permit may only be granted within those zoning districts identified as allowing outdoor music venues with a conditional use permit, subject to the provisions of this section.

(c) Application requirements. As part of the conditional use permit application, the applicant shall provide the following information:

1. A noise impact assessment completed by a professional acoustical engineering consultant prior to sound attenuation measures and after installation of sound attenuation measures.
2. Details of sound attenuation measures proposed to ensure that the outdoor music venue does not create a noise nuisance to surrounding properties.

(d) Review criteria. The planning commission may approve an outdoor music venue only if the planning commission first finds that:

1. The proposed venue is consistent with the Community Plan and the Land Development Code.
2. The nature, scale and operating characteristics of the venue are compatible with existing and future land use in the vicinity;
3. The noise impact assessment indicates decibel levels will not exceed the maximum decibel limits for the zoning district as set forth in the noise regulations; and,
4. When implemented, the management plan sufficiently assures ongoing compliance with hours of operation, security, noise control, parking management and all other conditions that may be attached to the conditional use permit.

Sec. 601.25 Temporary uses and structures.

(a) Short-term temporary uses or structures.

- (1) Applicability.* The regulations for short-term temporary uses or structures shall apply to temporary uses and/or temporary structures that do not exceed three (3) consecutive days in a 12-month time period per location, no more than two times per calendar year per location; except outdoor vendors otherwise regulated in this chapter.

Attachment C

Art. 601 Use Regulation Amendments

*Underlined text to be added and strikethrough text to be deleted.
Only code sections with amendments are shown.*

Sec. 601.29 Alcohol sales.

(b) Establishment types.

- (1) *Wholesale manufacture and/or distribution.* The wholesale manufacture and/or distribution of intoxicating liquors to include alcoholic beverages of every kind and type shall be allowed ~~by right in the I-1, Light Industrial and I-2, Heavy Industrial zoning districts and with the approval of a Conditional Use Permit in the C-2, General Commercial zoning district~~in the zoning districts as set forth in the Table of Uses in Article 401 Zoning Regulations, subject to the following additional provision:
 1. Any business that manufactures and/or distributes intoxicating liquors to include alcoholic beverages of every kind and type, that is located within 500 feet of any city owned and maintained park or trail, measured from the nearest point of the park or trail to the nearest point of the building to be permitted, shall not be entitled to so operate unless it first obtains a Conditional Use Permit.
- (2) *Microbrewery-Restaurant.* A microbrewery-restaurant as defined by the Division of Alcoholic Beverage Control of the State of Arkansas, shall be allowed in the zoning districts as set forth in the Table of Uses in Article 401 Zoning Regulations.
- (3) *Packaged Retail Sales.*
 1. *Beer and Light Wine – Districts Permitted.* The packaged retail sales of beer and/or light wine of every kind and type for consumption off the premises shall be allowed ~~by right in the following zoning districts: C-1, Neighborhood Commercial, C-2, General Commercial and C-3, Central Commercial and with the issuance of a Conditional Use Permit in the DC, Downtown Core zoning district~~in the zoning districts as set forth in the Table of Uses in Article 401 Zoning Regulations, subject to the conditional use provisions as outlined below in Section C. Conditions for Use.
 2. *Beer, Wine and Spirits – Districts Permitted.* The packaged retail sales of intoxicating liquors to include alcoholic beverages of every kind and type for consumption off the premises shall be allowed ~~by right in the C-2, General Commercial zoning district~~in the zoning districts as set forth in the Table of Uses in Article 401 Zoning Regulations, subject to the conditional use provisions as outlined below in Section C. Conditions for Use.

Attachment D

Art. 801 Sign Ordinance – Private Property Amendments

*Underlined text to be added and strikethrough text to be deleted.
Only code sections with amendments are shown.*

801.15 Signs allowed with a sign permit.

The following signs may be installed, mounted, or placed on public display only pursuant to a duly authorized and issued sign permit, subject to the height, area and location regulations specified in this Section. A common signage plan is required in accordance with *SEC. 801.09 Common Signage Plan*. Erection of the following signs without a permit is a violation of this Section.

(a) Height and area regulations.

Sign Type	ZONING								Use	No. Allowed	Max. Height	Max. Area (per sign face)
	A1, RE R1, R2, R3, R4, RC-2, RC-3 PRD, DN1, DN2	RO	C1	C2	C3	DC, DE, DN3, DN4	I1 & I2	PUD				
Freestanding	•								Subdivision & Multifamily	2/street entrance	6 ft.	32 sq. ft.
	•	•	•		•				Non - residential	1/street entrance frontage	6 ft.	32 sq. ft.
		•							All	1/lot	6 ft.	32 sq. ft.
			•						All	1/street frontage	6 ft.	32 sq. ft.
				•			•	•	Single tenant	1/street frontage	8 ft.	60 sq. ft.
				•			•	•	Multiple tenant	1/street frontage	12 ft.	100 sq. ft.
					•				All	1/street frontage	6 ft.	32 sq. ft.
Wall	•	•							Residential	1/building	1 ft. above roof peak	4 sq. ft., non-illuminated
	•	•							Non-residential	1/building	1 ft. above roof peak	25 sq. ft.
			•	•	•	•	•	•	All Non-residential	No maximum number; however, the total area cumulative of all sign faces cannot exceed 15% of the wall area for the building, or suite if	1 ft. above roof peak	15% of wall area* (includes awning, canopy, window, door, projecting and roof signs) 25 sq. ft. min. allowed



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

AGENDA FORM

CITY COUNCIL MEETING OF:

February 11, 2020

Submitted by:

Shelli Kerr

Department

Planning Services

Phone

271-6822

ACTION REQUIRED:

Approval of an ordinance amending the noise regulations established in Ordinance No. 2006-69. The amendments address outdoor activities, establish details on sound measurement, time limits and decibel levels in commercial zones, and the process for variances from the ordinance.

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



MEMO



To: Mayor Stephanie Orman and Bentonville City Council
From: Ellen Norvell, Planning and Building Services Director
CC Date: February 11, 2020
Re: Noise Ordinance Amendments

Background

In 2006, the City of Bentonville adopted Ordinance No. 2006-69 establishing regulations for noise.

Issue

Upon review, staff has identified areas for improvement in the regulations, including:

- outdoor venues that may have difficulty in meeting the noise regulations;
- the lack of details for sound measurement;
- time limits and decibel levels in commercial areas may be more restrictive than other communities in the region; and
- the request for a variance to the ordinance is not a process currently in place.

Recommendation

Staff recommends the following amendments to the regulations:

- Establish additional requirements for sound measurement.
- Establish additional requirements for the monitoring report.
- Exempt certain outdoor activities, including municipal or school affiliated activities.
- Exempt outdoor music venues that meet specific design criteria to reduce sound levels that have been approved by Planning Commission.
- Change the variance procedure from approval by City Council, for which no process is in place, to approval by Planning Commission through the existing conditional use permit process.
- Make the following changes in commercial zones:

Commercial Zone – Sunday through Thursday

7:00 am to 10:00 11:00 pm	65 70 dB(A)
10:00 11:00 pm – 7:00 am	60 65 dB(A)

Commercial Zone – Friday and Saturday

7:00 am to 10:00 12:00 pm	65 70 dB(A)
10:00 12:00 pm – 7:00 am	60 65 dB(A)

ORDINANCE NO. _____

**AN ORDINANCE AMENDING ORDINANCE NO. 2006-69 REGULATING
NOISE POLLUTION OF TITLE 7 PUBLIC PEACE, SAFETY AND
MORALS.**

WHEREAS, City Council approved Ordinance No. 2006-69 establishing noise regulations; and,

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

Section 1. That the Bentonville Municipal Code, Title 7 Public Peace, Safety and Morals should be and the same is hereby amended with the following *Attachment A: Noise Ordinance Amendment*, an electronic copy and paper copy of which is on file with the City Clerk, is hereby referred to, adopted and made a part hereof as though it were copied herein fully.

Section 2. That this ordinance shall be in full force and effect 30 days from the date of its passage and approval.

PASSED and APPROVED this _____ day of _____, 2020.

APPROVED:

Mayor Stephanie Orman

ATTEST:

City Clerk

Attachment A: Noise Ordinance Amendment

Underlined text to be added and strikethrough text to be deleted

7.48 NOISE

7.48.01 Intent. It is the intent of these regulations to provide citizens with an environment free from such excess sounds or noise as may jeopardize their health, welfare and safety, or degrade the quality of life.

7.48.02 Applicability. This ordinance shall apply to the control of all sound and vibration originating within the limits of the City of Bentonville.

7.48.03 Definitions.

Construction: Any site preparation, assembly, erection, substantial repair, alteration, or similar action, but excluding demolition, for or of public or private rights-of-way, structures, utilities or similar property.

Decibel (dB): A unit for measuring the volume of a sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals (20 micronewtons per square meter).

Demolition: Any dismantling, intentional destruction or removal of structures, utilities, public or private right-of-way surfaces, or similar property.

Emergency: Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

Motor Vehicle: Any vehicle which is propelled or drawn on land by a motor, such as, but not limited to, passenger cars, trucks, truck-trailers, semi-trailers, campers, go-carts, snowmobiles, amphibious craft on land, dune buggies, or racing vehicles, but not including motorcycles.

Motorcycle: An unenclosed motor vehicle having a saddle for the use of the operator and two or three wheels in contact with the ground, including, but not limited to, motor scooters and minibikes.

Noise: Any sound which endangers or injures the safety or health of humans or animals, or annoys or disturbs a reasonable person of normal sensitivities, or endangers or injures personal or real property.

Plainly Audible: Capable of being heard. It is not necessary to distinguish words or melodies. A plainly audible sound may consist of bass alone.

Real Property Boundary: An imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person, but not including intra-building real property divisions.

Sound: An oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

Sound Level: The weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network, such as A, B, or C as specified in American National Standards Institute specifications for sound level meters (ANSI S1.4-1971, or the latest approved revision thereof). If the frequency weighting employed is not indicated, the A-weighting shall apply.

Sound Level Meter: An instrument which includes a microphone, amplifier, RMS detector, integrator or time averager, output meter, and weighting networks used to measure sound pressure levels.

Vibration: An oscillatory motion of solid bodies of deterministic or random nature described by displacement, velocity, or acceleration with respect to a given reference point.

7.48.04 Administration.

- A. Lead.** The noise control program established by this chapter shall be administered by the Police Department.
- B. Departmental Cooperation.** All departments and agencies shall cooperate with the lead department to the fullest extent in enforcing these regulations.
- C. Sound Level Meter.** Sound level measurements shall be made with a sound level meter Type II or better using the A-weighted scale in conformance with the standards promulgated by the American National Standards Institution (ANSI). The microphone shall be equipped with a wind screen.
- D. Procedure for Measurement.** All tests shall be conducted according to the following procedures:
 - 1. *Complaint Driven.* When the measurement procedure is the result of a complaint, measurements will be taken at the property line of the receiving property.
 - 2. *Normal Monitoring.* When the measurement procedure is in the normal course of monitoring sound, the measurements will be taken at the real property line of the source of the sound.
 - 3. *Outdoor Conditions.* No outdoor measurements shall be taken while winds exceed (including gusts) 15 miles per hour; under conditions that will allow the sound level meter

to become wet; or when the ambient temperature is out of range of tolerance of the sound level meter.

4. Calibration. The sound level meter shall be verified and calibrated according to the manufacturer's specifications immediately prior to taking the measurements.
5. Meter Placement. The sound level meter shall be placed a minimum of four feet above the ground or from any reflective surface. The microphone shall be pointed at the sound source.
6. Measurements. Measurements shall include "high", "average" and "low" readings. If the sound level meter does not provide these multiple readings, a minimum of three separate measurements shall be taken at a single location at varying time intervals. The average sound level reading shall be used to determine whether there has been a violation of this ordinance.
7. Monitoring Report. The report for each measurement session shall include:
 - (a) the day, date and time of the measurements,
 - (b) ~~time~~ date and time of recent calibration,
 - (c) temperature and wind speed at time of measurement ~~weather conditions~~,
 - (d) identification of the monitoring equipment,
 - (e) location, land use, zoning and description of the source,
 - (f) location, land use and zoning of the listener, and
 - (g) sound level measurements.
- ~~5. Meter Placement.~~ ~~The sound level meter shall be placed a minimum of three feet above the ground or from any reflective surface.~~
8. Extraneous Sounds. If there are extraneous sound sources that are unrelated to the measurements and increase the monitored sound level, the measurement shall be postponed until these noises subside.

7.48.05 Unreasonable or Excessive Noise Prohibited. No person shall unreasonably make, continue, or cause to be made or continued, any noise disturbance, including noise of such character, intensity or duration as to be detrimental to the life, health or safety of an individual, or in disturbance of the public peace and welfare.

7.48.06 Exceptions. The provisions of this chapter shall not apply to:

- A. The emission of sound for the purpose of alerting persons to the existence of an emergency or the emission of sound in the performance of emergency work.
- B. Any facility, vehicles or equipment of the city, county, state or federal government while engaged upon necessary public business.
- C. The use of bells or chimes in conjunction with places of religious worship.

- D. The intentional sounding or permitting the sounding of any fire, burglar or civil defense alarm, siren, whistle or similar stationary or emergency signaling devise for emergency purposes or for testing, provided such testing uses only the minimum cycle test time.
- E. Movement of aircraft which are in all respects, conducted in accordance with, or pursuant to applicable Federal Laws or regulations.
- F. Activities conducted on or in municipal facilities that are approved, sponsored, or sanctioned by the city.
- G. Any athletic or school related event or activity that occurs on or in school facilities and approved, sponsored, or sanctioned by the school.
- H. A facility used for the production, display, and promotion of indoor and outdoor musical events that has been designed and built with inherent architectural design, landscape, and topography measures to reduce sound to minimal intrusive levels and has been approved by Planning Commission.
- I. Firework displays authorized by the city.

7.48.07 Limitations by Zoning District.

A. No person shall operate or cause to be operated, or permit, contract or allow to be operated on premises of public or private property any identifiable source of sound in such a manner as to create a sound level within the zoning districts in Table 1 below, which exceeds the maximum noise levels as set forth in Table 1 as measured at any point on the boundary of the property from which the sound or noise was emanating. A complaint under this section must be brought by a property owner or leaseholder affected by the excessive noise on their property.

Table 1	
Residential Zone	
7:00 am to 10:00 pm	60 dB(A)
10:00 pm – 7:00 am	55 dB(A)
Commercial Zone – <u>Sunday through Thursday</u>	
7:00 am to 10:00 <u>11:00</u> pm	65 <u>70</u> dB(A)
10:00 <u>11:00</u> pm – 7:00 am	60 <u>65</u> dB(A)
Commercial Zone – <u>Friday and Saturday</u>	
7:00 am to 10:00 <u>12:00</u> pm	65 <u>70</u> dB(A)
10:00 <u>12:00</u> pm – 7:00 am	60 <u>65</u> dB(A)
Industrial Zone	
7:00 am to 10:00 pm	70 dB(A)
10:00 pm – 7:00 am	65 dB(A)

- B. District Boundaries.** When a noise source can be identified and its noise measured in more than one zoning district, the noise level limits of the most restrictive zoning district shall apply at that district boundary.
- C. Commercial Source.** Notwithstanding the zoning classification of the underlying parcel, restaurants, night clubs, private clubs, auditoriums, dance halls, and rehearsal studios are defined as commercial sound sources existing in commercial zones for the purposes of this chapter.

7.48.08 Specific Prohibitions. The following acts, and the causing thereof, are declared to be in violation of this chapter:

A. Radios, loudspeakers and public address systems.

- 1. Commercial Use.** Use, operation or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier, or other machine or device for the producing or reproducing of sound which is cast upon the public streets from a point of origin located on public or private property, for the purpose of commercial advertising or attracting the attention of the public to any building or structure.
- 2. Non-Commercial Use.** The use or operation of any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier, or other machine or device for the producing or reproducing of sound which is cast upon the public streets from a point of origin located on public or private property, for a non-commercial purpose shall not be operated in such a manner or at such a volume as to annoy or disturb the quiet, comfort or repose of persons in any office, hospital, dwelling, hotel, or other type of residence in the vicinity and shall be restricted by the limitations of the zoning district set forth in section 7.48.07.

B. Radios, televisions, musical instruments and similar devices. Operating, playing or permitting the operation or playing of any radio, television, musical instrument, sound amplifier, or similar device which produces, reproduces or amplifies sound in such a manner or with such volume, particularly during the hours between 10:00 pm and 7:00 am, as to annoy or disturb the quietness, comfort or peace of any persons in or around any office, hospital, or in any dwelling, hotel or other type of residence.

C. Construction. Operation of construction, demolition, or excavation equipment; performance of any outside construction or repair work on buildings, structures, or projects; or operation of any pile driver, power shovel, pneumatic hammer, derrick, power hoist, or any other construction-type device in order to erect, demolish, alter, or repair any building, street, or highway within a residential zone or on any property within a radius of 500' of a residential zone on Sundays; legal holidays; Monday through Saturday between the hours of 7 pm and 6 am the following day in May, June, July, August and September; and Monday through Saturday between the hours of 6 pm and 6 am during the remainder months of the year.

Construction work shall be subject to the maximum noise level limitations specified for industrial zones in Section 7.48.07.

D. Motor vehicles and motorcycles.

1. **Repair noise.** The repairing, rebuilding, modifying or stationary testing of any motor vehicle, motorcycle, or motorboat in such a manner as to cause a sound plainly audible across any property boundary line between the hours of 10:00 p.m. and 7:00 a.m.
2. **Sound amplification device.** The operation or occupancy of a vehicle, which is moving or stationary, standing or parked, from which any sound amplification or producing device or similar equipment is creating a sound that is plainly audible at least 30 feet from the source of the sound.
3. **Engine noise.** The operating or occupancy of a vehicle, which is moving or stationary, standing or parked, from which the engine noise is creating a sound that is in excess of the maximum noise levels established for the time period and zoning districts set forth in section 7.48.07 when measured at least 30 feet from the source of the sound.
4. **Horns.** The sounding any horn or other auditory signaling device on or in any motor vehicle on any public right-of-way or public place, except as a warning of danger.

7.48.09 Permit for ~~variance~~ conditional use. Any person may apply to the ~~City Council~~ **Planning Commission** for a **conditional use** permit to conduct activities ~~which that~~ might otherwise violate this ~~chapter ordinance~~. **Applications shall be submitted to the planning department in accordance with the current planning department policies and procedures for a conditional use permit as set forth in Article 301 Administration and Enforcement of the Zoning Code.** The ~~City Council~~ **Planning Commission** may impose ~~such limitations~~ **conditions of approval, including but not limited to** as time and geographic area for such activity **and sound attenuation measures.** The ~~City Council~~ **Planning Commission** shall consider such factors as adequate police protection, interference with established businesses and ~~the like~~ **impact to surrounding land uses.** Such activities shall include, but not be limited to, functions advancing the arts, holiday festivals, parades, public functions protected by the First Amendment and election activities.



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

AGENDA FORM

CITY COUNCIL MEETING OF:

February 11, 2020

Submitted by: **Shelli Kerr**
obo Public Art Advisory Committee

Department **Planning Services**

Phone **271-6822**

ACTION REQUIRED:

Approval of the relocation of the artwork, titled "Sassy the Sasquatch" by artist Amanda Wilshire, from the current location in Park Springs Park at the southwest corner of the Tiger Boulevard and NW A Street intersection to an area near the parking lot at NE Cub Circle and NE A Street. The Public Art Advisory Committee and the Parks and Recreation Advisory Board have approved the relocation.

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



MEMO

To: Mayor Stephanie Orman, City Council
From: Shelli Kerr, AICP, Comprehensive Planning Manager
CC Date: February 11, 2020
Re: Relocation of public art– Sassy the Sasquatch



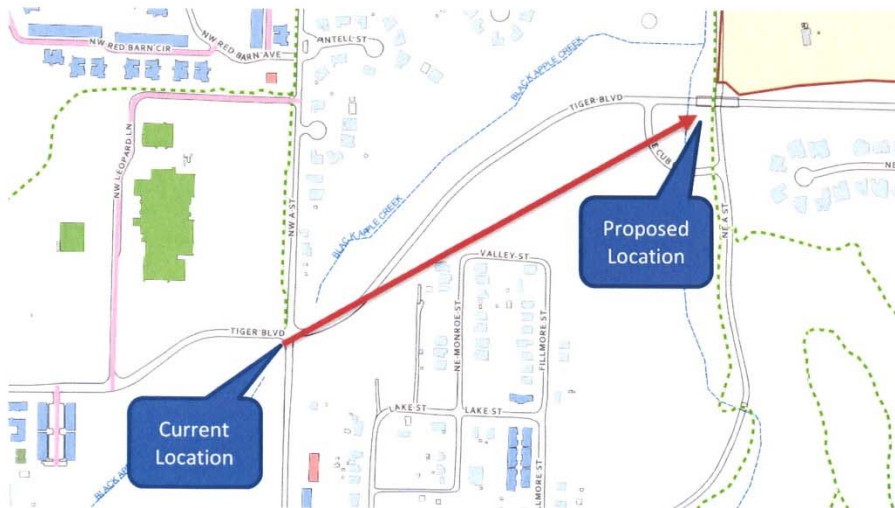
In 2018, artist Amanda Wilshire installed *Sassy the Sasquatch* at the current location in Park Springs Park at the southwest corner of Tiger Blvd. and NW A St.

The Public Art Advisory Committee received several positive comments about the artwork, however, did receive a few written complaints in 2019. In an effort to balance the concerns of the complaints and those who support the artwork, the committee decided to keep the artwork and relocate to a less visible location from a highly travelled roadway. Furthermore, the committee determined that the details of the artwork warrant a location that is more accessible for close viewing. The committee recommends relocating the artwork to an area near the parking lot at NE Cub Circle and NE A St.



The Public Art Advisory Committee approved the relocation at its regular meeting on October 8, 2019. The Parks and Recreation Advisory Board approved the relocation at its regular meeting on December 2, 2019.

Cost to relocate is estimated at \$2,500 and will be funded out of the Public Art Advisory Committee budget.





February 6, 2020

To: City Council Members & City Clerk
From: Mayor Stephanie Orman
Subject: Reappointment of Lee Culpepper to Bentonville's Advertising and Promotion Commission.

I recommend Lee Culpepper for reappointment to Bentonville's Advertising and Promotion Commission. Mr. Culpepper's term expires on December 31, 2024.


Stephanie Orman



January 24, 2018

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

Dear Mayor:

On December 12, 2019, the Bentonville Advertising & Promotion Commission voted to submit to the City Council for their approval:

The reappointment of **Lee Culpepper** as an at-large representative on the commission. This is his second term on the commission.

The term for this seat is January 1, 2020 through December 31, 2024.

For your convenience, we are enclosing a copy of his application and Commission terms summary.

Please let me know, if you have any questions.

Sincerely,



Kalene Griffith
President

104 E. Central Ave. · Bentonville, Arkansas 72712 · (479) 271-9153 · toll free (800) 410-2535

VISIT
Bentonville
A NEW AMERICAN TOWN

BENTONVILLE ADVERTISING & PROMOTION COMMISSION

COMMISSIONER APPLICATION

NAME: Lee Culpopper

DATE: 11-14-19

RESIDENCE ADDRESS:

MAILING ADDRESS:
(if different)

EMAIL ADDRESS:

PHONE NUMBERS:

(home)

(work)

(cell)

What are your qualifications for serving on this commission? Please attach a resume.

My term on the A&P Commission has given me a deep understanding of the important role the Commission plays in supporting tourism. My work background in public affairs both at Walmart and the National Restaurant Association have given me a level of expertise in how hospitality plays a vital role in economic development.

Why would you like to be considered for a position on the Bentonville Advertising & Promotion Commission?

I believe my background in Hospitality and business is strong and shows my genuine interest in working on the types of issues that come before the Commission. I'm truly excited about the opportunities that come before the commission to support growing tourism, economic development and better quality of life for the citizens of Bentonville.

I am

Signature

Please return the completed form by November 25, 2015

Email: johnna@visitbentonville.com

Mail: Bentonville A&P Commission 104 East Central Avenue Bentonville, AR 72712



Lee Culpepper

*Vice President, Public Affairs
Walmart Inc.*

Lee Culpepper is the Vice President of Public Affairs at Walmart. He has previously held the roles of Vice President of Corporate Affairs and Vice President of Federal Government Relations. He joined Walmart in July, 2005.

In his present role, Lee oversees corporate reputation research and advertising as well as issue management, advocacy and strategy. He oversees Walmart's federal and state grassroots outreach programs. He also leads Walmart's efforts with external stakeholder and constituent groups and is charged with the development and execution of strategy with key diverse organizations.

Prior to joining Walmart, Lee worked for the National Restaurant Association for 12 years departing as their Senior Vice President of Government Affairs and Public Policy. He spent more than eight years on Capitol Hill, handling legislative issues for members in both houses of Congress. He is a graduate of the University of Georgia.

Lee currently serves on the Board of Visitors of the University of Georgia School of Public and International Affairs. In January 2015, he was elected to the National Retail Federation Foundation Board of Directors and in 2016 was the recipient of the NRF Silver Plaque award for making a major contribution to the retail industry and for his outstanding leadership in NRF council and committee work. He also serves on the Unidos US Corporate Board of Advisors. He has previously served on the Board of the National Immigration Forum where he served a term as Chair and on the Board of the Asian Pacific American Institute for Congressional Studies (APAICS).

Locally, Lee serves on the Steering Committee of EngageNWA and is active with several charitable organizations.

[illegible]



February 6, 2020

To: City Council Members & City Clerk

From: Mayor Stephanie Orman

Subject: Appointment of Jon Terlouw to the City of Bentonville's Tree and Landscape Committee.

I recommend Jon Terlouw for appointment to the City of Bentonville's Tree and Landscape Committee. He will be filling Chris Sooter's unexpired term in the City Council Member position on the Committee. Term to expire 12/31/2021.

50

Stephanie Orman

From: Chris Sooter
Sent: Tuesday, December 17, 2019 10:45 AM
To: Danielle Semsrott Assistant to the Mayor
Subject: Re: Tree & Landscape Committee Meeting

Danielle-

I have changed jobs and now I am the Director of Finance at Jones Trust and Jones Center. I will be leaving the T&L committee. I have let the Mayor know.

Thanks!!

Sent from my iPhone

From: Jon Terlouw

Sent: Tuesday, February 04, 2020 5:41 PM

To: Janice E. Hopkins

Subject: Re: Confirmation that you would like to serve on T & L Committee

Hi Janice,

I would like to serve on the Tree & Landscape committee. Thank you.

Jon Terlouw

City Council, Ward 4



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

AGENDA FORM

CITY COUNCIL MEETING OF:

February 11, 2020

Submitted by:

Mike Bender

Department

Public Works Director

Phone

271-6873

ACTION REQUIRED:

Resolution requested by Staff for Council approval authorizing the Mayor and City Clerk to amend a professional services agreement with Hight-Jackson Associates, PA to provide professional services associated with the design and construction of the Public Works Maintenance Facility located on SW 24th and SW Aviation Streets in an amount equal to 7.25% of construction costs and discounted 25% for previous services rendered.

COST TO CITY:

Cost of this Request: \$121,800

Additional Budget Amount

☐ One time amount

☐ Continuing O and M

Previously Budgeted	\$	2,000,000
Funds Expended to Date		692,422
Remaining Budget		1,307,578
Budget Adjustment		-
Remaining After Adjustment	\$	1,307,578

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: Mike Bender
CC:
Date: January 30, 2020
Re: Hight-Jackson Associates PA contract for design and construction

Staff recommends amending a professional services agreement with Hight-Jackson Associates, PA in an amount equal to 7.25% of construction costs for services associated with redesign and construction administration of the Public Works Maintenance Facility located on SW 24th Street. Fees will be discounted 25% for previously rendered services. Services will include architectural design as well as civil, structural, electrical, and mechanical design.

City Council approved a contract with Hight-Jackson for the same project in July 2019. After construction estimates were prepared subsequent to large scale development approval, it was deemed to be too expensive. Staff met with the design team to reduce the scope of the project by approximately 40%. Since substantial work had been done on the project and the scope substantially changed, we felt the best route forward was to close the previous agreement and start a new one. Since there is work that can transfer from the original project to the new design, Hight-Jackson will discount their fee by 25% on the new design to account for the previous efforts. New design is estimated at \$2.2M. Previous design was estimated at \$3.5M. Below is a breakdown of design fees expended and estimated.

The new facility will include administrative offices, break room, custodial work area, mechanic's shop along with vehicle and equipment storage. This project will help alleviate overcrowding at the facility located in Memorial Park currently shared between Parks Maintenance and Public Works Maintenance.

Thank you for your consideration of this request.

 AIA® Document G802™ – 2017

Amendment to the Professional Services Agreement

PROJECT: <i>(name and address)</i> City of Bentonville Public Works Annex Bentonville, AR	AGREEMENT INFORMATION: Date: July 10, 2019	AMENDMENT INFORMATION: Amendment Number: 1 Date: January 20, 2020
OWNER: <i>(name and address)</i> City of Bentonville Bentonville, AR	ARCHITECT: <i>(name and address)</i> Hight Jackson Associates PA Rogers, AR	

The Owner and Architect amend the Agreement as follows:

Section 1.1.1. The Owner's program has been revised as follows:

Project includes one +/- 12,900 square foot single story building that includes a shop area, administrative office and mezzanine.

The Architect's compensation and schedule shall be adjusted as follows:

Compensation Adjustment:

Seven and one quarter Percent (7.25%) of the revised Cost of Work based on the above mentioned description. Architect will discount this fee Twenty-five Percent (25%) for previously rendered services.

Schedule Adjustment:

To be determined

SIGNATURES:

Hight Jackson Associates PA

ARCHITECT *(Firm name)*

[Redacted Signature]

SIGNATURE

Brian T. Jackson, President

PRINTED NAME AND TITLE

1/20/2020

DATE

City of Bentonville, AR

OWNER *(Firm name)*

[Redacted Signature]

SIGNATURE

Stephanie Orman, Mayor City of
Bentonville, AR

PRINTED NAME AND TITLE

DATE

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO AMEND A PROFESSIONAL SERVICES AGREEMENT WITH HIGHT-JACKSON ASSOCIATES, PA FOR SERVICES ASSOCIATED WITH DESIGN AND CONSTRUCTION OF THE PUBLIC WORKS MAINTENANCE FACILITY LOCATED AT 2401 SW AVIATION STREET

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 Amend a Professional Services Agreement with Hight-Jackson Associates, PA in an amount equal to 7.25% of construction costs then reduced by 25% for previously rendered services 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 _____, 2020.

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:

February 11, 2020

Submitted by:

Mike Bender

Department

Public Works Dir

Phone

271-6873

ACTION REQUIRED:

Resolution requested by Staff for Council approval authorizing the Mayor and City Clerk to enter into a professional services agreement with CR Crawford Construction, LLC to provide pre-construction services for the development of the Public Works Maintenance Facility located at 2401 SW Aviation Street for an amount not to exceed \$35,000.00. Services include construction cost estimating, constructability analysis, value engineering, scheduling, and clash analysis. CR Crawford Construction, LLC will collaborate with Hight-Jackson Associates and their team to prepare construction drawings and associated documents. This agreement allows the amendment to move to construction services. Such change will require additional City Council action.

COST TO CITY:

Cost of this Request: \$35,000

Additional Budget Amount

☐ One time amount

☐ Continuing O and M

Previously Budgeted	\$	2,000,000
Funds Expended to Date		814,222
Remaining Budget		1,185,778
Budget Adjustment		
Remaining After Adjustment	\$	1,185,778

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: Mike Bender

CC:

Date: January 30, 2020

Re: CR Crawford Construction, LLC contract for pre-construction services

Resolution - Staff requests City Council approval of a Resolution authorizing the Mayor and City Clerk to enter into a professional services agreement with CR Crawford Construction, LLC to provide pre-construction services for the development of the Public Works Maintenance Facility located at 2401 SW Aviation Street for an amount not to exceed \$35,000.00. Services include construction cost estimating, constructability analysis, value engineering, scheduling, and clash analysis. CR Crawford Construction, LLC will collaborate with Hight-Jackson Associates and their team to prepare construction drawings and associated documents. Agreement allows for amendment to move to construction services. Such change will require additional City Council action.

The new facility will include administrative offices, break room, custodial work area, and mechanic's shop along with vehicle and equipment storage. This project will help alleviate overcrowding at the facility located in Memorial Park currently shared between Parks Maintenance and Public Works Maintenance.

Thank you for your consideration of this request.

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 October day of Third in the year Two Thousand Nineteen
(*In words, indicate day, month and year.*)

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

City of Bentonville
117 W Central
Bentonville, Arkansas 72712

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

CR Crawford Construction, LLC
1102 S. Happy Hollow Road
Fayetteville, Arkansas 72701

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

Bentonville Maintenance Facility
Southwest 24th Street and Southwest Aviation Drive
Bentonville, Arkansas

The Architect:
(*Name, legal status and address*)

Hight Jackson Associates
5201 W. Village Parkway, Suite 300
Rogers, Arkansas 72758

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

Mike Bender
117 W Central
Bentonville, Arkansas 72712

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

Phil Jones

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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1102 S. Happy Hollow Road
Fayetteville, Arkansas 72701

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

The Owner and Construction Manager agree as follows.

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TABLE OF ARTICLES

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

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

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

§ 1.2 Relationship of the Parties

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

§ 1.3 General Conditions

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

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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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(3B9ADA4D)
User Notes:

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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.

§ 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 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.

§ 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 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.

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§ 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 B133™-2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

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

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

\$35,000.00

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

10 % annum

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.)

5%

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

10% for additive change orders; 0% for deductive change orders.

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

Not Applicable

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed Ten percent (10 %) of 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.)

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

§ 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.)

100% savings returned 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

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Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

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

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

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

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

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

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

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

§ 6.2 Labor Costs

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

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

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

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

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

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

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§ 6.3 Subcontract Costs

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

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

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

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

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

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

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

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

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

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

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

§ 6.6 Miscellaneous Costs

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

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

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

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

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of

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the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

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

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

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

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

§ 6.7 Other Costs and Emergencies

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

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

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

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

§ 6.8 Costs Not To Be Reimbursed

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

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

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§ 6.9 Discounts, Rebates and Refunds

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

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

§ 6.10 Related Party Transactions

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

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

§ 6.11 Accounting Records

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

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

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

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

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the Twenty-Fifth day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the Fifteenth 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-One (21) days after the Architect receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

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

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

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

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

1. Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
2. Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
3. Add the Construction Manager's Fee, less retainage of Ten percent (10 %). 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 Ten percent (10 %) from that portion of the Work that the Construction Manager self-performs;
5. Subtract the aggregate of previous payments made by the Owner;
6. Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
7. Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

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

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made

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exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.2 Final Payment

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

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

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

Certificate of Occupancy has been issued and punch list completed.

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

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request 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)
Commercial General Liability (CONTRACTOR)	\$2,000,000.00
Automobile Liability (CONTRACTOR)	\$1,000,000.00
Umbrella Liability (CONTRACTOR)	\$10,000,000.00
Workers Compensation and Employers Liability (CONTRACTOR)	\$1,000,000.00
Builders Risk (CONTRACTOR)	
Payment Bond (CONTRACTOR)	
Performance Bond (CONTRACTOR)	
Property Insurance (OWNER within 7 days of Substantial Completion)	

ARTICLE 9 DISPUTE RESOLUTION

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

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

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

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

☒ Litigation in a court of competent jurisdiction

☐ Other: *(Specify)*

This Agreement shall be construed in accordance with the laws of the State of Arkansas. The exclusive venue for the litigation of any disputes arising hereunder or related hereto shall be either Benton County Circuit Court or United States District Court, Western District of Arkansas, Fayetteville Division. By executing the Agreement, Owner hereby voluntarily, knowingly, and intentionally submits itself to the personal jurisdiction of the courts referenced herein for the purpose of litigating any and all disputes with Contractor related to this
(Paragraph Deleted)

Agreement.

§ 9.3 Initial Decision Maker

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

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

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ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

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

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

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

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

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

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

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

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

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

§ 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

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Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 Suspension

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

ARTICLE 11 MISCELLANEOUS PROVISIONS

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

§ 11.2 Ownership and Use of Documents

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

§ 11.3 Governing Law

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

§ 11.4 Assignment

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

§ 11.5 Other provisions:

ARTICLE 12 SCOPE OF THE AGREEMENT

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

§ 12.2 The following documents comprise the Agreement:

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

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)

Jason Keathley, Vice President
(Printed name and title)

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Additions and Deletions Report for AIA® Document A133™ – 2009

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 October day of Third in the year Two Thousand Nineteen

...

City of Bentonville
117 W Central
Bentonville, Arkansas 72712

...

CR Crawford Construction, L.L.C
1102 S. Happy Hollow Road
Fayetteville, Arkansas 72701

...

Bentonville Maintenance Facility
Southwest 24th Street and Southwest Aviation Drive
Bentonville, Arkansas

...

Hight Jackson Associates
5201 W. Village Parkway, Suite 300
Rogers, Arkansas 72758

...

Mike Bender
117 W Central
Bentonville, Arkansas 72712

...

Phil Jones
1102 S. Happy Hollow Road

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(3B9ADA4D)

Fayetteville, Arkansas 72701

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§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate ~~the agreed 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.

...

§ 2.3.2.3 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 fee plus 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

\$35,000.00

...

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

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§ 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.

...

10 % annum

...

5%

...

10% for additive change orders; 0% for deductive change orders.

...

Not Applicable

...

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§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed Ten percent (10 %) of the standard rate paid at the place of the Project.

...

100% savings returned to Owner.

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§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the Twenty-Fifth day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the Fifteenth 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-One (21) days after the Architect receives the Application for Payment.

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- .3 Add the Construction Manager's Fee, less retainage of Ten percent (10 %). 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 Ten percent (10 %) from that portion of the Work that the Construction Manager self-performs;

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Certificate of Occupancy has been issued and punch list completed.

...

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

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<u>Commercial General Liability</u>	<u>\$2,000,000.00</u>
<u>(CONTRACTOR)</u>	
<u>Automobile Liability (CONTRACTOR)</u>	<u>\$1,000,000.00</u>
<u>Umbrella Liability (CONTRACTOR)</u>	<u>\$10,000,000.00</u>
<u>Workers Compensation and Employers</u>	<u>\$1,000,000.00</u>
<u>Liability (CONTRACTOR)</u>	
<u>Builders Risk (CONTRACTOR)</u>	
<u>Payment Bond (CONTRACTOR)</u>	
<u>Performance Bond (CONTRACTOR)</u>	
<u>Property Insurance (OWNER within 7</u>	
<u>days of Substantial Completion)</u>	

...

☒ Litigation in a court of competent jurisdiction

...

This Agreement shall be construed in accordance with the laws of the State of Arkansas. The exclusive venue for the litigation of any disputes arising hereunder or related hereto shall be either Benton County Circuit Court or United States District Court, Western District of Arkansas, Fayetteville Division. By executing the Agreement, Owner hereby voluntarily, knowingly, and intentionally submits itself to the personal jurisdiction of the courts referenced herein for the purpose of litigating any and all disputes with Contractor related to this

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§

...

Agreement.

...

§ 9.3 Initial Decision Maker

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Stephanie Orman, Mayor

Jason Keathley, Vice President

Certification of Document's Authenticity
AIA® Document D401™ – 2003

I, , 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 11:33:58 ET on 02/04/2020 under Order No. 4734669138 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)

(Dated)

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AIA[®] Document A201[™] – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Bentonville Maintenance Facility
Bentonville, Arkansas

THE OWNER:

(Name, legal status and address)

City of Bentonville
117 W Central
Bentonville, Arkansas 72712

THE ARCHITECT:

(Name, legal status and address)

Hight Jackson Associates
5201 W. Village Parkway, Suite 300
Rogers, Arkansas 72758

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- 3 CONTRACTOR
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- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
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ADDITIONS AND DELETIONS:

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503[™], Guide for Supplementary Conditions.

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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 or proposal 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. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 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.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 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 retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and 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 the 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 suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, 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 suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

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§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

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 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 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,

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assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 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.

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

§ 2.3.4 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.

§ 2.3.5 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.

§ 2.3.6 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.

§ 2.4 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.

§ 2.5 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 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 default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for 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. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

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 its 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 2.3.4, 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 submit 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, subject to Section 15.1.7, 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. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be 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 notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative 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 approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 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

§ 3.5.1 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.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 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 14 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 that an equitable adjustment be made 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, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

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§ 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 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 notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice 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 and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably 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, or fails to provide submittals in accordance with the approved submittal schedule, the

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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 make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and 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 how 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 the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect 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.

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§ 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 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.

§ 3.12.10.1 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 be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop 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 and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and 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.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 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, 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, or patching shall be restored to the condition existing prior to the cutting, fitting, or 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 construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its 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 and 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 the Owner shall be entitled to reimbursement from the Contractor.

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§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with 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 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 an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the 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 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 Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 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.

§ 4.2 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.

§ 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 promptly report to the Owner (1) known deviations from the

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Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) 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

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 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 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, 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 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 order 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 Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 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 the subcontractors of a Separate Contractor.

§ 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, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice 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 for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, 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 that the Contractor, by these Contract 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,

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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; 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.

§ 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 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 term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 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 any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its 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 or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has 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 notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work 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. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 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 that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor 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.

§ 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. The Contractor shall proceed promptly with changes in the Work, 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:

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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 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine 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 7.3.4 shall be limited to the following:

1. Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
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, directly related to the change; and
5. Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 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.

§ 7.3.7 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.

§ 7.3.8 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 may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will

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affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

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.

§ 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, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 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 (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended 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

§ 9.1.1 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.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and

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unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent 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. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and 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 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 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, suppliers, or other persons or entities that 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 (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole 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 in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. 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. 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 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.

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§ 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 suppliers 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 either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

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

§ 9.5.4 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 supplier to whom the 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 Contractor shall reflect such payment on its next Application 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 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 and suppliers 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 or supplier, except as may otherwise be required by law.

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

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§ 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 or provided by 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, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 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' 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 shutdown, 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.

§ 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; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and 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 the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the 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.

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§ 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 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 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. 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 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, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and 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, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance 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 the lien, claim, security interest, or encumbrance, 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, corrected, 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 the 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.

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§ 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;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a 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, a Subcontractor, or a Sub-subcontractor; 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 implement, 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 the owners and users of adjacent sites and utilities of the safeguards.

§ 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 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. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is 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.

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§ 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, notice of the 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 and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. 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 notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's 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 the material or substance or who are to perform the task of removal or safe containment of the 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 by the amount of the Contractor's reasonable additional costs of shutdown, 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 owner may be entitled to by law.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous 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 hazardous 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.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances 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 reimburse 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.

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2 11.1 Contractor's Insurance and Bonds

endorsements, and subject to the terms

10. *Journal of the American Academy of Child and Adolescent Psychiatry*, 35, 10, 1175-1182.

15.2 The Tower shell

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1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 26

§ 11.3 Waivers of Subrogation

§ 11.3.1 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; (2) the Architect and Architect's consultants; and (3) Separate Contractors, 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 those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 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 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, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§ 11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

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.

§ 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, the Contractor shall be entitled to an equitable adjustment to

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the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before 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 any 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 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 2.5.

§ 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 of the Owner or Separate Contractors, whether completed or partially completed, 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.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 13.4.

§ 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 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 the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 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.

§ 13.3.2 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 thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 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 tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 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 13.4.1, 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 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 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.

§ 13.4.4 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.

§ 13.4.5 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.

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

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties 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.

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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, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, 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 reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, 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' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work 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' 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 or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner 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' 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,

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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 under 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 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 Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

Additions and Deletions Report for

AIA® Document A201™ – 2017

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

Bentonville Maintenance Facility
Bentonville, Arkansas

...

City of Bentonville
117 W Central
Bentonville, Arkansas 72712

...

Hight Jackson Associates
5201 W. Village Parkway, Suite 300
Rogers, Arkansas 72758

PAGE 2

45- CLAIMS AND DISPUTES

...

8.3.1, 15.3.2, 15.4

PAGE 4

3.14, ~~6.2.5~~, 6.2.5

PAGE 12

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 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 default or ~~neglect. Such neglect.~~ Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect ~~may, pursuant to~~ may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in ~~part to part to~~ part to part to the extent reasonably necessary to reimburse the Owner for 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. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the ~~Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.~~

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RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH CR CRAWFORD CONSTRUCTION, LLC FOR PRE-CONSTRUCTION SERVICES ASSOCIATED WITH DESIGN AND CONSTRUCTION OF THE PUBLIC WORKS MAINTENANCE FACILITY LOCATED AT 2401 SW AVIATION STREET

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 a Professional Services Agreement with CR Crawford Construction, LLC in an amount not to exceed \$35,000.00 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 _____, 2020.

APPROVED:

Stephanie Orman, Mayor

ATTEST:

Linda Spence, City Clerk



CHECK ALL THAT APPLY			
X	Bid Award	Bid #	IFB-20-01
	Budget Adjustment		
	Change Order		
	Informational		
	Ordinance		
	Resolution		
	Other		

AGENDA FORM

CITY COUNCIL MEETING OF:

February 11, 2020

Submitted by:

Bart Mahony

Department

Pub Works Maint

Phone

271-5945

ACTION REQUIRED:

Bid award IFB-20-01 to Titan Lawn & Landscape for the weekly finish mowing of city facilities in an amount not to exceed \$45,000.00. This is a 2020 budgeted item. This agreement may be extended up to 3 years upon mutual agreement of both parties.

COST TO CITY:

Cost of this Request: \$45,000

Additional Budget Amount

☐ One time amount

☐ Continuing O and M

Previously Budgeted	\$	45,000
Funds Expended to Date		
Remaining Budget		45,000
Budget Adjustment		-
Remaining After Adjustment	\$	45,000

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

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712

www.bentonvillear.com



PLEASE RECYCLE





MEMO

Public Works – Maintenance Department

TO: CITY COUNCIL, MAYOR ORMAN
FROM: BART MAHONY PUBLIC WORKS MAINTENANCE MANAGER
SUBJECT: BID AWARD TO SUMMIT LAWN & LANDSCAPE FOR FACILITY FINISH MOWING
DATE: 1/29/2020
CC: MIKE BENDER

Staff recommends City Council award Bid No IFB-20-01 to Titan Lawn & Landscape for weekly finish mowing of city facilities in an amount not to exceed \$45,000. The city received four bids, Titan Lawn & Landscape (\$1425 weekly) M&W Mowing (\$1664.45 weekly). Precision Lawns (\$2,395 weekly) Empire Group Property Management (\$2,235 weekly) Titan Landscape provided the lowest responsible bid. Bids are based on a weekly mowing cycle cost, including a complete mowing/trimming, edging and debris collection/removal.

The attached bid specifications include city facility locations covered by this bid. In general these locations are all city facilities with the exception of the Public Works Municipal Facility and the Bentonville Community Center. This contract will relieve City personnel from additional mowing responsibilities and allow for the savings of over 100 man hours per week to be re-directed to other responsibilities greatly reducing the need for additional maintenance personnel in the future.

2020 is the first year with this contractor and may be renewed annually up to 3 consecutive years upon mutual agreement of both parties and Council allocating the funds.

Thank you for your consideration of this request.



BID TABULATION:
IFB-20-01- BID OPENING
 Facility Finish Mowing
 TUESDAY, JANUARY 28, 2020
 at 2:30 P.M

BIDDER NAME	ATTENDED PRE-BID	Bid Bond Included (\$500.00)	BID COMPLETE	INSURANCE	ADDENDUM NUMBER 1	TOTAL BID PRICE
M&W MOWING	Y	Y	Y	Y	Y	\$1,664.45
EMPIRE GROUP PROPERTY MANAGEMENT	Y	Y	Y	Y	Y	\$2,235.00
TITAN LAWN & LANDSCAPE	Y	Y	Y	Y	Y	\$1,425.00
PRECISION LAWNS	Y	Y	Y	Y	Y	\$2,395.00



CITY OF BENTONVILLE

PURCHASING OFFICE – (479) 271-3115 – PURCHASING@BENTONVILLEAR.COM
CITY HALL 117 WEST CENTRAL AVENUE BENTONVILLE, ARKANSAS 72712

FOR PUBLICATION

PUBLICATION DATE: January 9, 2020

NOTICE TO BIDDERS FACILITY FINISH MOWING SERVICES Invitation For Bid (IFB)-20-01

The City of Bentonville, Arkansas is accepting formal, sealed bids from qualified and properly experienced and capable mowing businesses or individuals to perform facility finish mowing services at various locations located in Bentonville, Arkansas.

All Bids must be accompanied by a Bid Guarantee in the form of a bid bond, certified check, or cashier's check in the amount of five hundred dollars (\$500.00), payable without condition to the City of Bentonville. Personal checks and company checks are NOT acceptable as a Bid Guarantee.

There will be a Mandatory Pre-Bid Meeting held on January 17, 2020 at 9:00 A.M. CST at the Bentonville Municipal Complex, located at 3200 SW Municipal Drive Bentonville, Arkansas 72712. The meeting will be held in the second floor conference room. During the Mandatory Pre-Bid Meeting, prospective Bidders will have an opportunity to schedule ride-a-long appointments with the City's Public Works Maintenance Department. Ride-a-long appointments will be scheduled according to City staff availability on January 21 and 22, and will consist of driving by facility locations where services are to be performed, with a City staff member, to allow prospective Bidders to become familiar with the areas to be maintained. Prospective Bidders who do not attend the Mandatory Pre-Bid Meeting will not be permitted to submit a bid for the facility finish mowing services.

Interested parties can obtain the required bid packet by emailing purchasing@bentonvillear.com, by calling 479-271-3115 or from the Purchasing Office located at the address below. Sealed bids will be received until 2:30 P.M., Tuesday, January 28, 2020, at the Purchasing Office on the second floor of City Hall, located at 117 West Central Avenue, Bentonville, Arkansas 72712. Late submissions and unsigned bid submissions will be rejected, without exception.

WWW.BENTONVILLEAR.COM



CITY OF BENTONVILLE, ARKANSAS
PURCHASING OFFICE
CITY HALL
117 W. CENTRAL AVE
BENTONVILLE, ARKANSAS 72712

INVITATION FOR BID (IFB)
IFB-20-01

Date of Issuance: **January 9, 2020**

Bid Number: **IFB-20-01**

Mandatory Pre-Bid Meeting: January 17, 2020 at 9:00 A.M (address/details below).

Bid Opening Date: **January 28, 2020**

Bid Opening Time **2:30 P.M.**

Questions regarding this bid should be directed solely to the City of Bentonville Purchasing Office via written communication only, emailed to purchasing@bentonvillear.com.

All questions must be submitted prior to 4:30 P.M., January 23, 2020.

Mandatory Pre-Bid Meeting Address: 3200 SW Municipal Drive (2nd floor conference room)

During the Pre-Bid meeting, Bidders will have an opportunity to schedule ride-a-long appointments with the City's Public Works Maintenance Department. Ride-a-long appointments will consist of driving by locations where services are to be performed with a City staff member, to allow the Bidders to become familiar with areas to be maintained. Ride-a-long appointments will be scheduled for January 21st and 22nd only.

Mandatory Pre-Bid Meeting Date and Time: January 17, 2020 at 9:00 A.M.

Any bids received from entities which did not attend the Mandatory Pre-Bid Meeting will be rejected, without exception.

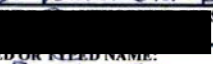
All bids must be received by the Purchasing Office prior to 2:30 P.M., January 28, 2020 in a sealed envelope, clearly marked on the outside with **BID # IFB-20-01**. Bids which must be opened to be identified may be rejected. Late bids will be rejected, without exception.

Bids will be publicly opened at City Hall, second floor, Purchasing Office, 117 West Central Ave Bentonville, AR 72712.

Pre-bid meeting for this invitation will not be held at the Purchasing Office, please review pre-bid information above

EXECUTION OF BID

Upon signing this Bid, the bidder certifies that he/she has read and agrees to the requirements set forth in this bid proposal including specifications, conditions and pertinent information regarding the articles being bid on, and agrees to furnish these articles at the prices stated. Unsigned bids will be rejected - no exceptions.

NAME OF FIRM: <u>TITAN LAWN & LANDSCAPE LLC</u>	PHONE NUMBER: <u>479-200-6702</u>	FAX NUMBER:
BUSINESS ADDRESS, STREETS: <u>6250 WEDINGTON DR</u>	CITY: <u>FAVETTEVILLE</u>	STATE: <u>AR</u>
SIGNATURE: 	DATE: <u>1-21-20</u>	ZIP: <u>72704</u>
PRINTED OR TYPED NAME: <u>ROY LOVELL</u>	TITLE: <u>OWNER</u>	

ARKANSAS SALES OR USE TAX NUMBER: 83-3311738

STATE CONTRACTORS LICENSE NUMBER: _____

INTENT

The intent of this Invitation for Bid is to solicit for weekly cycles of facility finish mowing services to be performed at the various City facility locations defined herein, for the City of Bentonville, Arkansas Public Works Maintenance Department. The awarded Bidder will be required to sign a binding contract.

RESPONSE DOCUMENTS & PRE-BID REQUIREMENTS

The following documents must be complete to provide a complete bid response package:

- IFB document, all response fields complete.
- \$500.00 Bid Guarantee: As defined in the 'BID GUARANTEE' section of this Invitation for Bid.
- Letter of Intent to provide insurance: All bids must contain a Letter of Intent from an insurance company authorized to do business in the State of Arkansas stating its willingness to insure the company submitting a bid pursuant to the terms herein and of any contract resulting from this Invitation for Bid.

All pricing must be entered on pricing sheet ("no bid" is an acceptable entry).

BID GUARANTEE

All bids must be accompanied by a bid guarantee in the form of a bid bond, certified check, or cashier's check in the amount of **five hundred dollars (\$500.00)**, payable without condition to the City of Bentonville. Personal checks and company checks are NOT acceptable as a bid guarantee.

Bids received that do not include a bid guarantee, as specified in this Invitation for Bid, will be rejected.

CONTRACT TERM:

The term for the awarded contract will be one (1) year, renewable annually upon mutual written agreement for a total maximum term of three (3) years.

SCOPE

Bidder agrees to furnish all labor and equipment necessary to perform weekly cycles of facility finish mowing services.

Each cycle will include all services that are industry standard when performing facility finish mowing; including but not limited to: finish mowing, edging grass, weed-eating (trimming), debris removal, blowing off debris or clippings from sidewalks, parking lots and walkways prior to the start of each mowing service, and upon the conclusion of each mowing service to present a finished appearance.

The City reserves the right to inspect any and all equipment to be used by the awarded Bidder prior to beginning services to ensure that the equipment is suitable to perform the services as described herein.

Bidder and the City agree that certain weather and growth related circumstances may require the mowing cycles to be delayed. Examples of such circumstances would be inclement weather and below average growth periods or seasons. Any delays or scheduling changes shall be communicated in writing between the City and the awarded Bidder. The City shall have the final determination of when grounds are able to be mowed or when the cycle requires rescheduling.

[This space is intentionally left blank]

DELIVERY

The City of Bentonville requests that the facility finish mowing services begin within two (2) weeks from the Notice of Award. If this schedule cannot be met, Bidder must state the date that Bidder is available to begin services. Failure to state a date of availability obligates the Bidder to begin services within the City's requested timeline. Extended service start dates may be considered when in the best interest of the City.

Estimated date for presentation to City Council: February 11, 2020

Estimated Notice of Award Date: February 12, 2020

(These dates are tentative and may be changed without notification to Bidders)

Date available to begin services: FEBRUARY 15, 2020

EQUIVALENT

Whenever these specifications mention an item by name and use specific descriptions as reference thereto, it is intended to convey to the bidder an understanding of the standard of excellence required. Items of equal type, quality, and size that will conform substantially to the standard of excellence established to provide equivalent merit, strength, durability, and to perform the required function in accordance with these specifications may be offered. City of Bentonville shall have the final approval of whether a substitute item is equal to the item specified.

INSURANCE

All bids must contain a Letter of Intent (LOI) from an insurance company authorized to do business in the State of Arkansas stating its willingness to insure the company submitting a bid.

The awarded Bidder will be required to provide the following Certificates of Insurance prior to beginning services for the City:

- Workers Compensation: As required by the State of Arkansas
- Comprehensive General Liability (Broad Form) in amounts to be specified by the City prior to signing the contract.

INVOICING

Bidder shall provide an invoice to the City's Accounts Payable office monthly upon the conclusion of each month's weekly mowing cycles.

**City of Bentonville
ATTN: Accounts Payable
117 West Central Ave.
Bentonville, AR 72712**

Invoices submitted on time and to the correct address will be paid within 14 days of receipt.

PAYMENT TERMS

Net 30 days



Other: _____

Registered with the Secretary of State's Office to Conduct Business in the State of Arkansas:



Yes _____ No _____

Contractor/Vendor Disclosure

Company Name: TITAN LAWN & LANDSCAPE, LLC

Identify each employee of the City Of Bentonville to whom you, any of your Employees owning more that 5% interest in your Company, or are a Director/Executive/Decision Maker of your Company are immediately related.

Immediate Relation includes:

- Spouse/Domestic Partner
- Parents-Natural or Legal/Step/In Laws
- Children/Step, Siblings-Whole/Half/Step/ In Laws
- Grandchildren/Step, Great Grandchildren.

N/A

Failure to disclose shall be considered a material breach and grounds for immediate termination of this contract/agreement. **Note: Any change in circumstances resulting in a conflict or appearance of a conflict shall be reported in 30 days of change of circumstance.** PL Initials

**CITY OF BENTONVILLE, ARKANSAS
PURCHASING DEPARTMENT**

INSTRUCTIONS TO BIDDERS

1. **SCOPE:** These instructions to bidders and general conditions apply to solicitations for material, equipment, supplies or services with an estimated single or combined cost of \$20,000 or more. These conditions shall be in force unless otherwise modified by the City in this bid document. Bidders shall be advised that the City of Bentonville is not responsible for the content of any bid package received through any 3rd party bid service. It is the sole responsibility of the vendor to ensure the completeness of the documents received from any 3rd party source other than hand delivered.
2. **DEFINITIONS (AS USED HEREIN):**
 - a. The term "Invitation For Bid" means a solicitation of formal sealed bids with a combined or single unit value \$20,000 and over. The acronym "IFB" means Invitation for Bid.
 - b. The term "bid" means the offer by the bidder.
 - c. The term "bidder" means the person or organization responding to the solicitation.
 - d. The term "contractor" means a person or organization who is the successful bidder and who enters into a contract with the City.
 - e. The term "change order" means a written order from the Purchasing department directing the contractor to make changes to a contract.
 - f. The term "City" means the City of Bentonville, Arkansas.
 - g. The term "City Council" means the governing body of the City of Bentonville, Arkansas.
3. **PREPARATION OF BIDS:** Bidders shall review the specifications, drawings, and all special and general conditions. Failure to do so will be at the bidder's risk.

Each bidder shall furnish the information required in the solicitation. The bidder shall provide their name, address, e-mail address, and telephone number where indicated in the solicitation documents. The affidavit must be signed by an officer or employee having the authority to bind the company or organization by his/her signature and included with the bid response.

Unit price for each unit offered must be provided. The unit price will be presumed correct.

The bidder must state a definite time for delivery of supplies or performance of services.
4. **SUBMITTING A BID:** Bids must be received by the City of Bentonville Purchasing Office **BEFORE** the time of opening indicated in the solicitation. All references to time shall be Bentonville, Arkansas time (Central time zone). Late bids will be rejected. Any exceptions or additional information required on a solicitation will be noted in the bid documents. Failure to provide any requested information or to follow these procedures may result in the rejection of your bid.
5. **BID DOCUMENT MISTAKES:** The bidder shall not be allowed to modify or correct mistakes in the bid document after the opening of the bid. Failure to complete the entire bid accurately may result in declaring the bid as non-responsive and the bid may be rejected.

Bids may not be withdrawn after the bid opening time and date if a bid mistake is based upon an error in judgment. If a nonjudgmental mistake, such as a math error, is suspected by the City or the bidder, the bidder shall respond within two (2) business days of the bid opening or within two (2) business days of notification from the City with a request for the City to consider verification of the mistake. Once a bid has been verified, it shall be considered submitted, as verified. The City shall permit a bidder to withdraw its bid without penalty or forfeiture of bid security if: (a) a nonjudgmental mistake is evident on the face of the bid, or (b) the bidder establishes by clear and convincing evidence that a nonjudgmental mistake was made.

If multiple bids are received from the same vendor, the City will either consider only one of the bids from that vendor, or reject all bids from the vendor, at the sole discretion of the City.
6. **ACCEPTANCE OF OFFER:** The submitted bid is considered an offer on the part of the bidder; such offer is deemed accepted upon issuance by the City of a Purchase Order or other contractual document.
7. **FIRM PRICES:** By submitting the bid, bidder signifies that the prices, terms and conditions quoted in their bid will be firm for acceptance for a period of not less than ninety (90) days from the bid opening date unless otherwise specified in the solicitation. Prices quoted must remain firm for the period of performance of any resulting purchase order or contract to be performed over a specified period of time as indicated in the solicitation.
8. **CONTRACT RENEWAL:** The City reserves the right to renew any contract resulting from this solicitation at the same prices, specifications, terms and conditions, upon mutual agreement between the City and the contractor.
9. **ESTIMATED QUANTITIES:** Whenever a bid requests prices to be firm for a period of performance, the quantities or usages shown are estimated only with no guarantee made by the City. The quantities are for the bidder's information only, and the City will be bound only for actual quantities ordered.

10. **DISCOUNTS:** Cash discounts will be considered in determining the award. Unless otherwise indicated in the IFB, discounts offering 10 days or more will be taken by the City's Accounts Payable office, with payment made on the nearest pay period after receipt, inspection and acceptance of articles, and receipt of correct invoice(s).
11. **SAMPLES:** Samples of items, when required, must be submitted within the time specified at no expense to the City. If not destroyed by testing, samples may be returned at the bidder's expense unless otherwise indicated in the solicitation.
12. **AWARD:** Award will be made to the lowest most responsive and responsible bidder, which will be judged on the basis of price, conformance to specifications, quality, delivery time, references, payment terms, and in the best interest of the City of Bentonville, all factors being considered.

The City reserves the right to accept or reject any or all bids or part of bids, to waive irregularities and technicalities, and to request rebids on the material described in the solicitation.

The City reserves the right to award the contract on a split-order basis, lump-sum or individual-item basis, or any other combination that is in the best interest of the City unless otherwise specified.

Conditional bids are subject to rejection in whole or in part at the sole discretion of the City.

In the event of two or more identical low bids, Arkansas code Annotated Section 14-22-11 shall apply.

No order or contract resulting from this solicitation may be assigned, transferred, or delegated to another party without written approval of the Assistant Finance Director of the City.

13. **BRAND NAMES:** If brand names, make, name of any manufacturer, trade name, or vendor catalog number are specified in these bid documents, it is for the purpose of establishing a grade or quality of material only. When the City does not wish to rule out other brands or makes, the phrase OR EQUAL is added. However, if a product other than that specified is bid, it is the bidder's responsibility to identify such product in their bid and prove to the City that the product is equal to or better than the product specified. Unless otherwise indicated, evidence in the form of samples may be requested if the proposed brand is other than that specified by the City. Such samples are to be furnished as specified in the solicitation or upon request of the City. Any samples requested by the City must be received by the City no later than four (4) days after formal request is made.
14. **VARIATIONS OF SPECIFICATIONS:** For purposes of evaluation, bidder must indicate any variances from any provision, specification, or condition stated in this solicitation, no matter how slight. If bidder does not indicate any variations, it will be assumed that the product or service fully complies with the provisions, specifications, or conditions as stated. If satisfactory bids are not received, the City reserves the right to consider alternate bids containing deviations from stated specifications.
15. **QUALITY:** Unless otherwise identified in the solicitation, all materials used in the manufacture or construction of supplies, materials or equipment covered by this solicitation shall be new. The items bid must be the latest make or model in current production, as offered to commercial trade, and of the highest quality material and workmanship. Used, shopworn, demonstrator, prototype, or discontinued models are not acceptable.
16. **ECO-FRIENDLY (GREEN) PRODUCTS:** The City of Bentonville supports the use of products that are ecologically friendly to the environment. Bidders are urged to include information with their bid submittal that describes the human health and environmental impact of products proposed. This eco-friendly approach takes into account, but is not limited to, waste production, energy and water use, greenhouse gas emissions, indoor air quality, recycled and reused content and packaging, and the presences of hazardous substances. Consideration may be given to these eco-friendly products when compared to mainstream products in cost and packaging.
17. **MATERIAL SAFETY DATA SHEET (MSDS):** It is mandatory for a manufacturer, supplier, or distributor of hazardous material to supply an MSDS as required by 29CFR 1910.1200 with the first shipment. Any time the content of an MSDS is revised, the vendor is required to provide a new MSDS to the City.
18. **ACCEPTANCE OF MATERIAL:** The material delivered under this bid shall remain the property of the seller until a physical inspection and actual usage of this material and/or service is made and is accepted by the City. It must comply with the terms of this IFB, and fully comply with specifications, and be of the highest quality. In the event the material and/or services supplied to the City is found to be defective or does not conform to specifications, the City reserves the right to cancel the order upon written notice to the contractor and return product to contractor at the contractor's expense.
19. **CODES AND REGULATIONS:** All products supplied and work performed within the scope of this request shall be supplied by the successful bidder to all applicable current prevailing City, State and Federal codes and regulations.
20. **DELIVERY:** Bidders must indicate the number of calendar days required to make delivery after receipt of a purchase order. Delivery time may be considered in making an award. The City reserves the right to cancel any order, or any part of that order, without obligation if delivery is not made within the time(s) specified on the bid form.

The City may grant additional time for delivery if the City is satisfied the delay is beyond the control of the vendor. Any request for time extension must be in writing and approved by the City's authorized representative.

All deliveries shall be FOB Destination to the location listed on the purchase order or price agreement unless otherwise specified. Bidders may be requested to provide separate pricing for delivery of all items in this solicitation.

21. **THIRD PARTY FREIGHT SERVICE:** The City of Bentonville may, at its discretion, use a third party freight service to arrange for delivery of the goods ordered as a result of this solicitation. In this case, the freight terms will be FOB Destination/Third Party Prepaid.
22. **PRICE CHANGES ON CONTRACTS:** If this solicitation is for an estimated quantity of supplies, consideration in awarding bid for yearly contracts will be given:
 - First to bidder offering firm prices for full contract period; and
 - Second to bidder offering firm prices subject to market price adjustment.
23. **COPYRIGHT OR PATENT RIGHTS:** By submitting the bid, bidder signifies that there has been no violation of copyrights or patent rights in manufacturing, producing or selling the goods shipped or ordered as a result of the bid, and bidder agrees to hold the City harmless from any and all liability, loss, or expense caused by any such violation.
24. **CONFLICT OF INTEREST:** The contractor, by signing the bid form in the solicitation or by acceptance of any purchase order resulting from this solicitation, certifies that to the best of their knowledge or belief, no elected or appointed official of the City is financially interested, directly or indirectly, in the purchase of the goods or services specified on this order or in the contract.
25. **TAXES:** The City of Bentonville is not tax exempt from any taxes imposed by the State and/or Federal Government. Applicable taxes should be included on all vendor invoices.
26. **MANUFACTURER'S CERTIFICATION:** The City reserves the right to request from bidders a separate manufacturer certification of all statements made in the bid. Failure to provide any requested certification may result in rejection of bid or termination of contract for which the bidder must bear full liability.
27. **TERMINATION:** Subject to the following provisions, any contract resulting from this solicitation may be terminated by either party upon thirty (30) days advance written notice to the other party; but if any work or service is in progress but not completed as of the date of termination, then said contract may be extended upon written approval of the City until said work or services are completed and accepted. Types of termination include:
 1. Termination for Convenience
In the event that the contract is terminated or cancelled upon request and for the convenience of the City, without the required thirty (30) days advance written notice, then the City shall negotiate reasonable termination costs, if applicable.
 2. Termination for Cause
Termination by the City for cause, default or negligence on the part of the contractor shall be excluded from the foregoing provision; termination costs, if any, shall not apply. The thirty (30) days advance notice requirement is waived in the event of termination for cause.
 3. Termination Due to Unavailability of Funds
When funds are not appropriated or otherwise made available to support continuation of performance, the contract shall be cancelled at the discretion of the City.
28. **W-9 REQUIREMENT:** The City of Bentonville requires a Form W-9 (Request for Taxpayer Identification Number and Certification), updated annually, from all contractors that do business with the City of Bentonville. The Form W-9 verifies the Tax Identification Number of the contractor so the City can correctly report to the IRS all funds paid to the contractor.
29. **DEFAULT OF CONTRACT:** In case of default by the contractor, the City may procure the items or services from other sources and hold the contractor responsible for any excess costs caused by such procurement. Failure of a bidder to furnish the equipment, supplies, material, and/or services as specified is cause for elimination of the bidder from the active bidder's list for the products or services concerned.
30. **BID BOND:** If required in this solicitation, bidders shall include a bid guarantee in the form of a bid bond, certified check, cashier's check in the amount of five percent (5%) of the base bid, payable without condition to the City of Bentonville. Personal or company checks are not acceptable. The bid bond shall be accompanied by a power of attorney showing the authority of the person executing the bond on behalf of the surety company. Failure to include a bid bond or bid guarantee request with your bid submittal may be cause for rejection of your bid. Bid guarantees (submitted by certified or cashier's checks) will be returned to unsuccessful bidders when the successful bidder is determined and the contract is executed. **When noted, a certified check or bid bond in the amount of 5% of the total bid shall accompany bid if bid exceeds \$35,000.00 [pursuant to Arkansas Code Annotated Section 22-9-203].**

31. **PERFORMANCE BOND:** At the discretion of the City, a performance bond may be required under the contract resulting from this solicitation. Such bond must be of a type and amount suitable for the nature of the commodity or services purchased and the dollar amount of the contract as indicated in this solicitation. The performance bond shall be for the duration of the contract, guaranteeing the faithful performance of the contract, and otherwise conditioned as required by law. Performance bond shall be accompanied by a power of attorney showing the authority of the person executing the bond on behalf of the surety company. Bond forms must be executed with a surety company licensed to do business in the State of Arkansas. The cost of the bond shall be included in the bidder's offer.
32. **MODIFICATIONS FOR CHANGES:** No agreement or understanding to modify this solicitation and resultant purchase orders or contract shall be binding upon the City unless made in writing by the Purchasing Department of the City of Bentonville.
33. **ORDER OF PRECEDENCE:** In the event of an inconsistency between provisions of the solicitation, the inconsistency will be resolved in the following order: (a) the schedule; (b) Instructions to Bidders and General Conditions; (c) special provisions; (d) other provisions of the contract, whether incorporated by reference or otherwise; and, (e) the specifications.
34. **WARRANTY:** Supplies or services furnished as a result of this solicitation shall be covered by the most favorable commercial warranties, expressed or implied, that the bidder and/or manufacturer gives to any customer. The rights and remedies provided herein are in addition to and do not limit any rights afforded to the City by any other clause of this bid. The City reserves the right to request from bidders a separate manufacturer certification of all statements made in the bid.
35. **PAYMENT:** Payment for materials or services received under this contract will be made upon completion of delivery for each purchase order and submission of invoice to the Accounts Payable Department, 117 West Central, Bentonville, AR 72712. Normal pay periods for the City are every Friday.
38. **GOVERNING LAW:** Any agreement resulting from this solicitation shall be interpreted under and governed by the laws of the State of Arkansas.
39. **ESCALATION/DE-ESCALATION CLAUSE:** In the event prevailing market conditions warrant an adjustment in contract pricing, the following escalation/de-escalation clause shall be the only clause acceptable to the City:
1. Contractor shall give written notice to the Purchasing Department of any proposed changes from contract prices not less than fifteen (15) calendar days prior to the effective date of price changes.
 2. Such notice must be accompanied by a copy of the supplier's notification to the contractor of a justifiable price change.
 3. No price escalation will be authorized in excess of the amount of the increase indicated on the supplier's notice.
 4. The approved price change shall be honored for all orders received by the contractor after the effective date of such price change.
 5. Approved price changes are not applicable to orders already issued and in process at time of price change.
 6. The City reserves the right to audit and/or examine any pertinent books, documents, papers, records, or invoice relating directly to the price increase after reasonable notice and during normal business hours.
 7. The Purchasing Department retains the right to determine whether or not such proposed price changes are in the best interests of the City.
 8. If in the opinion of the Procurement Department any proposed increase is found unacceptable, the Purchasing Department reserves the right to cancel the contract upon fifteen (15) calendar days' written notice.
 9. Contractors must tie any price change clause to an industry-wide or otherwise nationally recognized index or some other form of verifiable document. Contractor will put the Procurement Department on the mailing lists for such publications so the Purchasing Department can monitor said changes. Such membership will be at no cost to the City.
 10. If parties to the contract cannot agree on renewal terms, it is understood that the contract will be cancelled and a new contract will be solicited.
40. **ADDITIONAL INFORMATION:** Additional information may be obtained from the Purchasing Office at (479) 271-3115.

SPECIFICATIONS

Bidder must indicate, "AS SPECIFIED", by placing an "X" in the designated space following specifications. Bidder must also provide additional information where indicated.

SPECIFICATION	BIDDER MUST INDICATE "AS SPECIFIED" BY PLACING AN "X" IN THIS COLUMN.
Bidder shall coordinate all schedules and delays with the City's designated contact for facility finish mowing services.	X
Bidder will have equipment available for inspection by the City prior to beginning services and acknowledges that the City reserves the right to inspect Bidder's equipment prior to award of contract and/or prior to services beginning.	X
Bidder acknowledges and understands that facility finish mowing schedules should be kept consistent.	X
Bidder understands that Bidder and any of Bidders employees or agents will be expected to be professional, detail oriented, and quality driven.	X
Bidder understands that litter removal may be required prior to mowing and at the conclusion of mowing to ensure that litter does not become spread, cause property damage, or cause an unsightly appearance	X
Bidder understands that mowing services shall not be performed in conditions saturated to the point that turf damage or rut damage would occur and that any such damage as a result of the mowing operation would require the Bidder to repair the damaged area(s) at no cost to the City, as directed by the City.	X
Bidder shall clear finish mowed and landscaped areas, parking lots and walkways of leaves, sticks, etc. prior to mowing and upon the conclusion of mowing.	X
Grass shall be mowed to a uniform finish mow height of 3" (three inches). The City shall have the final determination of the mowing height.	X
Bidder shall use proper blowing equipment to remove all grass clippings, sticks, leaves, etc. from parking lots, streets, walkways, curb lines etc. In the event that grass become stuck to the surface, a push broom must be used in order to break the grass away from the surface and then proceed with blowing accordingly.	X
Trimming equipment, blower and edgers must be idled down when equipment is within 30' (thirty feet) of patrons, and completely idle when within 15' (fifteen feet) of patrons.	X
Bidder acknowledges that the safety of patrons is the number one concern, and attests that all industry standards and best practices will be in place to ensure the safety of patrons and their surroundings.	X
Specifications Continued..	

Property Lines: Various facility locations contain areas that may not necessarily be within the property line of the facility to be mowed, but due to easements, right of ways, etc., mowing of these areas should be performed and should be considered within the Bidder's Total Bid Price.	X
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Detail Notes

(Optional): _____

BIDDER'S ACKNOWLEDGEMENT OF REQUIRED DOCUMENTS

Bid Submittal Documents: Documents and bonds required for a complete Bid Submission.

Description	Bidder's Initials
Invitation for Bid document, executed with all fields completed, including the Pricing Sheet.	<u>PL</u>
Proof of Insurance, as specified.	<u>PL</u>
Bid Guarantee/Bid Bond, as specified.	<u>PL</u>
Acknowledgement of all Addenda in Bid Submission, where applicable. (Bidder is required to acknowledge any Addenda issued by either including a copy of the Addenda in their Bid Submission, or notating the Addenda number(s) here.)	<u>PL</u> _____ _____ _____

Upon Contract Execution: Bidder's verification of understanding that the following bonds and proof of insurance are due upon signing of the binding contract.

Description	Bidder's Initials
Payment Bond	<u>PL</u>
Insurance Certificate, as required and as specified, naming the City of Bentonville as additionally insured. Bidder's should use the following address for the City of Bentonville: City of Bentonville, Arkansas 117 West Central Avenue Bentonville, Arkansas 72712	<u>PL</u>

PRICING SHEET

Bid prices shall include all costs, including but not limited to: tax and delivery fees to the City of Bentonville, Arkansas. The City of Bentonville tax rate is 9.5%. All locations are located within the City of Bentonville, Arkansas.

The Bid Award will be made based on the most responsible and lowest Total Bid Price. The Total Bid Price will be the sum of the weekly cost for all locations, and is intended only for the City's use in the comparison of bids.

The City reserves the right to add or remove locations prior to or after award and execution of the awarded contract.

The awarded Bidder will only be compensated for completed mowing cycles at each location.

<u>Location Name and Address</u>	<u>Weekly (Unit) Cost</u>
Fire Station #1 800 SW A Street	Weekly \$ <u>65.00</u>
Fire Station #2 1601 SE Moberly Lane	Weekly \$ <u>45.00</u>
Fire Station #3 907 NW 13 th Street	Weekly \$ <u>40.00</u>
Fire Station #4 900 NE McCollum Road	Weekly \$ <u>50.00</u>
Fire Station #5 800 SW Elm Tree Road	Weekly \$ <u>65.00</u>
Fire Station #6 3312 SW I Street	Weekly \$ <u>65.00</u>
Fire Station #7 4508 SW Prime Avenue	Weekly \$ <u>165.00</u>
Police Department 908 SE 14 th Street	Weekly \$ <u>195.00</u>
Community Development 305 SW A Street	Weekly \$ <u>55.00</u>
Library 405 S Main Street	Weekly \$ <u>150.00</u>

PRICING SHEET CONTINUED

District Court 2706 S Walton	Weekly \$ <u>55.⁰⁰</u>
Municipal Airport 2500 Aviation Street	Weekly \$ <u>70.⁰⁰</u>
Municipal Airport West Side Hangars	Weekly \$ <u>130.⁰⁰</u>
Wastewater Lift Station 3608 Riviera Drive	Weekly \$ <u>40.⁰⁰</u>
Wastewater Facility 1901 NE A Street	Weekly \$ <u>55.⁰⁰</u>
Parks Downtown Activity Center 215 SW "A" Street	Weekly \$ <u>55.⁰⁰</u>
Compost Facility 2000 NW "A" Street	Weekly \$ <u>30.⁰⁰</u>
Police Special Services 801 SW "A" Street	Weekly \$ <u>45.⁰⁰</u>
Rubbermaid Building 1000 SW 14 th Street	Weekly \$ <u>50.⁰⁰</u>

TOTAL BID PRICE: \$ \$1425.⁰⁰

The sum of the weekly prices for all locations.
Used for bid comparison purposes only.



ADDENDUM TO BID
BID NUMBER: IFB-20-01

ADDENDUM NUMBER: 1

DATE OF ISSUANCE: January 20, 2020

RE: FACILITY FINISH MOWING SERVICES

FROM: City of Bentonville, Arkansas
117 W. Central Avenue
Bentonville, Arkansas 72712

TO: Prospective Bidders

This Addendum clarifies the original bidding document(s) dated January 9, 2020. *Bidders are required to acknowledge receipt of this Addendum by including it in their bid submission. Failure to include this Addendum may result in rejection of the bid submission.*

This Addendum Number 1 consists of 1 page.

DELIVERY:

1.0 During the Mandatory Pre-Bid Meeting for IFB-20-01 it was determined that clarification to the verbiage used in the DELIVERY section of the bidding documents was needed. Clarification was requested for the following statement: "The City of Bentonville requests that the facility finish mowing services begin within two (2) weeks from the Notice of Award."

1.1 The DELIVERY section of the bidding documents has been Amended to provide clarification, as follows:

The City of Bentonville requests that the awarded Bidder be available to begin services within two (2) weeks from the Notice of Award. If this schedule cannot be met, Bidder must state the date that Bidder is available to begin services. Failure to state a date of availability obligates the Bidder to begin services within the City's requested timeline. Extended service start dates may be considered when in the best interest of the City.

[End of Addendum Number 1]

City of Bentonville, Arkansas
Purchasing Office
IFB-20-01— Addendum Number 1

Page 1 of 1



Report Claims Immediately by Calling*

1-800-238-6225

Speak directly with a claim professional

24 hours a day, 365 days a year

**Unless Your Policy Requires Written Notice or Reporting*

CONTRACTORS PAC

LANDSCAPE GARDENING



A Custom Insurance Policy Prepared for:

**TITAN LAWN & LANDSCAPING LLC
6250 W WEDINGTON DR
FAYETTEVILLE AR 72704**

Presented by: KRISSELL AND JENNNIGS AGY



One Tower Square, Hartford, Connecticut 06183

COMMON POLICY DECLARATIONS
CONTRACTORS PAC
BUSINESS: LANDSCAPE GARDE

POLICY NO.: 680-3P553574-19-42
ISSUE DATE: 12/13/2019

INSURING COMPANY:
TRAVELERS CASUALTY INSURANCE COMPANY OF AMERICA

1. NAMED INSURED AND MAILING ADDRESS:

TITAN LAWN & LANDSCAPING LLC
6250 W WEDINGTON DR
FAYETTEVILLE AR 72704

2. POLICY PERIOD: From 12/13/2019 to 12/13/2020 12:01 A.M. Standard Time at your mailing address.

3. DESCRIPTION OF PREMISES:

PREM. LOC. NO.	BLDG. NO.	OCCUPANCY	ADDRESS (same as Mailing Address unless specified otherwise)
001	001	LANDSCAPE GARDE	6250 W WEDINGTON DR FAYETTEVILLE AR 72704

4. COVERAGE PARTS AND SUPPLEMENTS FORMING PART OF THIS POLICY AND INSURING COMPANIES

COVERAGE PARTS and SUPPLEMENTS	INSURING COMPANY
Businessowners Coverage Part	ACJ
Commercial Inland Marine Coverage Part	ACJ

5. The COMPLETE POLICY consists of this declarations and all other declarations, and the forms and endorsements for which symbol numbers are attached on a separate listing.

6. SUPPLEMENTAL POLICIES: Each of the following is a separate policy containing its complete provisions.

POLICY	POLICY NUMBER	INSURING COMPANY
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DIRECT BILL

7. PREMIUM SUMMARY:

SUBJECT TO AUDIT

Provisional Premium	\$	1,000.00
Due at Inception	\$	
Due at Each	\$	

NAME AND ADDRESS OF AGENT OR BROKER

COUNTERSIGNED BY:

KRISELL AND JENNINGS AGY X4510
909 E ROLLING HILLS DR

FAYETTEVILLE AR 72703

IL TO 19 02 05 (Page 1 of 01)

Office: ELMIRA NY SRV CTR DOWN

Authorized Representative

DATE: 12/13/2019



One Tower Square, Hartford, Connecticut 06183

BUSINESSOWNERS COVERAGE PART DECLARATIONS

CONTRACTORS PAC

POLICY NO.: 680-3P553574-19-42

ISSUE DATE: 12/13/2019

INSURING COMPANY:

TRAVELERS CASUALTY INSURANCE COMPANY OF AMERICA

POLICY PERIOD:

From 12-13-19 to 12-13-20 12:01 A.M. Standard Time at your mailing address

FORM OF BUSINESS: INDIVIDUAL

COVERAGES AND LIMITS OF INSURANCE: Insurance applies only to an item for which a "limit" or the word "included" is shown.

COMMERCIAL GENERAL LIABILITY COVERAGE

OCCURRENCE FORM	LIMITS OF INSURANCE	
General Aggregate (except Products-Completed Operations Limit)	\$	2,000,000
Products-completed Operations Aggregate Limit	\$	2,000,000
Personal and Advertising Injury Limit	\$	1,000,000
Each Occurrence Limit	\$	1,000,000
Damage to Premises Rented to You	\$	300,000
Medical Payments Limit (any one person)	\$	5,000

BUSINESSOWNERS PROPERTY COVERAGE

DEDUCTIBLE AMOUNT: Businessowners Property Coverage:
Building Glass:

BUSINESS INCOME/EXTRA EXPENSE LIMIT: NOT COVERED

Period of Restoration-Time Period:

ADDITIONAL COVERAGE:

Other additional coverages apply and may be changed by an endorsement. Please read the policy.

SPECIAL PROVISIONS:

**COMMERCIAL GENERAL LIABILITY COVERAGE
IS SUBJECT TO A GENERAL AGGREGATE LIMIT**

MP T0 01 02 05 (Page 1 of 1)



Titan Lawn & Landscape LLC
Attn: Roy Lovell
6250 W Wedington Dr
Fayetteville, AR 72704-5840



December 14, 2019

Policy Number: WC0203074-01
Policy Period: 12/13/2019 - 12/13/2020

Workers Compensation – Accident Prevention Services

Dear Arkansas Policyholder:

FirstComp Insurance Company is providing this letter to you in accordance with section III. D. of Arkansas Workers Compensation Commission Rule 099.31 to determine your need for accident prevention services or assistance.

As required by Ark. Code Ann. 11-9-409(d) and AWCC Rule 32, Markel Service, Inc., the servicing entity for FirstComp Insurance Company, provides a variety of accident prevention services to policyholders at no additional cost. Some of these services include:

- Surveys/ Inspections
- Loss control recommendations
- Training program materials
- Safety program consultations
- Analysis of accident causes
- Safety video library
- Other accident prevention services as requested

In order to determine your specific needs for accident prevention information or assistance we welcome any comments or inquiries you may have regarding these services. Please direct these comments to our Loss Control department at 1-888-500-3344.

Sincerely,



Kim E. Coonrod
Loss Control Manager

Markel
PO Box 3009, Omaha, NE 68103-0009 (888)-500-3344
www.markelinsurance.com

STATE OF ARKANSAS



John Thurston
ARKANSAS SECRETARY OF STATE

To All to Whom These Presents Shall Come, Greetings:

I, John Thurston, Arkansas Secretary of State of Arkansas, do hereby certify that the following and hereto attached instrument of writing is a true and perfect copy of

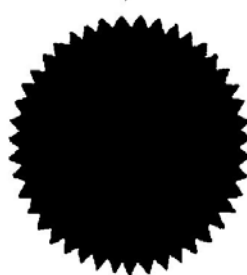
Articles of Organization

of

TITAN LAWN & LANDSCAPE LLC

filed in this office
January 24, 2019

In Testimony Whereof, I have hereunto set my hand and affixed my official Seal. Done at my office in the City of Little Rock, this 24th day of January 2019.


John Thurston
Secretary of State

Online Certificate Authorization Code: 2151655c491585bc06e
To verify the Authorization Code, visit sos.arkansas.gov



Articles of Organization for Domestic LLC

Filing Information
Filing Act: 1003 of 1993
Entity Name: TITAN LAWN & LANDSCAPE LLC
File Date: 2019-01-24 05:21:01
Effective Date: 2019-01-24
Filing Signature: ROY V. LOVELL JR
Registered Agent:
First Name: THETTA
Middle Name: M.
Last Name: EASTERLING
Address 1: 14385 DRAIN RD.
City: FARMINGTON
State: AR
Zip: 72730
Country: USA
Officers
First Name: ROY
Middle Name: V.
Last Name: LOVELL
Suffix: JR
Title: Incorporator/Organizer
Address 1: 6250 W WEDINGTON DR.
City: FAYETTEVILLE
State: AR
Zip: 72704
Country: USA
First Name: ROY
Middle Name: V.
Last Name: LOVELL
Suffix: JR
Title: Member
Address 1: 6250 W WEDINGTON DR.
City: FAYETTEVILLE
State: AR
Zip: 72704
Country: USA
Principal
Address 1: 6250 W WEDINGTON DR.
City: FAYETTEVILLE
State: AR
Zip: 72704
Country: USA



CHECK ALL THAT APPLY			
☒	Bid Award	Bid #	IFB 19-75
☐	Budget Adjustment		
☐	Change Order		
☐	Informational		
☐	Ordinance		
☐	Resolution		
☐	Other		

AGENDA FORM

CITY COUNCIL MEETING OF:

February 11, 2020

Submitted by:

Preston Newbill

Department

water

Phone

479-271-3140

ACTION REQUIRED:

Bid Award to Southard Construction Company in the amount of \$424,804.20 for utility relocations associated with ARDOT project BB0903-Interstate 49 and Hwy 71B (SE Walton Blvd) interchange improvements. This amount includes Southard's bid of \$384,804.20 plus a \$40,000 contingency.

COST TO CITY:

Cost of this Request: \$424,804

Additional Budget Amount

☐ One time amount

☐ Continuing O and M

Previously Budgeted	\$	539,404
Funds Expended to Date		114,600
Remaining Budget		424,804
Budget Adjustment		-
Remaining After Adjustment	\$	424,804

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: Mike Bender/Preston Newbill
CC:
Date: January 30, 2020
Re: BB0903 Utility Relocation – Bid Award

Staff recommends a bid award to Southard Construction Company, in the amount of, \$424,804.20 for utility relocations associated with ARDOT project BB0903-Interstate 49 and Hwy 71B (SE Walton Blvd) interchange improvements. This amount includes Southard's bid of \$384,804.20 plus a \$40,000 contingency.

Thank you for your consideration of this request.



Bentonville, Arkansas
HWY. 71B INTERCHANGE IMPROVEMENTS WATER MAIN RELOCATION
 Opinion of Probable Construction Cost
 November 2019

CEI Engineering Associates, Inc.

Spec No.	Item	Unit	Total Quantity	Est. Cost per unit	Est. Total Cost	Est. Cost per unit	Est. Total Cost
Waterline				CEI		Southard Construction of Joplin	
201	Clearing	STA	8.3	\$800.00	\$6,640.00	\$ 7.00	\$ 58.10
201	Grubbing	STA	8.3	\$800.00	\$6,640.00	\$ 7.00	\$ 58.10
202	Removal and Disposal of Curb and Gutter	LF	220	\$20.00	\$4,400.00	\$ 16.50	\$ 3,630.00
	Removal and Replacement of Landscaping	LS	1	\$10,000.00	\$10,000.00	\$ 10,000.00	\$ 10,000.00
202	Removal and Disposal of Asphalt Pavement	SY	294	\$15.00	\$4,410.00	\$ 18.00	\$ 5,292.00
202	Removal and Disposal of Concrete Pavement	SY	88	\$30.00	\$2,640.00	\$ 45.00	\$ 3,960.00
202	Removal and Disposal of Stamped Brick Concrete Pavement	SY	2	\$30.00	\$60.00	\$ 45.00	\$ 90.00
202	Removal and Disposal of Concrete Sidewalk	SY	15	\$15.00	\$225.00	\$ 45.00	\$ 675.00
	Removal and Replacement of Unsuitable Soil	CY	25	\$50.00	\$1,250.00	\$ 45.00	\$ 1,125.00
	Type 2 HMAC Surface Course (3")	TON	49	\$125.00	\$6,125.00	\$ 440.00	\$ 21,560.00
	PC Reinforced Concrete Pavement (6")	SY	88	\$75.00	\$6,600.00	\$ 100.00	\$ 8,800.00
634	Concrete Curb and Gutter	LF	220	\$20.00	\$4,400.00	\$ 35.00	\$ 7,700.00
	Stamped Brick Concrete Pavement (6")	SY	2	\$30.00	\$60.00	\$ 180.00	\$ 360.00
206	Flowable Select Material (As Directed by Engineer)	CY	20	\$150.00	\$3,000.00	\$ 300.00	\$ 6,000.00
633	Concrete Sidewalk (4")	SY	15	\$65.00	\$975.00	\$ 100.00	\$ 1,500.00
601	Mobilization	LS	1	\$15,000.00	\$15,000.00	\$ 12,000.00	\$ 12,000.00
603	Maintenance of Traffic	LS	1	\$15,000.00	\$15,000.00	\$ 12,000.00	\$ 12,000.00
620	Erosion Control	LS	1	\$10,000.00	\$10,000.00	\$ 6,000.00	\$ 6,000.00
620	Lime	TON	0.13	\$300.00	\$39.00	\$ 9,800.00	\$ 1,274.00
620	Seeding	ACRE	0.065	\$4,000.00	\$260.00	\$ 8,000.00	\$ 520.00
620	Mulch Cover	ACRE	0.065	\$4,000.00	\$260.00	\$ 24,000.00	\$ 1,560.00
620	Water	T.GAL	25	\$12.00	\$300.00	\$ 50.00	\$ 1,250.00
	Trenching and Excavation Safety Systems	LS	1	\$50,000.00	\$50,000.00	\$ 4,000.00	\$ 4,000.00
	6-Inch Waterline (C900 DR14 PVC)	LF	45	\$50.00	\$2,250.00	\$ 84.00	\$ 3,780.00
	8-Inch Waterline (C900 DR14 PVC)	LF	833	\$65.00	\$54,145.00	\$ 83.00	\$ 69,139.00
	Ductile Iron Fittings	LB	2240	\$6.00	\$13,440.00	\$ 4.25	\$ 9,520.00
	4" Tapping Sleeve and Valve, MJ	EA	1	\$2,000.00	\$2,000.00	\$ 3,600.00	\$ 3,600.00
	6" Tapping Sleeve and Valve, MJ	EA	1	\$3,250.00	\$3,250.00	\$ 3,800.00	\$ 3,800.00
	8"x6" Tapping Sleeve and Valve, MJ	EA	1	\$3,500.00	\$3,500.00	\$ 3,800.00	\$ 3,800.00
	8" Tapping Sleeve and Valve, MJ	EA	3	\$4,000.00	\$12,000.00	\$ 8,000.00	\$ 24,000.00
	6-Inch Gate Valve w/Box	EA	3	\$1,200.00	\$3,600.00	\$ 4,100.00	\$ 12,300.00
	8-Inch Gate Valve w/Box	EA	2	\$1,500.00	\$3,000.00	\$ 4,200.00	\$ 8,400.00
	4" Cut & Cap With I-Beam	EA	1	\$3,000.00	\$3,000.00	\$ 3,800.00	\$ 3,800.00
	6" Cut & Cap With I-Beam	EA	1	\$3,500.00	\$3,500.00	\$ 3,600.00	\$ 3,600.00
	8" Cut & Cap With I-Beam	EA	2	\$4,000.00	\$8,000.00	\$ 3,600.00	\$ 7,200.00
	Water Service Line (Less than 2" Dia.)	LF	160	\$30.00	\$4,800.00	\$ 66.00	\$ 10,560.00
	Water Service Line (More than 2" Dia.)	LF	13	\$35.00	\$455.00	\$ 70.00	\$ 910.00
	Replace and Relocate Fire Hydrant Assembly	EA	4	\$3,000.00	\$12,000.00	\$ 5,600.00	\$ 22,400.00
	Replace and Relocate 5/8" Double Meter and Boxes	EA	1	\$1,500.00	\$1,500.00	\$ 3,700.00	\$ 3,700.00
	Replace and Relocate 1" Meter and Box	EA	2	\$1,000.00	\$2,000.00	\$ 3,200.00	\$ 6,400.00
	Replace and Relocate 1" Irrigation Meter and Box	EA	1	\$1,000.00	\$1,000.00	\$ 3,700.00	\$ 3,700.00
	Jack and Bore 16" Pipe Encasement	LF	221	\$400.00	\$88,400.00	\$ 320.00	\$ 70,720.00
	Post Indicator Valve	EA	1	\$2,500.00	\$2,500.00	\$ 3,200.00	\$ 3,200.00
	Paint Pavement Marking White (4")	LF	16	\$1.50	\$24.00	\$ 2.00	\$ 32.00
	Paint Pavement Marking Yellow (4")	LF	415	\$1.50	\$622.50	\$ 2.00	\$ 830.00
	Contingency Allowance	LS	1	\$40,000.00	\$40,000.00	\$ 1.00	\$ 1.00
Waterline Total					\$413,270.50		\$384,804.20

**ARKANSAS STATE HIGHWAY COMMISSION
UTILITY CHANGE ORDER**

UTILITY Bentonville Water CHANGE ORDER NO. One
 JOB NO. BB0903 FAP NO. BIM-B49-0(212) JOB NAME Hwy. 71B
 ROUTE 49 SECTION 29 Inchng. Impvts. (S)
 COUNTY Benton

DESCRIPTION OF CHANGE:

Increase Construction Cost from \$345,982.00 as included in the original estimate to the low bid amount of \$384,803.20, resulting in an increase of \$38,821.20.

REASON FOR CHANGE:

Increase Construction Cost due to low bid received.

Review of bids by coordinator confirms no changes in quantities compared to the estimate utilized for the construction agreement.

Item Description	Present Amount	Revised Amount	Increase (Decrease)
Construction Cost	\$345,982.00	\$384,803.20	\$38,821.20
Construction Engineering	\$26,850.00	\$26,850.00	\$0.00
Easement Cost	\$138,697.40	\$138,697.40	\$0.00
Advertising Cost	\$500.00	\$500.00	\$0.00
Health Dep. Fee	\$500.00	\$500.00	\$0.00
TOTALS	\$512,529.40	\$551,350.60	\$38,821.20

COMPUTATION OF REIMBURSABLE AMOUNT:

Reimbursable Percentage: 78.13%

Present Amount	\$512,529.40	Reimb.	78.13%	\$400,439.22
Revised Amount	\$551,350.60	Reimb.	78.13%	\$430,770.22
Overrun				\$30,331.00

Requested

Date 1/21/2020

Recommended

Date 1-21-2020

Approved

Date 1/26/2020

Authorized

Date 1/27/2020



Bentonville, Arkansas
HWY. 71B INTERCHANGE IMPROVEMENTS WATER MAIN RELOCATION
Opinion of Probable Construction Cost
November 2019
CEI Engineering Associates, Inc.

Spec No.	Item	Unit	Total Quantity	Est. Cost per unit	Est. Total Cost	Est. Cost per unit	Est. Total Cost
Waterline				CEI		Southard Construction of Joplin	
201	Clearing	STA	8.3	\$800.00	\$6,640.00	\$ 7.00	\$ 58.10
201	Grubbing	STA	8.3	\$800.00	\$6,640.00	\$ 7.00	\$ 58.10
202	Removal and Disposal of Curb and Gutter	LF	220	\$20.00	\$4,400.00	\$ 16.50	\$ 3,630.00
	Removal and Replacement of Landscaping	LS	1	\$10,000.00	\$10,000.00	\$ 10,000.00	\$ 10,000.00
202	Removal and Disposal of Asphalt Pavement	SY	294	\$15.00	\$4,410.00	\$ 18.00	\$ 5,292.00
202	Removal and Disposal of Concrete Pavement	SY	88	\$30.00	\$2,640.00	\$ 45.00	\$ 3,960.00
202	Removal and Disposal of Stamped Brick Concrete Pavement	SY	2	\$30.00	\$60.00	\$ 45.00	\$ 90.00
202	Removal and Disposal of Concrete Sidewalk	SY	15	\$15.00	\$225.00	\$ 45.00	\$ 675.00
	Removal and Replacement of Unsuitable Soil	CY	25	\$50.00	\$1,250.00	\$ 45.00	\$ 1,125.00
	Type 2 HMA Surface Course (3")	TON	49	\$125.00	\$6,125.00	\$ 440.00	\$ 21,560.00
	PC Reinforced Concrete Pavement (6")	SY	88	\$75.00	\$6,600.00	\$ 100.00	\$ 8,800.00
634	Concrete Curb and Gutter	LF	220	\$20.00	\$4,400.00	\$ 35.00	\$ 7,700.00
	Stamped Brick Concrete Pavement (6")	SY	2	\$30.00	\$60.00	\$ 180.00	\$ 360.00
206	Flowable Select Material (As Directed by Engineer)	CY	20	\$150.00	\$3,000.00	\$ 300.00	\$ 6,000.00
633	Concrete Sidewalk (4")	SY	15	\$65.00	\$975.00	\$ 100.00	\$ 1,500.00
601	Mobilization	LS	1	\$15,000.00	\$15,000.00	\$ 12,000.00	\$ 12,000.00
603	Maintenance of Traffic	LS	1	\$15,000.00	\$15,000.00	\$ 12,000.00	\$ 12,000.00
620	Erosion Control	LS	1	\$10,000.00	\$10,000.00	\$ 6,000.00	\$ 6,000.00
620	Lime	TON	0.13	\$300.00	\$39.00	\$ 9,800.00	\$ 1,274.00
620	Seeding	ACRE	0.065	\$4,000.00	\$260.00	\$ 8,000.00	\$ 520.00
620	Mulch Cover	ACRE	0.065	\$4,000.00	\$260.00	\$ 24,000.00	\$ 1,560.00
620	Water	T.GAL	25	\$12.00	\$300.00	\$ 50.00	\$ 1,250.00
	Trenching and Excavation Safety Systems	LS	1	\$50,000.00	\$50,000.00	\$ 4,000.00	\$ 4,000.00
	6-Inch Waterline (C900 DR14 PVC)	LF	45	\$50.00	\$2,250.00	\$ 84.00	\$ 3,780.00
	8-Inch Waterline (C900 DR14 PVC)	LF	833	\$65.00	\$54,145.00	\$ 83.00	\$ 69,139.00
	Ductile Iron Fittings	LB	2240	\$6.00	\$13,440.00	\$ 4.25	\$ 9,520.00
	4" Tapping Sleeve and Valve, MJ	EA	1	\$2,000.00	\$2,000.00	\$ 3,600.00	\$ 3,600.00
	6" Tapping Sleeve and Valve, MJ	EA	1	\$3,250.00	\$3,250.00	\$ 3,800.00	\$ 3,800.00
	8"x6" Tapping Sleeve and Valve, MJ	EA	1	\$3,500.00	\$3,500.00	\$ 3,800.00	\$ 3,800.00
	8" Tapping Sleeve and Valve, MJ	EA	3	\$4,000.00	\$12,000.00	\$ 8,000.00	\$ 24,000.00
	6-Inch Gate Valve w/Box	EA	3	\$1,200.00	\$3,600.00	\$ 4,100.00	\$ 12,300.00
	8-Inch Gate Valve w/Box	EA	2	\$1,500.00	\$3,000.00	\$ 4,200.00	\$ 8,400.00
	4" Cut & Cap With I-Beam	EA	1	\$3,000.00	\$3,000.00	\$ 3,800.00	\$ 3,800.00
	6" Cut & Cap With I-Beam	EA	1	\$3,500.00	\$3,500.00	\$ 3,600.00	\$ 3,600.00
	8" Cut & Cap With I-Beam	EA	2	\$4,000.00	\$8,000.00	\$ 3,600.00	\$ 7,200.00
	Water Service Line (Less than 2" Dia.)	LF	160	\$30.00	\$4,800.00	\$ 66.00	\$ 10,560.00
	Water Service Line (More than 2" Dia.)	LF	13	\$35.00	\$455.00	\$ 70.00	\$ 910.00
	Replace and Relocate Fire Hydrant Assembly	EA	4	\$3,000.00	\$12,000.00	\$ 5,600.00	\$ 22,400.00
	Replace and Relocate 5/8" Double Meter and Boxes	EA	1	\$1,500.00	\$1,500.00	\$ 3,700.00	\$ 3,700.00
	Replace and Relocate 1" Meter and Box	EA	2	\$1,000.00	\$2,000.00	\$ 3,200.00	\$ 6,400.00
	Replace and Relocate 1" Irrigation Meter and Box	EA	1	\$1,000.00	\$1,000.00	\$ 3,700.00	\$ 3,700.00
	Jack and Bore 16" Pipe Encasement	LF	221	\$400.00	\$88,400.00	\$ 320.00	\$ 70,720.00
	Post Indicator Valve	EA	1	\$2,500.00	\$2,500.00	\$ 3,200.00	\$ 3,200.00
	Paint Pavement Marking White (4")	LF	16	\$1.50	\$24.00	\$ 2.00	\$ 32.00
	Paint Pavement Marking Yellow (4")	LF	415	\$1.50	\$622.50	\$ 2.00	\$ 830.00
	Contingency Allowance	LS	1	\$40,000.00	\$40,000.00	\$ 1.00	\$ 1.00
Waterline Total					\$413,770.50		\$84,804.20

not allowed

~~384,804.20~~ \$ 384,804.20

JB



Bentonville, Arkansas
 HWY. 71B INTERCHANGE IMPROVEMENTS WATER MAIN RELOCATION
 Opinion of Probable Construction Cost
 August 2018

CEI Engineering Associates, Inc.

Spec No.	Item	Unit	Total Quantity	Est. Cost per unit	Est. Total Cost
Waterline					
201	Clearing	STA	8.3	\$1,500.00	\$12,450.00 ✓
201	Grubbing	STA	8.3	\$1,500.00	\$12,450.00 ✓
202	Removal and Disposal of Curb and Gutter	LF	220	\$20.00	\$4,400.00 ✓
	Removal and Replacement of Landscaping	LS	1	\$10,000.00	\$10,000.00 ✓
202	Removal and Disposal of Asphalt Pavement	SY	294	\$8.00	\$2,352.00 ✓
202	Removal and Disposal of Concrete Pavement	SY	88	\$12.00	\$1,056.00 ✓
202	Removal and Disposal of Stamped Brick Concrete Pavement	SY	2	\$15.00	\$30.00 ✓
202	Removal and Disposal of Concrete Sidewalk	SY	15	\$10.00	\$150.00 ✓
	Removal and Replacement of Unsuitable Soil	CY	25	\$20.00	\$500.00 ✓
	Type 2 HMA Surface Course (3")	TON	49	\$100.00	\$4,900.00 ✓
	PC Reinforced Concrete Pavement (6")	SY	88	\$15.00	\$1,320.00 ✓
634	Concrete Curb and Gutter	LF	220	\$25.00	\$5,500.00 ✓
	Stamped Brick Concrete Pavement (6")	SY	2	\$25.00	\$50.00 ✓
206	Flowable Select Material (As Directed by Engineer)	CY	20	\$150.00	\$3,000.00 ✓
633	Concrete Sidewalk (4")	SY	15	\$50.00	\$750.00 ✓
601	Mobilization	LS	1	\$30,000.00	\$30,000.00 ✓
603	Maintenance of Traffic	LS	1	\$15,000.00	\$15,000.00 ✓
620	Erosion Control	LS	1	\$10,000.00	\$10,000.00 ✓
620	Lime	TON	0.13	\$200.00	\$26.00 ✓
620	Seeding	ACRE	0.065	\$2,500.00	\$162.50 ✓
620	Mulch Cover	ACRE	0.065	\$1,500.00	\$97.50 ✓
620	Water	T.GAL	25	\$8.00	\$200.00 ✓
	Trenching and Excavation Safety Systems	LS	1	\$20,000.00	\$20,000.00 ✓
	6-Inch Waterline (C900 DR14 PVC)	LF	45	\$40.00	\$1,800.00 ✓
	8-Inch Waterline (C900 DR14 PVC)	LF	833	\$50.00	\$41,650.00 ✓
	Ductile Iron Fittings	LB	2240	\$6.00	\$13,440.00 ✓
	4" Tapping Sleeve and Valve, MJ	EA	1	\$2,000.00	\$2,000.00 ✓
	6" Tapping Sleeve and Valve, MJ	EA	1	\$3,000.00	\$3,000.00 ✓
	8"x6" Tapping Sleeve and Valve, MJ	EA	1	\$3,250.00	\$3,250.00 ✓
	8" Tapping Sleeve and Valve, MJ	EA	3	\$3,500.00	\$10,500.00 ✓
	6-Inch Gate Valve w/Box	EA	3	\$1,250.00	\$3,750.00 ✓
	8-Inch Gate Valve w/Box	EA	2	\$1,500.00	\$3,000.00 ✓
	4" Cut & Cap With I-Beam	EA	1	\$1,500.00	\$1,500.00 ✓
	6" Cut & Cap With I-Beam	EA	1	\$1,750.00	\$1,750.00 ✓
	8" Cut & Cap With I-Beam	EA	2	\$2,000.00	\$4,000.00 ✓
	Water Service Line (Less than 2" Dia.)	LF	160	\$30.00	\$4,800.00 ✓
	Water Service Line (More than 2" Dia.)	LF	13	\$35.00	\$455.00 ✓
	Replace and Relocate Fire Hydrant Assembly	EA	4	\$5,000.00	\$20,000.00 ✓
	Replace and Relocate 5/8" Double Meter and Boxes	EA	1	\$1,500.00	\$1,500.00 ✓
	Replace and Relocate 1" Meter and Box	EA	2	\$1,000.00	\$2,000.00 ✓
	Replace and Relocate 1" Irrigation Meter and Box	EA	1	\$1,000.00	\$1,000.00 ✓
	Jack and Bore 16" Pipe Encasement	LF	221	\$400.00	\$88,400.00 ✓
	Post Indicator Valve	EA	1	\$2,500.00	\$2,500.00 ✓
	Paint Pavement Marking White (4")	LF	16	\$3.00	\$48.00 ✓
	Paint Pavement Marking Yellow (4")	LF	415	\$3.00	\$1,245.00 ✓
Waterline Total					\$345,982.00 ✓

Construction Eng. \$26,850.00
 Easement Cost \$138,697.40

Original Estimate



CEI Engineering Associates, Inc.

ENGINEERS ■ SURVEYORS ■ LANDSCAPE ARCHITECTS ■ PLANNERS

3108 SW Ragency Parkway, Suite 2
Bentonville, AR 72712
(479) 273-9472 Fax (479) 273-0844
www.ceieng.com

December 2, 2019

Mr. Mike Bender, PE
City of Bentonville
3200 SW Municipal Drive
Bentonville, AR 72712

Re: BB0903 HWY. 71B INTCHG. IMPVTS. (S) WATER MAIN RELOCATION – Engineer's Suggestion of Contractor

Mr. Bender,

As you are aware, bids were opened for the BB0903 Hwy. 71B Intchg. Impvts. (S) Water Main Relocation Project on 11/18/2019. Southard Construction Company of Joplin, Inc. submitted the lowest apparent bid of \$384,804.20. Upon review of their bid and submitted bidding documents, CEI found no apparent errors or omissions.

CEI Engineering recommends the City of Bentonville to award Southard Construction Company of Joplin, Inc., the bid amount of \$384,804.20 plus a \$40,000 contingency for a total contract amount of \$424,804.20 for the BB0903 Hwy. 71B Intchg. Impvts. (S) Water Main Relocation Project.

Please let us know if you would like to discuss or if you need anything additional.

Thank you,


Anna Reigh, P.E., CPM
Public Works Department Manager

ARKANSAS STATE HIGHWAY COMMISSION
HIGHWAY - UTILITY CONSTRUCTION/RELOCATION AGREEMENT

State Job No BB0903 (Utilities) County Benton
Federal Aid Project BIM-B49-0(212) Route 49 Section 29
Job Location Hwy. 71B Utility Owner Bentonville
Intchng. Impvts. (S) Water

THIS AGREEMENT, made and entered into this 3 day of October, 20 18, by and between the Arkansas State Highway Commission, acting by and through the duly authorized representatives of the Arkansas Department of Transportation, with headquarters at Little Rock, Arkansas, hereinafter referred to as the "Department," and the Bentonville Water of Bentonville, Arkansas acting by and through its duly authorized representatives, hereinafter referred to as the "Owner" WITNESSETH:

The Department proposes to make highway improvements as specified under the above referenced job number and the Owner will adjust or relocate its existing facilities as set out in the attached plans and cost estimate.

The Department will participate in the cost of said adjustment/relocation to the extent that eligibility is hereinafter established.

Payment will be made on actual cost basis as mutually agreed between Owner and Department.

This agreement is governed by all applicable State and Federal laws, rules, and regulations including the Arkansas State Highway Commission Utility Accommodation Policy adopted by Commission Minute Order 2010-146 as amended and supplemented, the Federal Aid Program Guide on Utility Adjustments and Accommodation on Federal Aid Highway Projects as amended and supplemented, and the provisions of 23 CFR § 645 as amended and supplemented.

DESCRIPTION OF WORK: See Exhibit A on Page 4

The Department agrees that the required adjustment is 78.13% eligible for reimbursement for the total cost which is estimated to be \$512,529.40 of which \$400,439.22 to be paid by the Department and \$112,090.18 is to be borne by Owner.

Owner will not commence work until authorized by the Department, and will then endeavor to begin within **60 calendar days** and complete within **150 calendar days** thereafter.

On completion of said work, Owner is responsible for the cleanup and restoration of the work area including the disposal of surplus materials and debris.

Final billing must include all supporting detail. Owner shall also submit one (1) set of as-built drawings at this time.

Payment will be 100% of lump sum bills and actual cost bills, at the discretion of the Department a 10% retainage can be withheld and released upon completion of an audit review. All final bills for utility relocation are subject to review and audit by state and/or federal auditors.

Expenses incurred under an actual cost agreement may be billed to the Department monthly in increments of \$5,000.00 or more.

Owner must maintain cost records and accounts to support the agreed adjustment/relocation work. Said records to be retained and available for inspection for a period of three (3) years from date of final payment.

Owner shall be responsible for any and all hazards to persons, property, and traffic.

With respect to traffic control, owner shall adhere to the requirements of the Manual of Uniform Traffic Control Devices as amended and supplemented.

To the extent applicable to this agreement, the Owner shall comply with the Buy America requirements (as specified in 23 U.S.C. 313 and 23 CFR 635.410). The Owner is not required to change its existing standards for materials as long as the Buy America requirements are met. Buy America requirements take precedence over regulations pertaining to the accommodation or regulation of the Owner's facilities (as specified in 23 CFR 645) on contracts and agreements involving Federal-Aid Highway Program funding and precedence over regulations which allow the Owner to furnish materials from company stock (as specified on 23 CFR 645.117(e)). Company Stock materials that do not meet Buy America requirements may not be permanently incorporated into a Federal-Aid Highway Program funded project. The Owner must provide a definitive statement that all products permanently incorporated into the project are covered under the Buy America requirements. This requirement is fulfilled via proper signature and submission of the statement of charges

form. In some circumstances, a waiver of the Buy America requirements may be granted by the Federal Highway Administration, to be determined on a project-by-project basis.

Rev. 08/07/2017

Job BB0903
Bentonville Water

Owner shall be responsible for and shall hold harmless the Arkansas State Highway Commission, the Department and their officers and employees from any and all claims, actions, causes of action, suits, damages, losses or liability whatsoever, arising out of Owner's performance of the work subject to this Agreement.

Notwithstanding anything hereinbefore written, neither the Owner nor the Department by execution of this Agreement waives or relinquishes any rights which either may legally have within the limits of the Law or Constitution, either State or Federal.

Bentonville Water

ARKANSAS HIGHWAY COMMISSION
Acting By and Through The
ARKANSAS DEPARTMENT of
TRANSPORTATION

Bob McCaslin
Name (Typed or Printed)

Mayer
Title

[Redacted Signature]

71 6000 642
FEDERAL TAXPAYER IDENTIFICATION #

Linda Spence
Name (Typed or Printed)

City Clerk
Title

[Redacted Signature]

Signature

[Redacted Signature]

Section Head-Utilities Section

EXHIBIT A

Adjust facilities to clear highway construction by abandoning eight hundred forty-three point eight six (843.86) feet of eight (8) inch water line complete with appurtenances. Restore service by installing eight hundred thirty-three (833) feet of eight (8) inch water line complete with appurtenances. Install forty-five (45) feet of six (6) inch water line to connect main to fire protection. Of the 843.86 feet of water line being abandoned, 659.29 feet is on private easement; therefore, the reimbursable factor is $659.29/843.86=78.13\%$. This work will be accomplished with contract forces by competitive bid.

Summary of Cost

Construction Cost	\$	345,982.00
Construction Engineering	\$	26,850.00
Easement Cost	\$	138,697.40
Advertising Cost	\$	500.00
Health Dept. Fee	\$	500.00
TOTAL COST	\$	512,529.40

Reimbursable Cost $\$512,529.40 \times 78.13\% = \$400,439.22$.

Gartrell, Blaine

From: Mike Bender <[REDACTED]>
Sent: Thursday, January 16, 2020 7:37 AM
To: Gartrell, Blaine
Subject: RE: BB0903 Utility Status

CAUTION: This email originated from outside of ARDOT. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Blaine,

The contractor's license (Southard Construction) was reinstated last week. I am waiting on a copy of their actual license. Do we have authorization to proceed? Do you have the change order prepared? We are moving forward with a bid award to be on our Council agenda for January 28.

Thanks,

Mike Bender, PE
Public Works Director
City of Bentonville
3200 SW Municipal Drive, Bentonville, Arkansas 72712
[REDACTED]

Information in this message may be privileged or confidential. Information is intended for the sole use of the addressee. No consent is given for unauthorized viewing or distribution.

From: Gartrell, Blaine <[REDACTED]>
Sent: Thursday, [REDACTED]
To: Mike Bender <[REDACTED]>
Subject: RE: BB0903 Utility Status

Mike,
I will proceed with the low bid change as planned for the contractor bid we have, is there anything else you need from me at this time?

Blaine Gartrell



From: Mike Bender <[REDACTED]>
Sent: Wednesday, [REDACTED]
To: Gartrell, Blaine <[REDACTED]>
Subject: RE: BB0903 Utility Status

CAUTION: This email originated from outside of ARDOT. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Blaine,

If we proceed with the current path of allowing the current bidder to renew his license by January 10, we could proceed with Council award by January 28th. If we rebid, the advertising period, bid receipt and review would push me to the February 11th meeting. The biggest worry about rebidding is that we only had one submittal and we may not get another. However, if the current bidder doesn't get renewed, I have to rebid anyway.

Thanks,

Mike Bender, PE
Public Works Director
City of Bentonville
3200 SW Municipal Drive, Bentonville, Arkansas 72712

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From: Gartrell, Blaine
Sent: Thursday, Dec 10, 2009
To: Mike Bender <[REDACTED]>
Subject: RE: BB0903 Utility Status

Thank you Mike, If we did rebid how would it affect us time wise? For documentation, please write me a short reason of why the option the City is choosing is better.

Blaine Gartrell



From: Mike Bender <[REDACTED]>
Sent: Thursday, Dec 10, 2009
To: Gartrell, Blaine <[REDACTED]>
Cc: Cruz, Barry W. <[REDACTED]>
Subject: RE: BB0903 Utility Status

CAUTION: This email originated from outside of ARDOT. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Here you go.

Thanks,

Mike Bender, PE

Public Works Director
City of Bentonville
3200 SW Municipal Drive, Bentonville, Arkansas 72712
[REDACTED]

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From: Gartrell, Blaine [REDACTED]
Sent: Tuesday, December 1, 2010
To: Mike Bender <[REDACTED]>
Cc: Cruz, Barry W. [REDACTED]
Subject: RE: BB0903 Utility Status

Can you send me the bid tab?

Blaine Gartrell



From: Mike Bender [REDACTED]
Sent: Tuesday, December 1, 2010
To: Gartrell, Blaine [REDACTED]
Subject: RE: BB0903 Utility Status

CAUTION: This email originated from outside of ARDOT. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Blaine,

The quickest option is to go with Southard. My other option is to rebid or try to waive bid and negotiate a contract, both of which will take longer than going with a current bid.

Thanks,

Mike Bender, PE
Public Works Director
City of Bentonville
3200 SW Municipal Drive, Bentonville, Arkansas 72712
[REDACTED]

Information in this message may be privileged or confidential. Information is intended for the sole use of the addressee. No consent is given for unauthorized viewing or distribution.

From: Gartrell, Blaine
Sent: Tuesday, December 15, 2019
To: Mike Bender <[REDACTED]>
Subject: RE: BB0903 Utility Status

Mike that is not good for the timeline of the project, what are our options? Let me know your thoughts? As far as the process you are speaking of, we will process the change order as long we are following city procedure as would be handled on a normal city project.

Blaine Gartrell



From: Mike Bender <[REDACTED]>
Sent: Tuesday, December 17, 2019
To: Gartrell, Blaine
Subject: RE: BB0903 Utility Status

CAUTION: This email originated from outside of ARDOT. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Blaine,

Southard Construction, the lone bidder on our water line relocation, let their Arkansas Contractor's license lapse. All other references check and they seem like a legit contractor capable of doing the job. They are in the process of renewing their Arkansas license. If they turn all their paperwork into the Licensing Board by December 18th, their license will be considered at the January 10, 2020 meeting. Their license could be reinstated at that point. Saying all of that, if we decide to proceed with them, I will not take their contract award to Council until they have their license renewed. Are you willing to look at the bid and process a change order, knowing this is in process, prior to them having the license?

Thanks,

Mike Bender, PE
Public Works Director
City of Bentonville
3200 SW Municipal Drive, Bentonville, Arkansas 72712
[REDACTED]

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From: Gartrell, Blaine [REDACTED]
Sent: Wednesday, November 27, 2019 2:22 PM
[REDACTED]

Subject: RE: BB0903 Utility Status

Mike,
Is the bid ready to send to me for a change order?

Blaine Gartrell



From: Mike Bender [REDACTED]
Sent: Monday, November 27, 2019 1:11 PM
To: Gartrell, Blaine [REDACTED]
Cc: Anna Keogh (a.keogh@ardot.gov) [REDACTED]
Subject: RE: BB0903 Utility Status

Blaine,

Since we haven't executed the contract, we don't have a solid date. The contract calls for 120 calendar days to substantial completion and 150 calendar days to final completion. With that, if we started the first of January, we should be complete around end of May or first of June. That would be the earliest I see us being able to start given that December 10 is the earliest I can have Council approval. Completion is subject to actual Council approval, contract execution, bonds, ARDOT authorization, etc.

Thanks,

Mike Bender, PE
Public Works Director
City of Bentonville
3200 SW Municipal Drive, Bentonville, Arkansas 72712
[REDACTED]

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From: Gartrell, Blaine [REDACTED]
Sent: Monday, November 27, 2019 1:11 PM
To: Mike Bender [REDACTED]
Cc: Anna Keogh [REDACTED]
Subject: RE: BB0903 Utility Status

Thank you for the update, do we have an estimated completion date?

Blaine Gartrell



F
S
T
C

Subject: RE: BB0903 Utility Status

Blaine,

Bids were opened at 10:00 this morning. We only had one submit (Southard Construction). CEI will review for completeness and errors. We have not used the contractor before, so we will be checking references. Also, once CEI has completed their review, we will forward to you for review.

Thanks,

Mike Bender, PE
Public Works Director
City of Bentonville
3200 SW Municipal Drive, Bentonville, Arkansas 72712

Information in this message may be privileged or confidential. Information is intended for the sole use of the addressee. No consent is given for unauthorized viewing or distribution.

From: Gartrell, Blaine
Sent: Monday, Nov

Subject: BB0903 Utility Status

I am receiving updates on this but slowly, give me a status of your relocations on BB0903.

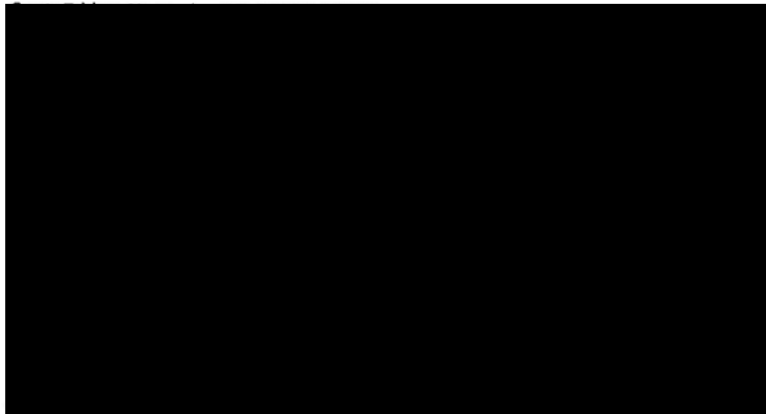
Windstream-
AT&T, Inc.- complete
AT&T, Ark.-
Black Hills-
City of Bentonville W&S-
City of Bentonville Electric-
CenturyLink- Digital-
Rogers Water-
Swepeco-
Cox- Complete

Thank you,

Blaine Gartrell



From: Gartrell, Blaine



The previous email was intended for utilities associated with project number BB0903 and for the utilities in the below list. Please respond accordingly. Sorry for the confusion.

BB0903
Windstream
AT&T, Inc.
AT&T, Ark.
Black Hills
City of Bentonville W&S

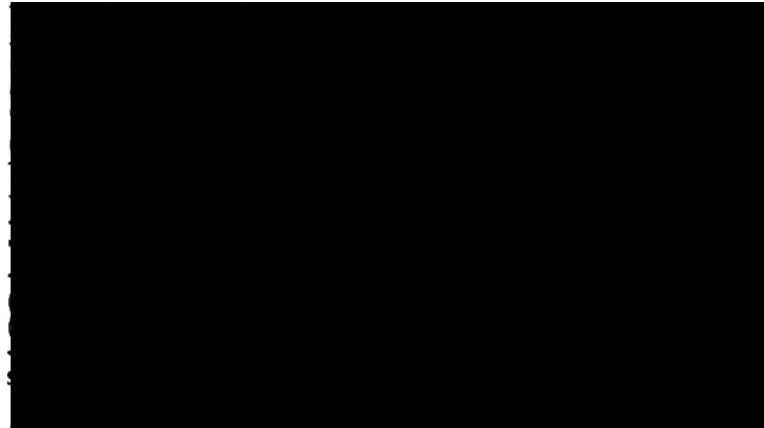
City of Bentonville Electric
CenturyLink- Digital
Rogers Water
Swepeco

Blaine Gartrell



From: Gartrell, Blaine

Sent: Friday, November 15, 2019 9:19 AM



All,

Please give me an updated status of your relocations on this project, provide an estimated completion date and any concerns that you have at this time.

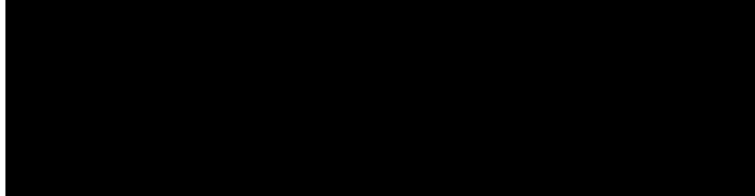
Thank you,

Blaine Gartrell



From: Gartrell, Blaine

Sent: Monday, February 25, 2019 11:53 AM



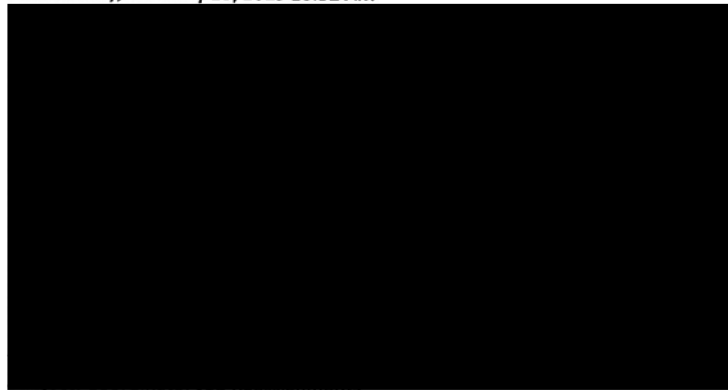
[REDACTED]

I look forward to working with you on these. Please send me your concerns/status on each of the project and let me know how I can help.

Blaine Gartrell



From: Coats, Chad
Sent: Friday, February 15, 2019 10:51 AM



All,
I have taken a job in another section with the Department. All of the projects I had have been reassigned to other coordinators. Blaine Gartrell (I have attached his contact info.) has been assigned the following list of projects and their associated utilities:

070480

AT&T
Entergy
SuddenLink
CenterPoint
El Dorado water
SATCO

BB0903

Windstream
AT&T, Inc.
AT&T, Ark.

Black Hills
City of Bentonville W&S
City of Bentonville Electric
CenturyLink- Digital
Rogers Water
Swepeco

090436

AT&T, Inc.
AT&T, ARK.
Bella Vista POA
Carroll Electric
Cox Comm.
CenturyLink
Ozarks-Go
Village Wastewater

Chad Coats

Beautification Coordinator
Beautification Section
Arkansas Department of Transportation
Physical Address: 10324 Interstate 30, Little Rock, Ar 72209
Mailing Address: P. O. Box 2261, Little Rock, AR 72203





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

AGENDA FORM

CITY COUNCIL MEETING OF:

February 11, 2020

Submitted by:

Preston Newbill

Department

water

Phone

479-271-3140

ACTION REQUIRED:

Budget Adjustment recommended by Staff for Council approval revising the original estimated amount of \$112,090.18 to the revised amount of \$160,580.38 to cover the non-reimbursable amount plus contingency for the water utility relocations associated with ARDOT Project No. BB0903 – Interstate 49 Improvements at Hwy 71B interchange. This budget adjustment represents a change of an additional \$48,490.20 from the original budget adjustment.

COST TO CITY:

Cost of this Request: \$48,490

Additional Budget Amount

☐ One time amount

☐ Continuing O and M

Previously Budgeted	\$	-
Funds Expended to Date		-
Remaining Budget		-
Budget Adjustment		48,490
Remaining After Adjustment	\$	48,490

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: Water

Date of Request: February 11, 2020

Acct Number	Account Name	Revenue + (-)	Expense + (-)	Fund Balance + (-)
503020-34410	Reimbursement of Services	\$30,331.22		\$ 30,331.22
503020-47321	Water Line relocation		\$78,821.42	\$ (78,821.42)
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
	Totals	\$ 30,331.22	\$ 78,821.42	\$ (48,490.20)

Justification:

To recognize ARDOT actual reimbursement of 78.13% or \$430,770.22 plus the additional funds of \$48,490.20 making the City's actual contribution to a total of \$160,580.38.

FOR ACTING USE ONLY

Council Action: Approved Disapproved Other _____

Date: _____ Date entered: _____ By: _____

Revised 5/1/07

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712

www.bentonvillear.com



PLEASE RECYCLE



Memo



To: City Council, Mayor Orman
From: Mike Bender/Preston Newbill
CC:
Date: January 30, 2020
Re: BB0903 Utility Relocation – Budget Adjustment

Staff recommends Council approval of a Budget Adjustment revising the original estimated amount of \$112,090.18 to the revised amount of \$160,580.38 to cover the non-reimbursable amount plus contingency for the water utility relocations associated with ARDOT Project No. BB0903 – Interstate 49 Improvements at Hwy 71B interchange. This budget adjustment represents a change of an additional \$48,490.20 from the original budget adjustment. In addition, this budget adjustment acknowledges the amount of reimbursement funds provided by ARDOT.

The following is a summary of the revised costs associated with this project:

Construction Costs	\$384,804.20
Construction Engineering	\$26,850.00
Easement Costs	\$138,697.40
Advertising Cost	\$500
Health Dept. Fee	\$500
Total Cost	\$551,350.60
Reimbursement (78.13%) -	\$430,770.22
Contingency Fee +	\$40,000.00
City's Total Responsibility	\$160,580.38

ARDOT does not recognize the contingency fee for reimbursement. If it is necessary, due to site conditions, to use any of the contingency allowance the expenses will be reconciled at the end of the project.

Thank you for your consideration of this request.

**ARKANSAS STATE HIGHWAY COMMISSION
UTILITY CHANGE ORDER**

UTILITY Bentonville Water CHANGE ORDER NO. One
 JOB NO. BB0903 FAP NO. BIM-B49-0(212) JOB NAME Hwy. 71B
 ROUTE 49 SECTION 29 Inchng. Impvts. (S)
 COUNTY Benton

DESCRIPTION OF CHANGE:

Increase Construction Cost from \$345,982.00 as included in the original estimate to the low bid amount of \$384,803.20, resulting in an increase of \$38,821.20.

REASON FOR CHANGE:

Increase Construction Cost due to low bid received.

Review of bids by coordinator confirms no changes in quantities compared to the estimate utilized for the construction agreement.

Item Description	Present Amount	Revised Amount	Increase (Decrease)
Construction Cost	\$345,982.00	\$384,803.20	\$38,821.20
Construction Engineering	\$26,850.00	\$26,850.00	\$0.00
Easement Cost	\$138,697.40	\$138,697.40	\$0.00
Advertising Cost	\$500.00	\$500.00	\$0.00
Health Dep. Fee	\$500.00	\$500.00	\$0.00
TOTALS	\$512,529.40	\$551,350.60	\$38,821.20

COMPUTATION OF REIMBURSABLE AMOUNT:

Reimbursable Percentage: 78.13%

Present Amount	\$512,529.40	Reimb.	78.13%	\$400,439.22
Revised Amount	\$551,350.60	Reimb.	78.13%	\$430,770.22
Overrun				\$30,331.00



Date 1/21/2020

Date 1-21-2020

Date 1/26/2020

Date 1/27/2020

Asst. Chief Engineer-Design



Bentonville, Arkansas
HWY. 71B INTERCHANGE IMPROVEMENTS WATER MAIN RELOCATION
Opinion of Probable Construction Cost
November 2019
CEI Engineering Associates, Inc.

Spec No.	Item	Unit	Total Quantity	Est. Cost per unit	Est. Total Cost	Est. Cost per unit	Est. Total Cost
Waterline				CEI		Southard Construction of Joplin	
201	Clearing	STA	8.3	\$800.00	\$6,640.00	\$ 7.00	\$ 58.10
201	Grubbing	STA	8.3	\$800.00	\$6,640.00	\$ 7.00	\$ 58.10
202	Removal and Disposal of Curb and Gutter	LF	220	\$20.00	\$4,400.00	\$ 16.50	\$ 3,630.00
	Removal and Replacement of Landscaping	LS	1	\$10,000.00	\$10,000.00	\$ 10,000.00	\$ 10,000.00
202	Removal and Disposal of Asphalt Pavement	SY	294	\$15.00	\$4,410.00	\$ 18.00	\$ 5,292.00
202	Removal and Disposal of Concrete Pavement	SY	88	\$30.00	\$2,640.00	\$ 45.00	\$ 3,960.00
202	Removal and Disposal of Stamped Brick Concrete Pavement	SY	2	\$30.00	\$60.00	\$ 45.00	\$ 90.00
202	Removal and Disposal of Concrete Sidewalk	SY	15	\$15.00	\$225.00	\$ 45.00	\$ 675.00
	Removal and Replacement of Unsuitable Soil	CY	25	\$50.00	\$1,250.00	\$ 45.00	\$ 1,125.00
	Type 2 HMA Surface Course (3")	TON	49	\$125.00	\$6,125.00	\$ 440.00	\$ 21,560.00
	PC Reinforced Concrete Pavement (6")	SY	88	\$75.00	\$6,600.00	\$ 100.00	\$ 8,800.00
634	Concrete Curb and Gutter	LF	220	\$20.00	\$4,400.00	\$ 35.00	\$ 7,700.00
	Stamped Brick Concrete Pavement (6")	SY	2	\$30.00	\$60.00	\$ 180.00	\$ 360.00
206	Flowable Select Material (As Directed by Engineer)	CY	20	\$150.00	\$3,000.00	\$ 300.00	\$ 6,000.00
633	Concrete Sidewalk (4")	SY	15	\$65.00	\$975.00	\$ 100.00	\$ 1,500.00
601	Mobilization	LS	1	\$15,000.00	\$15,000.00	\$ 12,000.00	\$ 12,000.00
603	Maintenance of Traffic	LS	1	\$15,000.00	\$15,000.00	\$ 12,000.00	\$ 12,000.00
620	Erosion Control	LS	1	\$10,000.00	\$10,000.00	\$ 6,000.00	\$ 6,000.00
620	Lime	TON	0.13	\$300.00	\$39.00	\$ 9,800.00	\$ 1,274.00
620	Seeding	ACRE	0.065	\$4,000.00	\$260.00	\$ 8,000.00	\$ 520.00
620	Mulch Cover	ACRE	0.065	\$4,000.00	\$260.00	\$ 24,000.00	\$ 1,560.00
620	Water	T.GAL	25	\$12.00	\$300.00	\$ 50.00	\$ 1,250.00
	Trenching and Excavation Safety Systems	LS	1	\$50,000.00	\$50,000.00	\$ 4,000.00	\$ 4,000.00
	6-Inch Waterline (C900 DR14 PVC)	LF	45	\$50.00	\$2,250.00	\$ 84.00	\$ 3,780.00
	8-Inch Waterline (C900 DR14 PVC)	LF	833	\$65.00	\$54,145.00	\$ 83.00	\$ 69,139.00
	Ductile Iron Fittings	LB	2240	\$6.00	\$13,440.00	\$ 4.25	\$ 9,520.00
	4" Tapping Sleeve and Valve, MJ	EA	1	\$2,000.00	\$2,000.00	\$ 3,600.00	\$ 3,600.00
	6" Tapping Sleeve and Valve, MJ	EA	1	\$3,250.00	\$3,250.00	\$ 3,800.00	\$ 3,800.00
	8"x6" Tapping Sleeve and Valve, MJ	EA	1	\$3,500.00	\$3,500.00	\$ 3,800.00	\$ 3,800.00
	8" Tapping Sleeve and Valve, MJ	EA	3	\$4,000.00	\$12,000.00	\$ 8,000.00	\$ 24,000.00
	6-Inch Gate Valve w/Box	EA	3	\$1,200.00	\$3,600.00	\$ 4,100.00	\$ 12,300.00
	8-Inch Gate Valve w/Box	EA	2	\$1,500.00	\$3,000.00	\$ 4,200.00	\$ 8,400.00
	4" Cut & Cap With I-Beam	EA	1	\$3,000.00	\$3,000.00	\$ 3,800.00	\$ 3,800.00
	6" Cut & Cap With I-Beam	EA	1	\$3,500.00	\$3,500.00	\$ 3,600.00	\$ 3,600.00
	8" Cut & Cap With I-Beam	EA	2	\$4,000.00	\$8,000.00	\$ 3,600.00	\$ 7,200.00
	Water Service Line (Less than 2" Dia.)	LF	160	\$30.00	\$4,800.00	\$ 66.00	\$ 10,560.00
	Water Service Line (More than 2" Dia.)	LF	13	\$35.00	\$455.00	\$ 70.00	\$ 910.00
	Replace and Relocate Fire Hydrant Assembly	EA	4	\$3,000.00	\$12,000.00	\$ 5,600.00	\$ 22,400.00
	Replace and Relocate 5/8" Double Meter and Boxes	EA	1	\$1,500.00	\$1,500.00	\$ 3,700.00	\$ 3,700.00
	Replace and Relocate 1" Meter and Box	EA	2	\$1,000.00	\$2,000.00	\$ 3,200.00	\$ 6,400.00
	Replace and Relocate 1" Irrigation Meter and Box	EA	1	\$1,000.00	\$1,000.00	\$ 3,700.00	\$ 3,700.00
	Jack and Bore 16" Pipe Encasement	LF	221	\$400.00	\$88,400.00	\$ 320.00	\$ 70,720.00
	Post Indicator Valve	EA	1	\$2,500.00	\$2,500.00	\$ 3,200.00	\$ 3,200.00
	Paint Pavement Marking White (4")	LF	16	\$1.50	\$24.00	\$ 2.00	\$ 32.00
	Paint Pavement Marking Yellow (4")	LF	415	\$1.50	\$622.50	\$ 2.00	\$ 830.00
	Contingency Allowance	LS	1	\$40,000.00	\$40,000.00	\$ 1.00	\$ 1.00
Waterline Total					\$413,220.50		\$384,804.20

not allowed

384,804.20

JB



Bentonville, Arkansas
 HWY. 718 INTERCHANGE IMPROVEMENTS WATER MAIN RELOCATION
 Opinion of Probable Construction Cost
 August 2018

CEI Engineering Associates, Inc.

Spec No.	Item	Unit	Total Quantity	Est. Cost per unit	Est. Total Cost
Waterline					
201	Clearing	STA	8.3	\$1,500.00	\$12,450.00 ✓
201	Grubbing	STA	8.3	\$1,500.00	\$12,450.00 ✓
202	Removal and Disposal of Curb and Gutter	LF	220	\$20.00	\$4,400.00 ✓
	Removal and Replacement of Landscaping	LS	1	\$10,000.00	\$10,000.00 ✓
202	Removal and Disposal of Asphalt Pavement	SY	294	\$8.00	\$2,352.00 ✓
202	Removal and Disposal of Concrete Pavement	SY	88	\$12.00	\$1,056.00 ✓
202	Removal and Disposal of Stamped Brick Concrete Pavement	SY	2	\$15.00	\$30.00 ✓
202	Removal and Disposal of Concrete Sidewalk	SY	15	\$10.00	\$150.00 ✓
	Removal and Replacement of Unsuitable Soil	CY	25	\$20.00	\$500.00 ✓
	Type 2 HMA Surface Course (3")	TON	49	\$100.00	\$4,900.00 ✓
	PC Reinforced Concrete Pavement (6")	SY	88	\$15.00	\$1,320.00 ✓
634	Concrete Curb and Gutter	LF	220	\$25.00	\$5,500.00 ✓
	Stamped Brick Concrete Pavement (6")	SY	2	\$25.00	\$50.00 ✓
206	Flowable Select Material (As Directed by Engineer)	CY	20	\$150.00	\$3,000.00 ✓
633	Concrete Sidewalk (4")	SY	15	\$50.00	\$750.00 ✓
601	Mobilization	LS	1	\$30,000.00	\$30,000.00 ✓
603	Maintenance of Traffic	LS	1	\$15,000.00	\$15,000.00 ✓
620	Erosion Control	LS	1	\$10,000.00	\$10,000.00 ✓
620	Lime	TON	0.13	\$200.00	\$26.00 ✓
620	Seeding	ACRE	0.065	\$2,500.00	\$162.50 ✓
620	Mulch Cover	ACRE	0.065	\$1,500.00	\$97.50 ✓
620	Water	T.GAL	25	\$8.00	\$200.00 ✓
	Trenching and Excavation Safety Systems	LS	1	\$20,000.00	\$20,000.00 ✓
	6-Inch Waterline (C900 DR14 PVC)	LF	45	\$40.00	\$1,800.00 ✓
	8-Inch Waterline (C900 DR14 PVC)	LF	833	\$50.00	\$41,650.00 ✓
	Ductile Iron Fittings	LB	2240	\$6.00	\$13,440.00 ✓
	4" Tapping Sleeve and Valve, MJ	EA	1	\$2,000.00	\$2,000.00 ✓
	6" Tapping Sleeve and Valve, MJ	EA	1	\$3,000.00	\$3,000.00 ✓
	8"x6" Tapping Sleeve and Valve, MJ	EA	1	\$3,250.00	\$3,250.00 ✓
	8" Tapping Sleeve and Valve, MJ	EA	3	\$3,500.00	\$10,500.00 ✓
	6-Inch Gate Valve w/Box	EA	3	\$1,250.00	\$3,750.00 ✓
	8-Inch Gate Valve w/Box	EA	2	\$1,500.00	\$3,000.00 ✓
	4" Cut & Cap With I-Beam	EA	1	\$1,500.00	\$1,500.00 ✓
	6" Cut & Cap With I-Beam	EA	1	\$1,750.00	\$1,750.00 ✓
	8" Cut & Cap With I-Beam	EA	2	\$2,000.00	\$4,000.00 ✓
	Water Service Line (Less than 2" Dia.)	LF	160	\$30.00	\$4,800.00 ✓
	Water Service Line (More than 2" Dia.)	LF	13	\$35.00	\$455.00 ✓
	Replace and Relocate Fire Hydrant Assembly	EA	4	\$5,000.00	\$20,000.00 ✓
	Replace and Relocate 5/8" Double Meter and Boxes	EA	1	\$1,500.00	\$1,500.00 ✓
	Replace and Relocate 1" Meter and Box	EA	2	\$1,000.00	\$2,000.00 ✓
	Replace and Relocate 1" Irrigation Meter and Box	EA	1	\$1,000.00	\$1,000.00 ✓
	Jack and Bore 16" Pipe Encasement	LF	221	\$400.00	\$88,400.00 ✓
	Post Indicator Valve	EA	1	\$2,500.00	\$2,500.00 ✓
	Paint Pavement Marking White (4")	LF	16	\$3.00	\$48.00 ✓
	Paint Pavement Marking Yellow (4")	LF	415	\$3.00	\$1,245.00 ✓
Waterline Total					\$345,982.00 ✓

Construction Eng. \$26,850.00
 Easement Cost \$138,697.40

Original Estimate



CEI Engineering Associates, Inc.

ENGINEERS ■ SURVEYORS ■ LANDSCAPE ARCHITECTS ■ PLANNERS

3108 SW Regency Parkway, Suite 2
Bentonville, AR 72712
(479) 273-9472 Fax (479) 273-0844
www.ceieng.com

December 2, 2019

Mr. Mike Bender, PE
City of Bentonville
3200 SW Municipal Drive
Bentonville, AR 72712

Re: BB0903 HWY. 71B INTCHG. IMPVTS. (S) WATER MAIN RELOCATION – Engineer's Suggestion of Contractor

Mr. Bender,

As you are aware, bids were opened for the BB0903 Hwy. 71B Intchg. Impvts. (S) Water Main Relocation Project on 11/18/2019. Southard Construction Company of Joplin, Inc. submitted the lowest apparent bid of \$384,804.20. Upon review of their bid and submitted bidding documents, CEI found no apparent errors or omissions.

CEI Engineering recommends the City of Bentonville to award Southard Construction Company of Joplin, Inc., the bid amount of \$384,804.20 plus a \$40,000 contingency for a total contract amount of \$424,804.20 for the BB0903 Hwy. 71B Intchg. Impvts. (S) Water Main Relocation Project.

Please let us know if you would like to discuss or if you need anything additional.

Thank you,


Anna Keogh, PE, CFM
Public Works Department Manager

ARKANSAS STATE HIGHWAY COMMISSION
HIGHWAY - UTILITY CONSTRUCTION/RELOCATION AGREEMENT

State Job No BB0903 (Utilities) County Benton
Federal Aid Project BIM-B49-0(212) Route 49 Section 29
Job Location Hwy. 71B Utility Owner Bentonville
Intchng. Impvts. (S) Water

THIS AGREEMENT, made and entered into this 3 day of October, 20 18, by and between the Arkansas State Highway Commission, acting by and through the duly authorized representatives of the Arkansas Department of Transportation, with headquarters at Little Rock, Arkansas, hereinafter referred to as the "Department," and the Bentonville Water of Bentonville, Arkansas acting by and through its duly authorized representatives, hereinafter referred to as the "Owner" WITNESSETH:

The Department proposes to make highway improvements as specified under the above referenced job number and the Owner will adjust or relocate its existing facilities as set out in the attached plans and cost estimate.

The Department will participate in the cost of said adjustment/relocation to the extent that eligibility is hereinafter established.

Payment will be made on actual cost basis as mutually agreed between Owner and Department.

This agreement is governed by all applicable State and Federal laws, rules, and regulations including the Arkansas State Highway Commission Utility Accommodation Policy adopted by Commission Minute Order 2010-146 as amended and supplemented, the Federal Aid Program Guide on Utility Adjustments and Accommodation on Federal Aid Highway Projects as amended and supplemented, and the provisions of 23 CFR § 645 as amended and supplemented.

DESCRIPTION OF WORK: See Exhibit A on Page 4

The Department agrees that the required adjustment is 78.13% eligible for reimbursement for the total cost which is estimated to be \$512,529.40 of which \$400,439.22 to be paid by the Department and \$112,090.18 is to be borne by Owner.

Owner will not commence work until authorized by the Department, and will then endeavor to begin within 60 calendar days and complete within 150 calendar days thereafter.

On completion of said work, Owner is responsible for the cleanup and restoration of the work area including the disposal of surplus materials and debris.

Final billing must include all supporting detail. Owner shall also submit one (1) set of as-built drawings at this time.

Payment will be 100% of lump sum bills and actual cost bills, at the discretion of the Department a 10% retainage can be withheld and released upon completion of an audit review. All final bills for utility relocation are subject to review and audit by state and/or federal auditors.

Expenses incurred under an actual cost agreement may be billed to the Department monthly in increments of \$5,000.00 or more.

Owner must maintain cost records and accounts to support the agreed adjustment/relocation work. Said records to be retained and available for inspection for a period of three (3) years from date of final payment.

Owner shall be responsible for any and all hazards to persons, property, and traffic.

With respect to traffic control, owner shall adhere to the requirements of the Manual of Uniform Traffic Control Devices as amended and supplemented.

To the extent applicable to this agreement, the Owner shall comply with the Buy America requirements (as specified in 23 U.S.C. 313 and 23 CFR 635.410). The Owner is not required to change its existing standards for materials as long as the Buy America requirements are met. Buy America requirements take precedence over regulations pertaining to the accommodation or regulation of the Owner's facilities (as specified in 23 CFR 645) on contracts and agreements involving Federal-Aid Highway Program funding and precedence over regulations which allow the Owner to furnish materials from company stock (as specified on 23 CFR 645.117(e)). Company Stock materials that do not meet Buy America requirements may not be permanently incorporated into a Federal-Aid Highway Program funded project. The Owner must provide a definitive statement that all products permanently incorporated into the project are covered under the Buy America requirements. This requirement is fulfilled via proper signature and submission of the statement of charges

form. In some circumstances, a waiver of the Buy America requirements may be granted by the Federal Highway Administration, to be determined on a project-by-project basis.

Rev. 08/07/2017

Job BB0903
Bentonville Water

Owner shall be responsible for and shall hold harmless the Arkansas State Highway Commission, the Department and their officers and employees from any and all claims, actions, causes of action, suits, damages, losses or liability whatsoever, arising out of Owner's performance of the work subject to this Agreement.

Notwithstanding anything hereinbefore written, neither the Owner nor the Department by execution of this Agreement waives or relinquishes any rights which either may legally have within the limits of the Law or Constitution, either State or Federal.

Bentonville Water

ARKANSAS HIGHWAY COMMISSION
Acting By and Through The
ARKANSAS DEPARTMENT of
TRANSPORTATION

Bob McCaslin
Name (Typed or Printed)

Mayer
Title



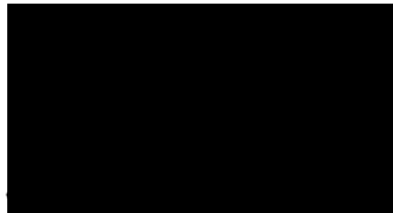
71 6000 642
FEDERAL TAXPAYER IDENTIFICATION #

Linda Spence
Name (Typed or Printed)

City Clerk



Signature



Section Head-Utilities Section

EXHIBIT A

Adjust facilities to clear highway construction by abandoning eight hundred forty-three point eight six (843.86) feet of eight (8) inch water line complete with appurtenances. Restore service by installing eight hundred thirty-three (833) feet of eight (8) inch water line complete with appurtenances. Install forty-five (45) feet of six (6) inch water line to connect main to fire protection. Of the 843.86 feet of water line being abandoned, 659.29 feet is on private easement; therefore, the reimbursable factor is $659.29/843.86=78.13\%$. This work will be accomplished with contract forces by competitive bid.

Summary of Cost

Construction Cost	\$	345,982.00
Construction Engineering	\$	26,850.00
Easement Cost	\$	138,697.40
Advertising Cost	\$	500.00
Health Dept. Fee	\$	500.00
TOTAL COST	\$	512,529.40

Reimbursable Cost $\$512,529.40 \times 78.13\% = \$400,439.22$.

Gartrell, Blaine

From: Mike Bender [REDACTED]
Sent: Thursday, January 16, 2020 7:37 AM
To: Gartrell, Blaine
Subject: RE: BB0903 Utility Status

CAUTION: This email originated from outside of ARDOT. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Blaine,

The contractor's license (Southard Construction) was reinstated last week. I am waiting on a copy of their actual license. Do we have authorization to proceed? Do you have the change order prepared? We are moving forward with a bid award to be on our Council agenda for January 28.

Thanks,

Mike Bender, PE
Public Works Director
City of Bentonville
3200 SW Municipal Drive, Bentonville, Arkansas 72712
[REDACTED]

Information in this message may be privileged or confidential. Information is intended for the sole use of the addressee. No consent is given for unauthorized viewing or distribution.

From: [REDACTED]
Sent: [REDACTED]
To: Mike Bender
Subject: RE: BB0903 Utility Status

Mike,
I will proceed with the low bid change as planned for the contractor bid we have, is there anything else you need from me at this time?

Blaine Gartrell



From: [REDACTED]
Sent: [REDACTED]
To: Gartrell, Blaine
Subject: RE: BB0903 Utility Status

CAUTION: This email originated from outside of ARDOT. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Blaine,

If we proceed with the current path of allowing the current bidder to renew his license by January 10, we could proceed with Council award by January 28th. If we rebid, the advertising period, bid receipt and review would push me to the February 11th meeting. The biggest worry about rebidding is that we only had one submittal and we may not get another. However, if the current bidder doesn't get renewed, I have to rebid anyway.

Thanks,

Mike Bender, PE
Public Works Director
City of Bentonville
3200 SW Municipal Drive, Bentonville, Arkansas 72712

Information in this message may be privileged or confidential. Information is intended for the sole use of the addressee. No consent is given for unauthorized viewing or distribution.

From: [REDACTED]
Sent: [REDACTED]
To: [REDACTED]
Subject: RE: BB0903 Utility Status

Thank you Mike, If we did rebid how would it affect us time wise? For documentation, please write me a short reason of why the option the City is choosing is better.

Blaine Gartrell



From: [REDACTED]
Sent: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: BB0903 Utility Status

CAUTION: This email originated from outside of ARDOT. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Here you go.

Thanks,

Mike Bender, PE

Public Works Director
City of Bentonville
3200 SW Municipal Drive, Bentonville, Arkansas 72712
[REDACTED]

Information in this message may be privileged or confidential. Information is intended for the sole use of the addressee. No consent is given for unauthorized viewing or distribution.

[REDACTED]
Subject: RE: BB0903 Utility Status

Can you send me the bid tab?

Blaine Gartrell



[REDACTED]
Subject: RE: BB0903 Utility Status

CAUTION: This email originated from outside of ARDOT. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Blaine,

The quickest option is to go with Southard. My other option is to rebid or try to waive bid and negotiate a contract, both of which will take longer than going with a current bid.

Thanks,

Mike Bender, PE
Public Works Director
City of Bentonville
3200 SW Municipal Drive, Bentonville, Arkansas 72712
[REDACTED]

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[REDACTED]

Subject: RE: BB0903 Utility Status

Mike that is not good for the timeline of the project, what are our options? Let me know your thoughts? As far as the process you are speaking of, we will process the change order as long we are following city procedure as would be handled on a normal city project.

Blaine Gartrell



[REDACTED]

Subject: RE: BB0903 Utility Status

CAUTION: This email originated from outside of ARDOT. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Blaine,

Southard Construction, the lone bidder on our water line relocation, let their Arkansas Contractor's license lapse. All other references check and they seem like a legit contractor capable of doing the job. They are in the process of renewing their Arkansas license. If they turn all their paperwork into the Licensing Board by December 18th, their license will be considered at the January 10, 2020 meeting. Their license could be reinstated at that point. Saying all of that, if we decide to proceed with them, I will not take their contract award to Council until they have their license renewed. Are you willing to look at the bid and process a change order, knowing this is in process, prior to them having the license?

Thanks,

Mike Bender, PE
Public Works Director
City of Bentonville
3200 SW Municipal Drive, Bentonville, Arkansas 72712

[REDACTED]

Information in this message may be privileged or confidential. Information is intended for the sole use of the addressee. No consent is given for unauthorized viewing or distribution.

From: Gartrell, Blaine <[REDACTED]>
Sent: Wednesday, November 27, 2019 2:22 PM
To: Mike Bender <[REDACTED]>

Mike,
Is the bid ready to send to me for a change order?

Blaine Gartrell



From: Mike Bender <[REDACTED]>
Sent: Monday, November 27, 2019 1:11 PM
To: Gartrell, Blaine <[REDACTED]>
Cc: Anna Keogh <[REDACTED]>
Subject: RE: BB0903 Utility Status

Blaine,

Since we haven't executed the contract, we don't have a solid date. The contract calls for 120 calendar days to substantial completion and 150 calendar days to final completion. With that, if we started the first of January, we should be complete around end of May or first of June. That would be the earliest I see us being able to start given that December 10 is the earliest I can have Council approval. Completion is subject to actual Council approval, contract execution, bonds, ARDOT authorization, etc.

Thanks,

Mike Bender, PE
Public Works Director
City of Bentonville
3200 SW Municipal Drive, Bentonville, Arkansas 72712
Phone: [REDACTED]
E-mail: [REDACTED]

Information in this message may be privileged or confidential. Information is intended for the sole use of the addressee. No consent is given for unauthorized viewing or distribution.

Thank you for the update, do we have an estimated completion date?

Blaine Gartrell



From: Mike Bender

Sent: Monday, November 18, 2019 11:00 AM

[REDACTED]

Blaine,

Bids were opened at 10:00 this morning. We only had one submit (Southard Construction). CEI will review for completeness and errors. We have not used the contractor before, so we will be checking references. Also, once CEI has completed their review, we will forward to you for review.

Thanks,

Mike Bender, PE
Public Works Direct...
City of Bentonville
3200 SW Municipal Drive, Bentonville, Arkansas 72712

E-mail: [REDACTED]

Information in this message may be privileged or confidential. Information is intended for the sole use of the addressee. No consent is given for unauthorized viewing or distribution.

From: Gartrell, Blaine

Sent: Monday, November 18, 2019 10:23 AM

[REDACTED]

I am receiving updates on this but slowly, give me a status of your relocations on BB0903.

Windstream-
AT&T, Inc.- complete
AT&T, Ark.-
Black Hills-
City of Bentonville W&S-
City of Bentonville Electric-
CenturyLink- Digital-
Rogers Water-
Swepeco-
Cox- Complete

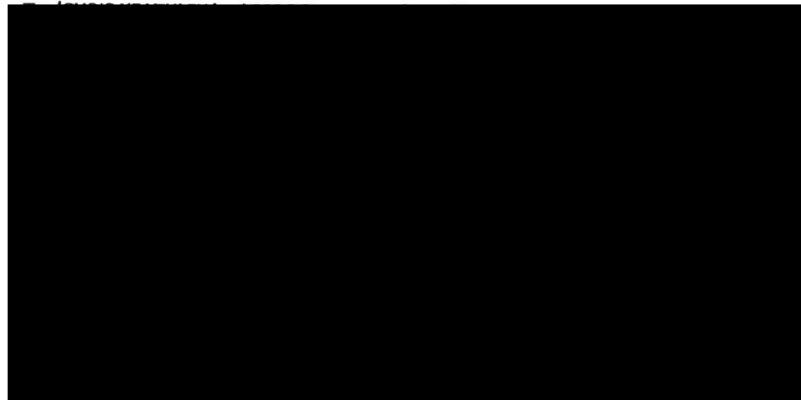
Thank you,

Blaine Gartrell



From: Gartrell, Blaine

Sent: Friday, November 15, 2019 1:12 PM



The previous email was intended for utilities associated with project number BB0903 and for the utilities in the below list. Please respond accordingly. Sorry for the confusion.

BB0903

Windstream
AT&T, Inc.
AT&T, Ark.
Black Hills
City of Bentonville W&S

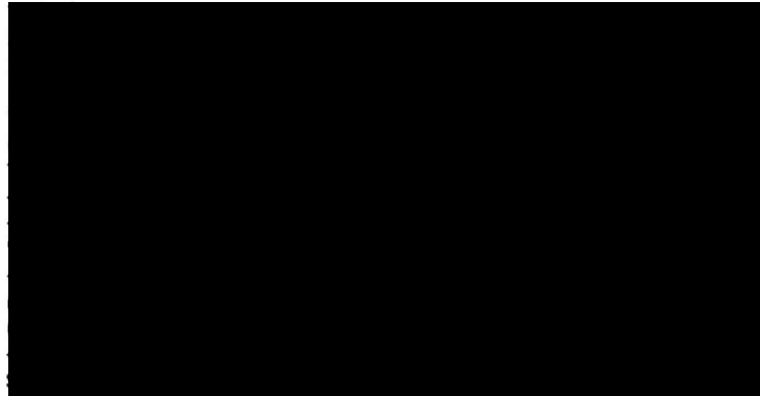
City of Bentonville Electric
CenturyLink- Digital
Rogers Water
Swepeco

Blaine Gartrell



From: Gartrell, Blaine

Sent: Friday, November 15, 2019 9:19 AM



All,
Please give me an updated status of your relocations on this project,
provide an estimated completion date and any concerns that you have at
this time.

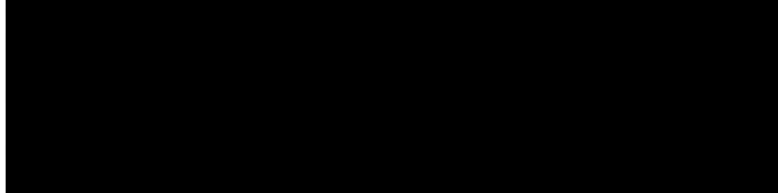
Thank you,

Blaine Gartrell



From: Gartrell, Blaine

Sent: Monday, February 25, 2019 11:53 AM



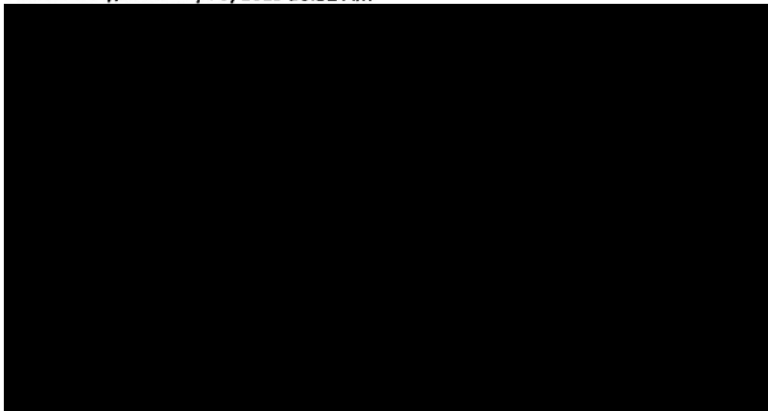


I look forward to working with you on these. Please send me your concerns/status on each of the project and let me know how I can help.

Blaine Gartrell



From: Coats, Chad
Sent: Friday, February 15, 2019 10:51 AM



All,
I have taken a job in another section with the Department. All of the projects I had have been reassigned to other coordinators. Blaine Gartrell (I have attached his contact info.) has been assigned the following list of projects and their associated utilities:

070480
AT&T
Entergy
SuddenLink
CenterPoint
El Dorado water
SATCO

BB0903
Windstream
AT&T, Inc.
AT&T, Ark.

Black Hills
City of Bentonville W&S
City of Bentonville Electric
CenturyLink- Digital
Rogers Water
Swepeco

090436

AT&T, Inc.
AT&T, ARK.
Bella Vista POA
Carroll Electric
Cox Comm.
CenturyLink
Ozarks-Go
Village Wastewater

Chad Coats

Beautification Coordinator
Beautification Section
Arkansas Department of Transportation
Physical Address: 10324 Interstate 30, Little Rock, Ar 72209
Mailing Address: P. O. Box 2261, Little Rock, AR 72203
O: 501.569.4506
C: 501.837.8586
F: 501.569.2018
E: [REDACTED]





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

AGENDA FORM

CITY COUNCIL MEETING OF:

January 28, 2020

Submitted by:

David Wright

Department

Parks and Rec

Phone

271-6813

ACTION REQUIRED:

Resolution requested by Parks and Recreation for City Council approval of an amendment to an existing contract with Sarah Gwin for the service of teaching instructional swim lessons for Parks and Recreation.

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



Memo



To: City Council, Mayor Orman
From: Josh Stacey, Recreation Services Manager
Through: David Wright, Parks and Recreation Director
Date: January 16, 2020
Re: Approval of Contract Amendment for Sarah Gwin

In 2019, Parks and Recreation entered into an agreement with Sarah Gwin for the service of teaching instructional swim lessons, and City Council approved a resolution to pay her an amount not to exceed \$60,000 for this professional service

The demand for our swim lessons at the BCC has increased at a rapid rate every year. In 2019 more than 8,600 participants have utilized the BCC for swim lessons, creating a gross revenue for the program of more than \$310,000. Because of this demand and the number of participants in our program, Sarah Gwin exceeded her revenue estimate by \$904

This amendment authorizes Parks and Recreation to pay Ms. Gwin \$904 to bring her total for 2019 to \$60,904. This expense is 100% recovered by the revenue produced by the program.

If you have any questions regarding this item, please let me know. Please call me at 696.0204, or email jstacey@bentonvillear.com.

Attachments:



CITY OF BENTONVILLE, ARKANSAS

117 West Central Avenue Bentonville, Arkansas 72712

AMENDMENT TO AGREEMENT

Independent Contractor Agreement: Sarah Gwin

This amendment (the "Amendment"), dated _____ (month) _____ (day), 2020 is made by the City of Bentonville, Arkansas ("City") and Sarah Gwin ("Instructor"), parties to the Independent Contractor Agreement, dated November 18, 2018 (the "Agreement").

1. Previous Amendments
 - a. The anticipated annual income was amended, on August 27, 2020, from the original amount of \$40,000.00 (forty thousand dollars) to \$60,000.00 (sixty thousand dollars).
2. The Agreement is amended as follows:
 - a. The anticipated annual income shall be \$61,000.00 (sixty-one thousand dollars).
3. Except as set forth in this Amendment, the Agreement is unaffected and shall continue in full force and effect in accordance with its terms. If there is conflict between this Amendment and the Agreement, or any earlier Amendment, the terms of this Amendment shall prevail.

THE CITY OF BENTONVILLE, ARKANSAS

INSTRUCTOR

BY: _____
Stephanie Orman, Mayor

BY: _____

Name(printed): _____

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE MAYOR AND
CLERK TO ENTER INTO AN AMENDMENT TO AN
EXISTING CONTRACT WITH SARAH GWIN FOR
TEACHING INSTRUCTIONAL SWIM LESSONS FOR THE
CITY OF BENTONVILLE PARKS DEPARTMENT.**

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

Section 1: That the Mayor and Clerk be and are hereby authorized to enter into an amendment to the existing contract with Sarah Gwin for the designated service of teaching instructional swim lessons for the City of Bentonville Parks and Recreation Department as set forth in the attached 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 _____, 2020.

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:

February 11, 2020

Submitted by:

Tracy Billings

Department

Engineering

Phone

696-0229

ACTION REQUIRED:

A resolution setting a public hearing for February 25, 2020 for an Alley ROW Vacation at 540 SE A Street of Mauck-Black Subdivision.

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.

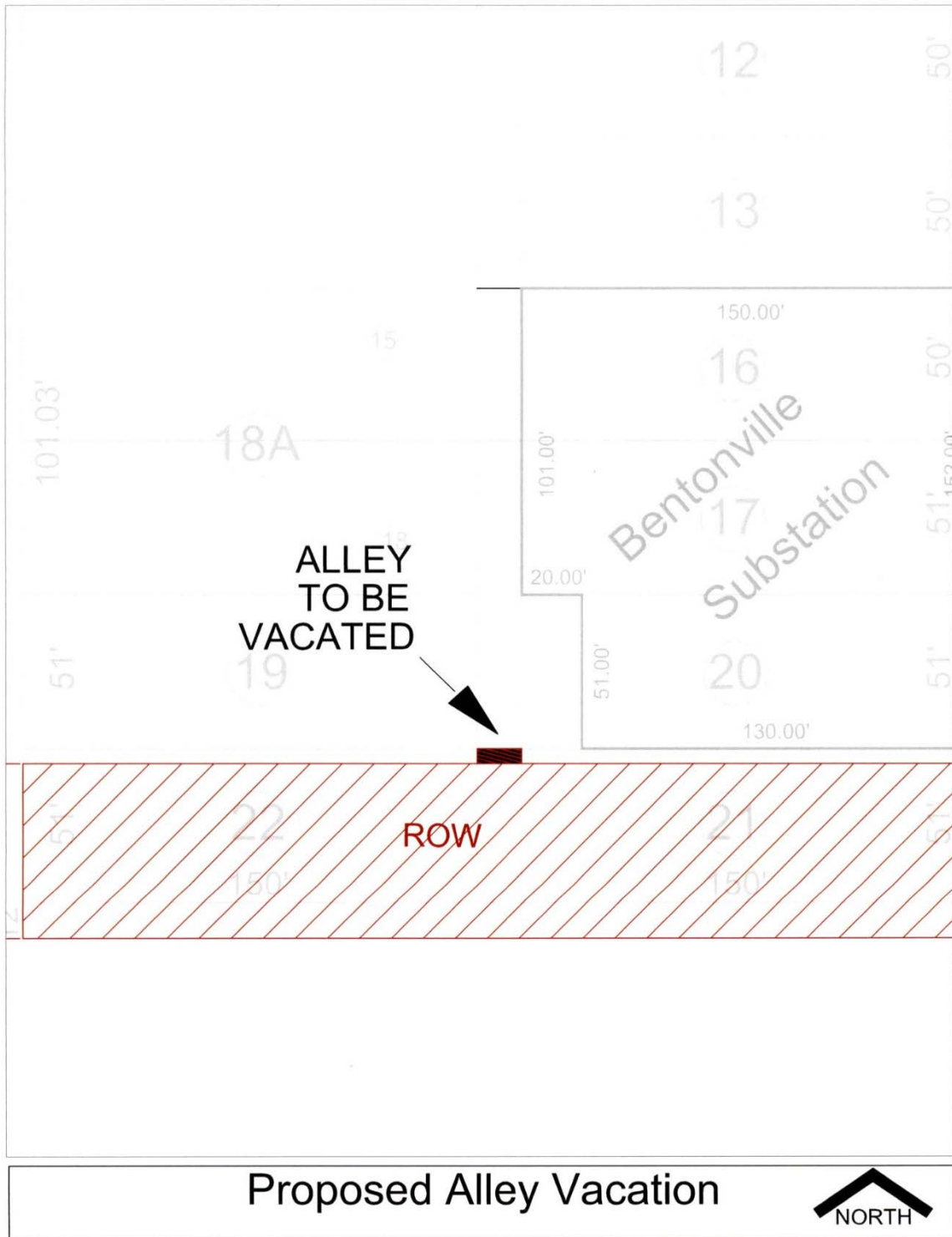
117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712

www.bentonvillear.com



PLEASE RECYCLE





RESOLUTION NO. _____

IN THE CITY COUNCIL FOR THE CITY OF BENTONVILLE, ARKANSAS

WHEREAS, a petition was duly filed with the City Council of Bentonville, Arkansas requesting Alley Right-of-Way Vacation (VAC20-0001) within the City of Bentonville, Arkansas be vacated, which said alley right of way is described as follows:

The North 5' of a 14.83' platted alley adjacent and East of Lot 21 Mauck-Block Subdivision, as shown on Plat Record "G" Page 245 and filed for record at the Benton County Clerk's Office, Benton County, Arkansas.

WHEREAS, Ark. Code Ann. Section 14-301-302(c) provides that the City Council shall by resolution fix a day for the hearing of the petition and shall direct the City Clerk and Recorder to give notice of the meeting, by publication, once per week for two (2) consecutive weeks in some newspaper published in and having general circulation in Bentonville, Benton County, Arkansas.

NOW, THEREFORE, BE IT RESOLVED, by the City of Bentonville, Arkansas, that the petition to vacate the above described Alley Right-of-Way is set for a hearing February 25, 2020 at 6:00 p.m. in the City Council Room of the City of Bentonville, Arkansas, and the Bentonville City Clerk and Recorder is directed to give notice of this meeting by publication as set forth by Ark. Code Ann. Section 14-301-302(c).

The above and foregoing resolution was passed, approved, and adopted the _____ day of _____ 2020 at a regular meeting of the City Council of the City of Bentonville, Arkansas.

Linda Spence, City Clerk
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:

February 11, 2020

Submitted by:

Tracy Billings

Department

Engineering

Phone

696-0229

ACTION REQUIRED:

A resolution setting a public hearing for February 25, 2020 for a Utility Easement Vacation requested for 3811 US 71 HWY of Lowes Addition.

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



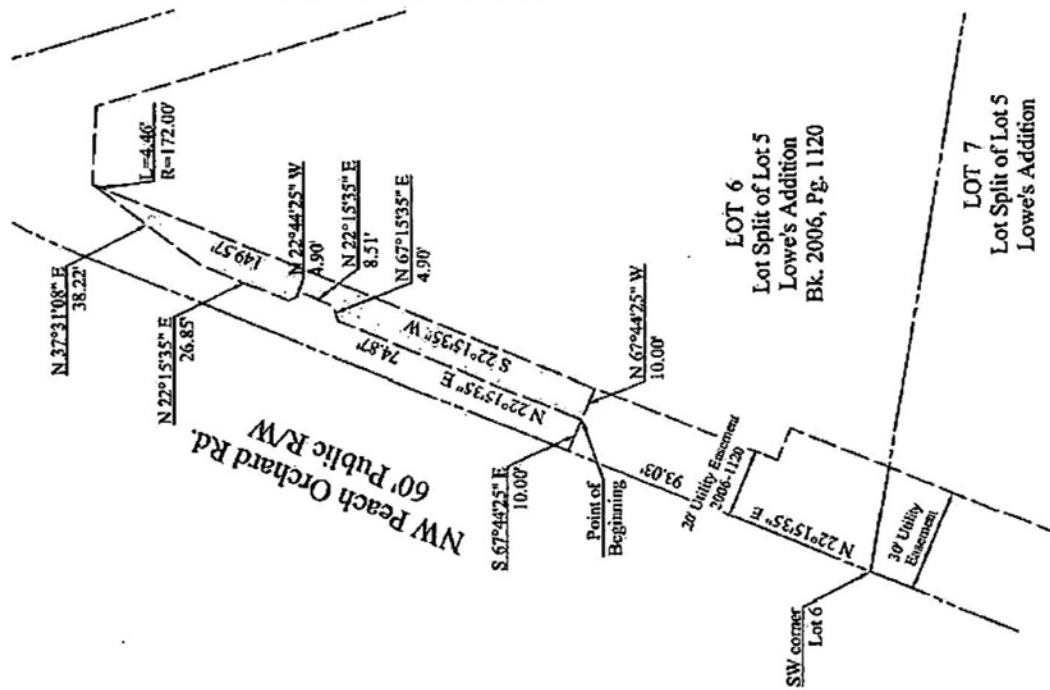
PLEASE RECYCLE



EASEMENT VACATION

A portion of a platted 20' utility easement in Lot 6, as shown on the Lot Split of Lot 5, Lowe's Addition, recorded in Book 2006, Page 1120, said portion of the utility easement further described as follows:

Commencing at the Southwest corner of said Lot 6; thence North 22°15'35" East, 93.03 feet along the Westerly line of said Lot 6; thence South 67°44'25" East, 10.00 feet to the point of beginning of the portion of said utility easement to be vacated; thence North 22°15'35" East, 74.87 feet; thence North 67°15'35" East, 4.90 feet; thence North 22°15'35" East, 8.51 feet; thence North 22°44'25" West, 4.90 feet; thence North 22°15'35" East, 26.85 feet; thence North 37°31'08" East, 38.22 feet to a point on the Easterly line of said existing utility easement; thence around a non-tangent curve to the left having a radius of 172.00 feet, an arc length of 4.46 feet, a chord bearing of South 23°00'20" West and a chord length of 4.46 feet along said Easterly line of the existing utility easement; thence South 22°15'35" West, 149.57 feet along the Easterly line of said existing utility easement; thence North 67°44'25" West, 10.00 feet to the point of beginning.



A. Ozark
Civil Engineering Inc.

3214 NW ANCONWAY, SUITE 4
BENTONVILLE, AR 72712
479-464-0856 | OFFICE 479-464-0840 | FAX

SCALE: 1"=40'
DRAWN BY: RD
DATE: 6-13-19
CHECKED BY: JB

RESOLUTION NO. _____

IN THE CITY COUNCIL FOR THE CITY OF BENTONVILLE, ARKANSAS:

WHEREAS, a petition was duly filed with the City Council of Bentonville, Arkansas by Ozark Civil requesting utility easement vacation (VAC20-0002) within the City of Bentonville, Arkansas be vacated, which said utility easement is described as follows:

A portion of a platted 20' utility easement in Lot 6, as shown on the Lot Split of Lot 5, Lowe's Addition, recorded in Book 2006, Page 1120, said portion of the utility easement further described as follows:

Commencing at the Southwest corner of said Lot 6; thence North 22°15'35" East, 93.03 feet along the Westerly line of said Lot 6; thence South 67°44'25" East, 10.00 feet to the point of beginning of the portion of said utility easement to be vacated; thence North 22°15'35" East, 74.87 feet; thence North 67°15'35" East, 4.90 feet; thence North 22°15'35" East, 8.51 feet; thence North 22°44'25" West, 4.90 feet; thence North 22°15'35" East, 26.85 feet; thence North 37°31'08" East, 38.22 feet to a point on the Easterly line of said existing utility easement; thence around a non-tangent curve to the left having a radius of 172.00 feet, an arc length of 4.46 feet, a chord bearing of South 23°00'20" West and a chord length of 4.46 feet along said Easterly line of the existing utility easement; thence South 22°15'35" West, 149.57 feet along the Easterly line of said existing utility easement; thence North 67°44'25" West, 10.00 feet to the point of beginning.

WHEREAS, Ark. Code Ann. Section 14-301-302(c) provides that the City Council shall by resolution fix a day for the hearing of the petition and shall direct the City Clerk and Recorder to give notice of the meeting, by publication, once per week for two (2) consecutive weeks in some newspaper published in and having general circulation in Bentonville, Benton County, Arkansas.

NOW, THEREFORE, BE IT RESOLVED, by the City of Bentonville, Arkansas, that the petition to close the above described utility easement is set for a hearing on February 25, 2020 at 6:00 p.m. in the City Council Room of the City of Bentonville, Arkansas, and the Bentonville City Clerk and Recorder is directed to give notice of this meeting by publication as set forth by Ark. Code Ann. Section 14-301-302(c).

The above and foregoing resolution was passed, approved and adopted the _____ day of _____ 2020 at a regular meeting of the City Council of the City of Bentonville, Arkansas.

Linda Spence, City Clerk
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:

February 11, 2020

Submitted by:

Jon Simpson

Department

Police

Phone

271-3172

ACTION REQUIRED:

Ordinance requesting a waiver of bid (sole source provider) allowing for a purchase from Axon Enterprises Inc. for law enforcement tasers, specifically a less lethal Conducted Electrical Weapon or CEW. Tasers for law enforcement use tasers are only manufactured and available for purchase from Axon Enterprises Inc. Axon is the sole distributor of all TASER brand products in the several states, including AR, CT, DE, FL, GA, HI, IA, IL, IN, KS, LA, MA, MD, ME, MI, MN, MO, MS, NC, ND, NE, NH, NJ, NY, OK, OR, PA, RI, SC, SD, VA, VI, VT, WI, WV, and the District of Columbia and Guam. The purchase would allow for replacements of previously purchased tasers and keep our department's equipment within a 5-year product cycle life as recommended by the manufacturer. This agreement would be for the purchase of sixteen (16) X26P tasers, sixteen (16) spare APPM batteries, and thirty-two (32) 25 ft. standard cartridges. The purchase would include a 5-year warranty, and be in the amount of \$28,272.90. See attached documentation and sole source letter.

COST TO CITY:

Cost of this Request: \$28,273

Additional Budget Amount

☒ One time amount

☐ Continuing O and M

Previously Budgeted	\$	32,000
Funds Expended to Date		
Remaining Budget		32,000
Budget Adjustment		-
Remaining After Adjustment	\$	32,000

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



REQUEST FOR WAIVER OF BID

Date	<u>2/11/2020</u>		
Requested by:	<u>Chief Jon Simpson</u>		
Department:	<u>Police Department</u>		
DESCRIPTION OF REQUEST:			
Type of Equipment:	<u>CEW, less lethal Conducted Electrical Weapon</u>		
Year & Model:	<u>2020, TASER X26P with warranty and accessories</u>		
Serial #	<u>TBD</u>		
To Be Purchased From:	<u>Axon Enterprises Inc.</u>		
	<u>17800 N. 85th Street</u>		
	<u>Scottsdale, AZ 85255</u>		
Amount:	Base Amount:		<u>\$28,273.00</u>
	Tax:		<u> </u>
	*Other:		<u> </u>
	TOTAL		<u>\$ 28,273.00</u>
* List all other costs: (not to exceed above detailed budgeted amount)			
JUSTIFICATION FOR REQUEST FOR WAIVER OF BID:			
Sole Source Provider, see attached letter.			
_____ Department Head		_____ Director of Finance & Administration	



Axon Enterprise, Inc.
17800 N 85th St.
Scottsdale, Arizona 85255
United States
Phone: (800) 978-2737

Q-243278-43857.677JM

Issued: 01/27/2020

Quote Expiration: 02/29/2020

Account Number: 111075

Payment Terms: Net 30
Delivery Method: Fedex - Ground

SHIP TO

Ray Shastid
Bentonville Police Dept. - AR
908 SE. 14TH ST.
Bentonville, AR 72712
US

BILL TO

Bentonville Police Dept. - AR
908 SE. 14TH ST.
Bentonville, AR 72712
US

SALES REPRESENTATIVE

Jason Maxwell
Phone: (480) 502-6201
Email: jmaxwell@taser.com
Fax: (480) 378-6152

PRIMARY CONTACT

Ray Shastid
Phone: (479) 271-3170
Email: ray.shastid@bentonville.arkansas.gov

Group1

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Hardware						
11003	YELLOW X26P CEW, HANDLE		16	1,113.00	1,113.00	17,808.00
11015	XAPPM, SPARE CARTRIDGE, AUTO SHUT-DOWN BATTERY PACK, X26P		16	85.75	85.75	1,372.00
44203	25 FT STANDARD CARTRIDGE, X26/X26P		32	34.50	34.50	1,104.00
11004	WARRANTY, 4 YEAR, X26P		16	346.00	346.00	5,536.00
Subtotal						25,820.00
Estimated Shipping						0.00
Estimated Tax						2,452.90
Total						28,272.90

Grand Total 28,272.90

Q-243278-43857.677JM

1

Protect Life.

Tax is subject to change at order processing with valid exemption.

Axon's Sales Terms and Conditions

This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and Axon's Master Services and Purchasing Agreement (posted at www.axon.com/legal/sales-terms-and-conditions), as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

Signature: _____ Date: _____
Name (Print): _____ Title: _____
PO# (Or write N/A): _____

Please sign and email to Jason Maxwell at jmaxwell@taser.com or fax to (480) 378-6152

Thank you for being a valued Axon customer. For your convenience on your next order, please check out our online store buy.axon.com

The trademarks referenced above are the property of their respective owners.

Axon Internal Use Only		
		SFDC Contract #:
		Order Type:
		RMA #:
		Address Used:
		SO #:
Review 1	Review 2	
Comments:		

Q-243278-43857.677JM

2

Protect Life.



17800 N. 85th St., Scottsdale, Arizona 85255 • 480-991-0797 • Fax 480-991-0791 • www.axon.com

January 31, 2020

To: United States state, local and municipal law enforcement agencies

Re: Sole Manufacturer Letter for Axon Enterprise, Inc.'s Conducted Electrical Weapons, on-Officer Cameras, and Evidence.com Data Management Solutions

Axon Enterprise, Inc. (Axon), is the sole manufacturer for TASER brand conducted electrical weapons (CEWs) and Axon brand products. Axon is also the sole distributor of all Axon brand products in the USA and the sole distributor of all TASER brand products in the States of AR, CT, DE, FL, GA, HI, IA, IL, IN, KS, LA, MA, MD, ME, MN, MO, MS, NC, ND, NE, NH, NJ, NY, OK, OR, PA, RI, SC, SD, VA, VI, VT, WI, WV, and the District of Columbia. Axon is also the sole developer and offeror of the Evidence.com data management services.¹



TASER CEW Descriptions

TASER 7 CEW

- Multiple-shot CEW
- High-efficiency flashlight
- Close Quarter and Standoff cartridges
- Green LASER and dual red LASERs that adjust for cartridge angle
- Arc switch enables drive-stun with or without a Smart Cartridge installed
- Central Information Display (CID): Displays mission critical data such as remaining battery energy, burst time, and cartridge status.
- Weapon logs
- TASER 7 Dock connected to Axon Evidence (Evidence.com) services
- Onboard self-diagnostic and system status monitoring and reporting
- Real-time clock updated when the battery pack is plugged into the TASER 7 Dock
- Ambidextrous safety switch
- Can be configured by the agency to alert Axon camera systems
- The trigger activates a single cycle (approximately five seconds). Holding the trigger down will continue the discharge beyond the standard cycle (unless configured by the agency to stop at five seconds). The CEW cycle can be stopped by placing the safety switch in the down (SAFE) position.
- Compatible with TASER 7 Cartridges only

X2 CEW

- Multiple-shot CEW
- High efficiency flashlight
- Static dual LASERs (used for target acquisition)
- ARC switch enables drive-stun with or without a Smart Cartridge installed
- Central Information Display (CID): Displays mission-critical data such as remaining battery energy, burst time, operating mode, and user menu to change settings and view data on a yellow-on-black display
- The Trilogy log system records information from a variety of sensors into three data logs: Event log, Pulse log, and Engineering log. Data can be downloaded using a universal serial bus (USB) data interface module connected to a personal computer (PC). Data may be transferred to Evidence.com services.

¹ Evidence.com is both a division of Axon and a data management product solution offered by Axon. Evidence.com is not a separate corporate entity.

- Real-time clock with back-up battery
- Onboard self-diagnostic and system status monitoring and reporting
- Ambidextrous safety switch
- Capable of audio/video recording with optional TASER CAM HD recorder
- The trigger activates a single cycle (approximately five seconds). Holding the trigger down will continue the discharge beyond the standard cycle (except when used with an APPM or TASER CAM HD AS). The CEW cycle can be stopped by placing the safety switch in the down (SAFE) position.
- Compatible with TASER Smart Cartridges only

X26P CEW

- High efficiency flashlight
- Red LASER (used for target acquisition)
- Central Information Display (CID): Displays data such as calculated remaining energy, burst time, and notifications
- The Trilogy log system records information from a variety of sensors into three data logs: Event log, Pulse log, and Engineering log. Data can be downloaded using a universal serial bus (USB) data interface module connected to a personal computer (PC). Data may be transferred to Evidence.com services.
- Real-time clock with back-up battery
- Onboard self-diagnostic and system status monitoring and reporting
- Ambidextrous safety switch
- Capable of audio/video recording with optional TASER CAM HD recorder
- The trigger activates a single cycle (approximately five seconds). Holding the trigger down will continue the discharge beyond the standard cycle (except when used with an APPM or TASER CAM HD AS). The CEW cycle can be stopped by placing the safety switch in the down (SAFE) position.
- Compatible with TASER standard series cartridges

Axon Signal Performance Power Magazine (SPPM)

- Battery pack for the TASER X2 and X26P conducted electrical weapons
- Shifting the safety switch from the down (SAFE) to the up (ARMED) positions sends a signal from the SPPM. Upon processing the signal, an Axon system equipped with Axon Signal technology transitions from the BUFFERING to EVENT mode. Axon Signal technology only works with Axon cameras.

Axon Signal Sidearm Sensor

- Can be installed on common duty holsters
- Drawing a service handgun from the holster sends a signal from the Axon Signal Sidearm sensor. Upon processing the signal, an Axon system equipped with Axon Signal technology transitions from the BUFFERING to EVENT mode.

TASER Brand CEW Model Numbers

1. Conducted Electrical Weapons (CEWs):
 - TASER X2 Models: 22002 and 22003
 - TASER X26P Models: 11002 and 11003
2. Optional Extended Warranties for CEWs:
 - X2 - 4-year extended warranty, item number 22014
 - X26P - 2-year extended warranty, item number 11008
 - X26P - 4-year extended warranty, item number 11004
3. TASER standard cartridges (compatible with the X26P; required for this CEW to function in the probe deployment mode):
 - 15-foot Model: 34200
 - 21-foot Model: 44200

- 21-foot non-conductive Model: 44205
 - 25-foot Model: 44203
 - 35-foot Model: 44206
4. TASER Smart Cartridges (compatible with the X2; required for this CEW to function in the probe deployment mode):
 - 15-foot Model: 22150
 - 25-foot Model: 22151
 - 25-foot inert simulation Model: 22155
 - 25-foot non-conductive Model: 22157
 - 35-foot Model: 22152
 - Inert Smart Cartridge Model: 22153
 5. TASER CAM HD recorder Model: 26810 (full HD video and audio) and TASER CAM HD with AS (automatic shut-down feature) Model: 26820. The TASER CAM HD is compatible with both the X26P and X2 CEWs.
 - TASER CAM HD replacement battery Model: 26764
 - TASER CAM HD Download Kit Model: 26762
 - TASER CAM HD optional 4-year extended warranty, item number 26763
 6. Power Modules (Battery Packs) for X26P and X2 CEWs:
 - Performance Power Magazine (PPM) Model: 22010
 - Tactical Performance Power Magazine (TPPM) Model: 22012
 - Automatic Shut-Down Performance Power Magazine (APPM) Model: 22011
 - eXtended Performance Power Magazine (XPPM) Model: 11010
 - eXtended Automatic Shut-Down Performance Power Magazine (XAPPM) Model: 11015
 - Axon Signal Performance Power Magazine (SPPM) Model: 70116
 7. TASER Dataport Download Kits:
 - Dataport Download Kit for the X2 and X26P Model: 22013
 8. TASER Blast Door Repair Kit Model 44019 and TASER Blast Door Replenishment Kit Model 44023
 9. TASER Simulation Suit II Model 44550

Axon Digital Evidence Solution Description

Axon Body 3 Video Camera (DVR)

- Improved video quality with reduced motion blur and better low-light performance
- Multi-mic audio—four built-in microphones
- Wireless upload option
- Gunshot detection and alerts
- Streaming audio and video capability
- "Find my camera" feature
- Verbal transcription with Axon Records (coming soon)
- End-to-end encryption
- Twelve-hour battery
- Up to 120-second buffering period to record footage before pressing record button

Axon Flex 2 Video Camera

- Video playback on mobile devices in the field via Bluetooth pairing
- Retina Low Light capability sensitive to less than 0.1 lux
- Audio tones to alert user of usage
- Low SD, high SD, low HD, and high HD resolution (customizable by the agency)
- Up to 120-second buffering period to record footage before pressing record button

- Multiple mounting options using magnetic attachment: head, collar, shoulder, helmet, ball cap, car dash, and Oakley sunglass mounts available
- 120-degree diagonal field of view camera lens. 102-degree horizontal field of view, and 55-degree vertical field of view

Axon Flex 2 Controller

- 12+ hours of battery operation per shift (even in recording mode)
- LED lights to show current battery level and operating mode
- Haptic notification available
- Tactical beveled button design for use in pocket
- Compatible with Axon Signal technology

Axon Body 2 Video Camera

- Video playback on mobile devices in the field via Bluetooth pairing
- Retina Low Light capability sensitive to less than 1 lux
- Audio tones and haptic (vibration) notification to alert user of usage
- Audio mute during event option
- Wi-Fi capability
- High, medium, and low quality recording available (customizable by the agency)
- Up to two-minute buffering period to record footage before pressing record button
- Multiple mounting options using holster attachment: shirt, vest, belt, and dash mounts available
- 12+ hours of battery operation per shift (even in recording mode)
- LED lights to show current battery level and operating mode
- 143-degree lens
- Includes Axon Signal technology

Axon Fleet 2 Camera

- High-definition video system with wide field of view, zoom, infrared for the back seat and wireless microphone integration
- Intuitive mobile data terminal app, Axon View XL, for quick tagging, uploads and more on the fly
- Ability to efficiently categorize, play back and share all video alongside other digital files on Evidence.com
- Multi-cam playback, for reviewing up to four videos, including body-worn and in-car footage, at the same time
- Best-in-class install times and quick remote troubleshooting
- Fully integrated with Evidence.com services and Axon devices
- Automatic time synchronization with other Axon Fleet and Axon on-officer cameras allows for multi-camera playback on Evidence.com.
- Immediate upload to Evidence.com of critical event videos via 4G/LTE
- Wireless alerts from the TASER CEW Signal Performance Power Magazine (SPPM).
- Automatic transition from BUFFERING to EVENT mode in an emergency vehicle equipped with the Axon Signal Unit

Axon Fleet Camera

- In-car camera with the technological advantages of the Axon Body 2 camera
- Flexible mount that enables pointing the camera in multiple directions
- Automatic transition from buffering to event mode in an emergency vehicle equipped with the Axon Signal Unit

Axon Signal Unit (ASU)

- Communications device that can be installed in emergency vehicles.
- With emergency vehicle light bar activation, or other activation triggers, the Axon Signal Unit sends a signal. Upon processing the signal, an Axon system equipped with Axon Signal technology transitions from the BUFFERING to EVENT mode.

Axon Interview Solution

- High-definition cameras and microphones for interview rooms
- Covert or overt camera installations
- Touch-screen user interface
- Motion-based activation
- Up to 7-minute pre- and post-event buffering period
- Full hardware and software integration
- Upload to Evidence.com services
- Interview room files can be managed under the same case umbrella as files from Axon on-officer cameras and Axon Fleet cameras; i.e., Axon video of an arrest and interview room video are managed as part of the same case in Evidence.com
- Dual integration of on-officer camera and interview room camera with Evidence.com digital evidence solution

Axon Signal Technology

- Sends a broadcast of status that compatible devices recognize when certain status changes are detected.
- Only compatible with TASER and Axon products

Axon Dock

- Automated docking station uploads to Evidence.com services through Internet connection
- No computer necessary for secure upload to Evidence.com
- Charges and uploads simultaneously
- The Axon Dock is tested and certified by TUV Rheinland to be in compliance with UL 60950-1: 2007 R10.14 and CAN/ CSA-C22.2 NO.60950-I-07+A1:2011+A2:2014 Information Technology Equipment safety standards.

Evidence.com Data Management System

- Software as a Service (SaaS) delivery model that allows agencies to manage and share digital evidence without local storage infrastructure or software needed
- SaaS model reduces security and administration by local IT staff: no local installation required
- Automatic, timely security upgrades and enhancements deployed to application without the need for any local IT staff involvement
- Securely share digital evidence with other agencies or prosecutors without creating copies or requiring the data to leave your agency's domain of control
- Controlled access to evidence based on pre-defined roles and permissions and pre-defined individuals
- Password authentication includes customizable security parameters: customizable password complexity, IP-based access restrictions, and multi-factor authentication support
- Automated category-based evidence retention policies assists with efficient database management
- Ability to recover deleted evidence within 7 days of deletion
- Stores and supports all major digital file types: .mpeg, .doc, .pdf, .jpeg, etc.
- Requires NO proprietary file formats
- Ability to upload files directly from the computer to Evidence.com via an Internet browser
- Data Security: Robust Transport Layer Security (TLS) implementation for data in transit and 256-bit AES encryption for data in storage
- Security Testing: Independent security firms perform in-depth security and penetration testing
- Reliability: Fault- and disaster-tolerant infrastructure in at least four redundant data centers in both the East and West regions of the United States
- Chain-of-Custody: Audit logs automatically track all system and user activity. These logs cannot be edited or deleted, even by account administrators and IT staff
- Protection: With no on-site application, critical evidence stored in Evidence.com is protected from local malware that may penetrate agency infrastructure
- Stability: Axon Enterprise is a publicly traded company with stable finances and funding, reducing

- concerns of loss of application support or commercial viability
- Application and data protected by a CJIS and ISO 27001 compliant information security program
- Dedicated information security department that protects Evidence.com and data with security monitoring, centralized event log analysis and correlation, advanced threat and intrusion protection, and incident response capabilities
- Redact videos easily within the system, create tags, markers and clips, search seven fields in addition to five category-based fields, create cases for multiple evidence files

Evidence.com for Prosecutors

- All the benefits of the standard Evidence.com services
- Ability to share information during the discovery process
- Standard licenses available for free to prosecutors working with agencies already using Evidence.com services
- Unlimited storage for data collected by Axon cameras and Axon Capture

Axon Capture Application

- Free app for IOS and Android mobile devices
- Allows users to capture videos, audio recordings, and photos and upload these files to their Evidence.com account from the field
- Allows adding metadata to these files, such as: Category, Title, Case ID, and GPS data

Axon Commander Services

- On-premises data management platform
- Chain of custody reports with extensive audit trail
- Automated workflows, access control, storage, and retention
- Compatible with multiple file formats

Axon View Application

- Free app for IOS and Android mobile devices
- Allows user to view the camera feed from a paired Axon Body, Axon Body 2, Axon Flex, or Axon Flex 2 camera in real-time
- Allows for playback of videos stored on a paired Axon Body Axon Body 2, Axon Flex, or Axon Flex 2 system
- Allows adding meta-data to videos, such as: Category, Title, Case ID, and GPS data

Axon Professional Services

- Dedicated implementation team
- Project management and deployment best practices aid
- Training and train-the-trainer sessions
- Integration services with other systems

Axon Customer Support

- Online and email-based support available 24/7
- Human phone-based support available Monday–Friday 7:00 AM–5:00 PM MST; support is located in Scottsdale, AZ, USA
- Library of webinars available 24/7
- Remote-location troubleshooting



Axon Brand Model Numbers

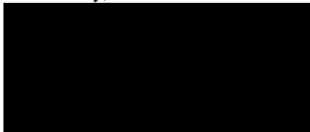
1. Axon Body 3 Camera Model: 73202
2. Axon Flex 2 Cameras:
 - Axon Flex 2 Camera (online) Model: 11528
 - Axon Flex 2 Camera (offline) Model: 11529
3. Axon Flex 2 Controller Model: 11532
4. Axon Flex 2 USB Sync Cable Model: 11534
5. Axon Flex 2 Coiled Cable, Straight to Right Angle, 48" (1.2 m)
6. Axon Flex 2 Camera Mounts:
 - Oakley Flak Jacket Kit Model: 11544
 - Collar Mount Model: 11545
 - Oakley Clip Model: 11554
 - Epaulette Mount Model: 11546
 - Ballcap Mount Model: 11547
 - Ballistic Vest Mount Model: 11555
 - Universal Helmet Mount Model: 11548
7. Axon Body 2 Camera Model: 74001
8. Axon Flex 2 Controller and Axon Body 2 Camera Mounts:
 - Z-Bracket, Men's, Axon RapidLock Model: 74018
 - Z-Bracket, Women's Axon RapidLock Model: 74019
 - Magnet, Flexible, Axon RapidLock Model: 74020
 - Magnet, Outerwear, Axon RapidLock Model: 74021
 - Small Pocket, 4" (10.1 cm), Axon RapidLock Model: 74022
 - Large Pocket, 6" (15.2 cm), Axon RapidLock Model: 74023
 - MOLLE Mount, Single, Axon RapidLock Model: 11507
 - MOLLE Mount, Double, Axon RapidLock Model: 11508
 - Belt Clip Mount, Axon RapidLock Model: 11509
9. Axon Fleet Camera Model: 74001
10. Axon Signal Unit Model: 70112
11. Axon Dock Models:
 - Axon Dock – Individual Bay and Core for Axon Flex 2 Model: 11536
 - Axon Dock – 6-Bay and Core for Axon Flex 2 Model: 11537
 - Individual Bay for Axon Flex 2 Model: 11538
 - Core (compatible with all Individual Bays and 6-Bays) Model: 70027
 - Wall Mount Bracket Assembly for Axon Dock: 70033
 - Axon Dock – Individual Bay and Core for Axon Body 2 and Axon Fleet Model 74009
 - Axon Dock – 6-Bay and Core for Axon Body 2 and Axon Fleet Model 74008
 - Individual Bay for Axon Body 2 and Axon Fleet Model: 74011

TASER Product Packages

1. **Officer Safety Plan:** Includes an X2 or X26P conducted energy weapon (CEW), Axon camera and Dock upgrade, and Evidence.com license and storage. See your Sales Representative for further details and Model numbers.
2. **Officer Safety Plan 7:** Includes a TASER 7 conducted electrical weapon (CEW), Axon camera and Dock upgrade, Axon Evidence (Evidence.com) licenses and storage, and Axon Records Core.
3. **TASER 7 Certification:** Pays for TASER 7 program in installments over 5 years including access to Evidence.com for CEW program management, annual training cartridges, unlimited duty cartridges and online training content.
4. **TASER Certification Add-On:** Allows the agency to pay an annual fee to receive an annual allotment of training cartridges, unlimited duty cartridges and online training content.
5. **TASER Assurance Plan (TAP):** Hardware extended coverage, Spare Products (for Axon cameras), and Upgrade Models, for the Axon Flex camera and controller, Axon Body camera, and Axon Dock. (The TAP is available only through Axon Enterprise, Inc.)
6. **TASER 60:** Pay for X2 and X26P CEWs and Spare Products in installments over 5 years.
7. **Unlimited Cartridge Plan:** Allows the agency to pay an annual fee to received annual training cartridges, unlimited duty cartridges and unlimited batteries for the X2 and X26P.
8. **TASER 60 Unlimited:** Pays for X2 and X26P CEWs and Spare Products in installments over 5 years and receive unlimited cartridges and batteries.

Please contact your local Axon sales representative or call us at 1-800-978-2737 with any questions.

Sincerely,



Josh Isner
Chief Revenue Officer
Axon Enterprise, Inc.

Android is a trademark of Google, Inc., Bluetooth is a trademark of the Bluetooth SIG, Flak Jacket is a trademark of Oakley, Inc., iPod touch is a trademark of Apple Inc., IOS is a trademark of Cisco, Shoei is a trademark of Shoei Co., Ltd., VELCRO is a trademark of Velcro Industries, B.V., and Wi-Fi is a trademark of the Wi-Fi Alliance.

▲, ▲ AXON, Axon, Axon Body 2, Axon Body 3, Axon Capture, Axon Dock, Axon Evidence, Axon Fleet, Axon Fleet 2, Axon Flex 2, Axon Interview, Axon RapidLock, Axon Records, Axon Signal, Axon Signal Sidearm, Axon Signal Vehicle, Axon View, Evidence.com, Smart Cartridge, Trilogy, TASER CAM, X2, X26P, TASER 7, TASER, and  are trademarks of Axon Enterprise, Inc., some of which are registered in the US and other countries. For more information, visit www.axon.com/legal. All rights reserved. © 2019 Axon Enterprise, Inc.

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE MAYOR AND THE CITY CLERK TO ENTER INTO AN AGREEMENT WITH AXON ENTERPRISES INC. FOR THE PURCHASE OF LAW ENFORCEMENT TASERS FOR THE BENTONVILLE POLICE DEPARTMENT AND WAIVING THE REQUIREMENT OF COMPETITIVE BIDDING.

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

Section 1: That the Mayor and City Clerk be and are hereby authorized to enter into an agreement with Axon Enterprises Inc. for the purchase of law enforcement tasers, specifically less lethal Conducted Electrical Weapons and associated components, in the amount of \$28,272.90 as per the Proposal attached hereto as Exhibit A.

Section 2: Because tasers for law enforcement use are a sole source item, exclusively manufactured and available for purchase from Axon Enterprises, Inc., it would be neither practical nor feasible to advertise for competitive bidding, and that requirement is herein waived.

PASSED and APPROVED this _____ day of _____, 2020.

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:

February 11, 2020

Submitted by: **Jon Simpson**

Department: **Police**

Phone: **271-3172**

ACTION REQUIRED:

Resolution to declare two (2) no longer in service police department vehicles as surplus property. The vehicles include City of Bentonville Unit 2010-01, a 2011 Chevrolet Police Tahoe PPV, VIN number 1GNLC2E00BR317629, mileage: 95902, and Unit 2010-97, a 2011 Chevrolet Police Tahoe PPV, VIN number 1GNLC2E06BR321880, mileage: 84827. Both of these vehicles were previously used as marked patrol cars and scheduled for replacement in 2020. Both vehicles are equipped with lightbars, sirens, consoles, gun racks, prisoner containment systems, and other law enforcement specific items that would ordinarily require removal prior to any transfer of ownership. However, upon being approved and declared as surplus, these vehicles will be traded to Superior Automotive Group in Siloam Springs for an approximate credit of \$8,000 each. Superior offers a unique trade-in program for emergency vehicles, which allows used police vehicles to be refurbished and sold to other law enforcement agencies at a reduced cost of ownership. Additionally, this credit will be applied toward the three Chevrolet Tahoe PPV's approved in the 2020 budget. Surplusing these two vehicles in the form of a trade represents a responsible and safe disposition of police equipped vehicles and also saves the city the costs associated with the removal, storage, and proper disposal of law enforcement only equipment that cannot be transferred to another vehicle.

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



RESOLUTION NO. _____

**A RESOLUTION DECLARING CERTAIN PROPERTY
BELONGING TO THE CITY OF BENTONVILLE POLICE
DEPARTMENT AS SURPLUS PROPERTY.**

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

Section 1: That certain property of the City of Bentonville Police Department, more particularly described in the attached agenda form, is hereby declared to be surplus and the Police Department is authorized to dispose of or exchange such property as authorized by law and more particularly described therein.

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 _____, 2020.

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:

February 11, 2020

Submitted by:

Jon Simpson

Department

Police

Phone

271-3172

ACTION REQUIRED:

Bid award to Superior Auto Group in the amount of \$207,093.64, Bid IFP-20-02 (4 Chevrolet Police Pursuit Vehicles). See attached bid tabulation and bid submission forms. Note: This purchase will complete 4 of 9 vehicles budgeted in 2020. The remaining 5 vehicles will be purchased via Bid/State Bid.

COST TO CITY:

Cost of this Request: \$207,094

Additional Budget Amount

☐ One time amount

☐ Continuing O and M

Previously Budgeted	\$	428,500
Funds Expended to Date		-
Remaining Budget		428,500
Budget Adjustment		-
Remaining After Adjustment	\$	428,500

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

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PLEASE RECYCLE





BID TABULATION:
IFB-20-02- BID OPENING
 4 2020 Chevrolet Police Pursuit Vehicles
 TUESDAY, JANUARY 28, 2020
 at 1:30 P.M

BIDDER NAME	BID COMPLETE	Vehicle M/M/Y Submitted	TOTAL BID PRICE (for 1 hour of On Site Waste Grinding Services, As Specified)
SUPERIOR AUTO GROUP	YES	2020 Chevrolet Tahoe PPVs	\$207,093.64



CITY OF BENTONVILLE

PURCHASING OFFICE – (479) 271-3115 – PURCHASING@BENTONVILLEAR.COM
CITY HALL 117 WEST CENTRAL AVENUE BENTONVILLE, ARKANSAS 72712

FOR PUBLICATION

PUBLICATION DATE: January 12, 2020

NOTICE TO BIDDERS

(4) 2020 Chevrolet Tahoe Police Pursuit Vehicles (PPV-9C1) 2WD 4DR, with Additional Equipment Installed **Invitation For Bid (IFB)-20-02**

The City of Bentonville, Arkansas is accepting formal, sealed bids for the purchase and delivery of four (4) 2020 Chevrolet Tahoe Police Pursuit Vehicles (PPV-9C1) 2 WD (two wheel drive), 4 DR (four door), with additional equipment installed.

Interested parties can obtain the required bid packet by emailing purchasing@bentonvillear.com, by calling 479-271-3115 or from the Purchasing Office located at the address below. Sealed bids will be received until 1:30 P.M., Tuesday, January 28, 2020, at the Purchasing Office on the second floor of City Hall, located at 117 West Central Avenue, Bentonville, Arkansas 72712. Late submissions and unsigned bid submissions will be rejected, without exception.

WWW.BENTONVILLEAR.COM



CITY OF BENTONVILLE, ARKANSAS
PURCHASING OFFICE
CITY HALL
117 W. CENTRAL AVE
BENTONVILLE, ARKANSAS 72712
IFB-20-03

INVITATION FOR BID (IFB)
(4) 2020 Chevrolet Tahoe Police Pursuit Vehicles (PPV-9C1) 2WD 4DR,
with Additional Equipment Installed

Date of Issuance: **January 12, 2020**

Bid Number: **IFB-20-02**

Bid Opening Date: **January 28, 2020**

Bid Opening Time: **1:30 P.M.**

Questions regarding this bid should be directed to the Purchasing Office only, by emailing purchasing@bentonville.com.
All questions must be submitted prior to 4:30 P.M., January 23, 2020.

Bids must be received by the Purchasing Office prior to 1:30 P.M., January 28, 2020 in a sealed envelope, clearly marked on the outside with Bid # IFB-20-02. Bids which must be opened to be identified may be rejected. Late bids will be rejected, without exception.

Bids will be publicly opened at City Hall, second floor, Purchasing Office, 117 West Central Ave, Bentonville, AR 72712.

EXECUTION OF BID

(REQUIRED FOR ACCEPTANCE OF BID)

Upon signing this Bid, the bidder certifies that he/she has read and agrees to the requirements set forth in this bid proposal including specifications, conditions and pertinent information regarding the articles being bid on, and agrees to furnish these articles at the prices stated. Unsigned bids will be rejected - no exceptions.

NAME OF FIRM: SUPERIOR AUTO GROUP	PHONE NUMBER: 479 268 1003	FAX NUMBER: 479 524 3150
BUSINESS ADDRESS, STREETS: 490 HIGHWAY 412 EAST	CITY: Silvanna Springs	STATE: AR
SIGNATURE: [Redacted]	DATE: 1/24/2020	ZIP: 72761
PRINTED OR TYPED NAME: DOA CLARK	TITLE: FLEET DIRECTOR	

ARKANSAS SALES OR USE TAX NUMBER: **246969-04-001**

STATE CONTRACTORS LICENSE NUMBER: _____



CITY OF BENTONVILLE, ARKANSAS
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IFB-20-03

INTENT

The intent of this Invitation for Bid (IFB) is for the purchase and delivery of four (4) 2020 Chevrolet Tahoe Police Pursuit Vehicles (PPV-9C1) 2WD (two wheel drive) 4DR (four door), with additional equipment installed.

RESPONSE DOCUMENTS

The following documents must be complete to provide a complete bid response package:

- IFB document, all response fields complete.

All pricing must be entered on pricing sheet ("no bid" is an acceptable entry).

CONTRACT TERM:

The awarded bidder will receive a single purchase order issued by the City of Bentonville for the one-time purchase and delivery of four (4) 2020 Chevrolet Tahoe Police Pursuit Vehicles (PPV-9C1) 2WD 4DR, with additional equipment installed.

SCOPE

The City of Bentonville, Arkansas is soliciting bids for the purchase and delivery of four (4) 2020 Chevrolet Tahoe Police Pursuit Vehicles (PPV-9C1) 2WD 4DR, with additional equipment installed, for the City of Bentonville, Arkansas Police Department. Bidder agrees to furnish all equipment and accessories as specified in this Invitation for Bid document, and as is standard to be included with this type of equipment.

DELIVERY

The City of Bentonville requests delivery within (30) days after receipt of the City's purchase order. If this delivery schedule cannot be met, Bidder must state the number of days required from receipt of the City's purchase order to deliver the item to the City. Failure to state a delivery time obligates the Bidder to complete delivery within the City's requested timeline. Extended delivery dates may be considered when in the best interest of the City. Delivery must be made within the City's working hours, which are Monday through Friday from 8:00 A.M to 3:00 P.M. CST

Delivery within (7) SEVEN days after receipt of City's purchase order.



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EQUIVALENT ITEMS/REFERENCED SPECIFICATIONS

Whenever these specifications mention an item by name and use specific descriptions as refers thereto, it is intended to convey to the bidder an understanding of the standard of excellence required. Items of equal type, quality, and size that will conform substantially to the standard of excellence established to provide equivalent merit, strength, durability, and to perform the required function in accordance with these specifications may be offered. Bids containing items proposed as equivalent shall clearly describe the equivalent article being offered and indicate how it differs from the City's original specification. Descriptive literature or manufacturer's specifications, in addition to any supplemental information necessary for comparison purposes should also be submitted with the bid. It is the Bidder's responsibility to demonstrate to the City that a substitute offer is equivalent to and meets the standard of quality indicated by the City's specifications. The City of Bentonville shall have the final approval of whether a substitute item is equal to the item specified.

INVOICING

The awarded Bidder shall submit an invoice to the City, at the remittance address below:

City of Bentonville
ATTN: Accounts Payable
117 West Central Ave.
Bentonville, AR 72712

For payment to be made upon delivery of the equipment, the awarded Bidder must submit an Invoice to the City at least seven (7) days prior to the scheduled delivery date.

PAYMENT TERMS



Net 30 days



Other: UPON DELIVERY



CITY OF BENTONVILLE, ARKANSAS
PURCHASING OFFICE
CITY HALL
117 W. CENTRAL AVE
BENTONVILLE, ARKANSAS 72712
IFB-20-03

Contractor/Vendor Disclosure

Company Name: Superior Auto Group

Registered with the Secretary of State's Office to Conduct Business in the State of Arkansas:

☒ Yes ☐ No

Identify each employee of the City of Bentonville to whom you, any of your
Employees owning more than 5% interest in your Company, or are a Director/Executive/Decision Maker
of your Company are immediately related.

Immediate Relation includes:

- Spouse/Domestic Partner
- Parents-Natural or Legal/Step/In Laws
- Children/Step, Siblings-Whole/Half/Step/ In Laws
- Grandchildren/Step, Great Grandchildren.

NONE

Failure to disclose shall be considered a material breach and grounds for immediate termination of this
contract/agreement. Note: Any change in circumstances resulting in a conflict or appearance of a
conflict shall be reported in 30 days of change of circumstance. RC Initials



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**CITY OF BENTONVILLE, ARKANSAS
PURCHASING OFFICE**

INSTRUCTIONS TO BIDDERS

1. **SCOPE:** These instructions to bidders and general conditions apply to solicitations for material, equipment, supplies or services with an estimated single or combined cost of \$20,000 or more. These conditions shall be in force unless otherwise modified by the City in this bid document. Bidders shall be advised that the City of Bentonville is not responsible for the content of any bid package received through any 3rd party bid service. It is the sole responsibility of the vendor to ensure the completeness of the documents received from any 3rd party source other than hand delivered.

2. **DEFINITIONS (AS USED HEREIN):**

- a. The term "Invitation For Bid" means a solicitation of formal sealed bids with a combined or single unit value \$20,000 and over. The acronym "IFB" means Invitation for Bid.
- b. The term "bid" means the offer by the bidder.
- c. The term "bidder" means the person or organization responding to the solicitation.
- d. The term "contractor" means a person or organization who is the successful bidder and who enters into a contract with the City.
- e. The term "change order" means a written order from the Purchasing Manager directing the contractor to make changes to a contract.
- f. The term "City" means the City of Bentonville, Arkansas.
- g. The term "City Council" means the governing body of the City of Bentonville, Arkansas.

3. **PREPARATION OF BIDS:** Bidders shall review the specifications, drawings, and all special and general conditions. Failure to do so will be at the bidder's risk.

Each bidder shall furnish the information required in the solicitation. The bidder shall provide their name, address, e-mail address, and telephone number where indicated in the solicitation documents. The affidavit must be signed by an officer or employee having the authority to bind the company or organization by his/her signature and included with the bid response.

Unit price for each unit offered must be provided. The unit price will be presumed correct.

The bidder must state a definite time for delivery of supplies or performance of services.

4. **SUBMITTING A BID:** Bids must be received by the City of Bentonville Purchasing Office **BEFORE** the time of opening indicated in the solicitation. All references to time shall be Bentonville, Arkansas time (Central time zone). Late bids will be rejected. Any exceptions or additional information required on a solicitation will be noted in the bid documents. Failure to provide any requested information or to follow these procedures may result in the rejection of your bid.

5. **BID DOCUMENT MISTAKES:** The bidder shall not be allowed to modify or correct mistakes in the bid document after the opening of the bid. Failure to complete the entire bid accurately may result in declaring the bid as non-responsive and the bid may be rejected.

Bids may not be withdrawn after the bid opening time and date if a bid mistake is based upon an error in judgment. If a nonjudgmental mistake, such as a math error, is suspected by the City or the bidder, the bidder shall respond within two (2) business days of the bid opening or within two (2) days of notification from the City, with a request for the City to consider verification of the mistake. Once a bid has been verified, it shall be considered submitted, as verified. The City shall permit a bidder to withdraw its bid without penalty or forfeiture of bid security if: (a) a nonjudgmental mistake is evident on the face of the bid, or (b) the bidder establishes by clear and convincing evidence that a nonjudgmental mistake was made.

If multiple bids are received from the same vendor, the City will either consider only one of the bids from that vendor, or reject all bids from the vendor, at the sole discretion of the City.

6. **ACCEPTANCE OF OFFER:** The submitted bid is considered an offer on the part of the bidder; such offer is deemed accepted upon issuance by the City of a Purchase Order or other contractual document.

7. **FIRM PRICES:** By submitting the bid, bidder signifies that the prices, terms and conditions quoted in their bid will be firm for acceptance for a period of not less than ninety (90) days from the bid opening date unless otherwise specified in the solicitation.



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Prices quoted must remain firm for the period of performance of any resulting purchase order or contract to be performed over a specified period of time as indicated in the solicitation.

8. **CONTRACT RENEWAL:** The City reserves the right to renew any contract resulting from this solicitation at the same prices, specifications, terms and conditions, upon mutual agreement between the City and the contractor.
9. **ESTIMATED QUANTITIES:** Whenever a bid requests prices to be firm for a period of performance, the quantities or usages shown are estimated only with no guarantee made by the City. The quantities are for the bidder's information only, and the City will be bound only for actual quantities ordered.
10. **DISCOUNTS:** Cash discounts will be considered in determining the award. Unless otherwise indicated in the IFB, discounts offering 10 days or more will be taken by the City's Accounts Payable Division, with payment made on the nearest pay period after receipt, inspection and acceptance of articles, and receipt of correct invoice(s).
11. **SAMPLES:** Samples of items, when required, must be submitted within the time specified at no expense to the City. If not destroyed by testing, samples may be returned at the bidder's expense unless otherwise indicated in the solicitation.
12. **AWARD:** Award will be made to the lowest most responsive and responsible bidder, which will be judged on the basis of price, conformance to specifications, quality, delivery time, references, payment terms, and in the best interest of the City of Bentonville, all factors being considered.

The City reserves the right to accept or reject any or all bids or part of bids, to waive irregularities and technicalities, and to request rebids on the material described in the solicitation.

The City reserves the right to award the contract on a split-order basis, lump-sum or individual-item basis, or any other combination that is in the best interest of the City unless otherwise specified.

Conditional bids are subject to rejection in whole or in part at the sole discretion of the City.

In the event of two or more identical low bids, Arkansas code Annotated Section 14-22-11 shall apply

No order or contract resulting from this solicitation may be assigned, transferred, or delegated to another party without written approval of the Procurement Manager of the City.

13. **BRAND NAMES:** If brand names, make, name of any manufacturer, trade name, or vendor catalog number are specified in these bid documents, it is for the purpose of establishing a grade or quality of material only. When the City does not wish to rule out other brands or makes, the phrase OR EQUAL is added. However, if a product other than that specified is bid, it is the bidder's responsibility to identify such product in their bid and prove to the City that the product is equal to or better than the product specified. Unless otherwise indicated, evidence in the form of samples may be requested if the proposed brand is other than that specified by the City. Such samples are to be furnished as specified in the solicitation or upon request of the City. Any samples requested by the City must be received by the City no later than four (4) days after formal request is made.
14. **VARIATIONS OF SPECIFICATIONS:** For purposes of evaluation, bidder must indicate any variances from any provision, specification, or condition stated in this solicitation, no matter how slight. If bidder does not indicate any variations, it will be assumed that the product or service fully complies with the provisions, specifications, or conditions as stated. If satisfactory bids are not received, the City reserves the right to consider alternate bids containing deviations from stated specifications.
15. **QUALITY:** Unless otherwise identified in the solicitation, all materials used in the manufacture or construction of supplies, materials or equipment covered by this solicitation shall be new. The items bid must be the latest make or model in current production, as offered to commercial trade, and of the highest quality material and workmanship. Used, shopworn, demonstrator, prototype, or discontinued models are not acceptable.
16. **ECO-FRIENDLY (GREEN) PRODUCTS:** The City of Bentonville supports the use of products that are ecologically friendly to the environment. Bidders are urged to include information with their bid submittal that describes the human health and environmental impact of products proposed. This eco-friendly approach takes into account, but is not limited to, waste production, energy and water use, greenhouse gas emissions, indoor air quality, recycled and reused content and packaging, and the presences of hazardous substances. Consideration may be given to these eco-friendly products when compared to mainstream products in cost and packaging.



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17. **MATERIAL SAFETY DATA SHEET (MSDS):** It is mandatory for a manufacturer, supplier, or distributor of hazardous material to supply an MSDS as required by 29CFR 1910.1200 with the first shipment. Any time the content of an MSDS is revised, the vendor is required to provide a new MSDS to the City.
18. **ACCEPTANCE OF MATERIAL:** The material delivered under this bid shall remain the property of the seller until a physical inspection and actual usage of this material and/or service is made and is accepted by the City. It must comply with the terms of this IFB, and fully comply with specifications, and be of the highest quality. In the event the material and/or services supplied to the City is found to be defective or does not conform to specifications, the City reserves the right to cancel the order upon written notice to the contractor and return product to contractor at the contractor's expense.
19. **CODES AND REGULATIONS:** All products supplied and work performed within the scope of this request shall be supplied by the successful bidder to all applicable current prevailing City, State and Federal codes and regulations.
20. **DELIVERY:** Bidders must indicate the number of calendar days required to make delivery after receipt of a purchase order. Delivery time may be considered in making an award. The City reserves the right to cancel any order, or any part of that order, without obligation if delivery is not made within the time(s) specified on the bid form.
- The City may grant additional time for delivery if the City is satisfied the delay is beyond the control of the vendor. Any request for time extension must be in writing and approved by the City's authorized representative.
- All deliveries shall be FOB Destination to the location listed on the purchase order or price agreement unless otherwise specified. Bidders may be requested to provide separate pricing for delivery of all items in this solicitation.
21. **THIRD PARTY FREIGHT SERVICE:** The City of Bentonville may, at its discretion, use a third party freight service to arrange for delivery of the goods ordered as a result of this solicitation. In this case, the freight terms will be FOB Destination/Third Party Prepaid.
22. **PRICE CHANGES ON CONTRACTS:** If this solicitation is for an estimated quantity of supplies, consideration in awarding bid for yearly contracts will be given:
- First to bidder offering firm prices for full contract period; and
 - Second to bidder offering firm prices subject to market price adjustment.
23. **COPYRIGHT OR PATENT RIGHTS:** By submitting the bid, bidder signifies that there has been no violation of copyrights or patent rights in manufacturing, producing or selling the goods shipped or ordered as a result of the bid, and bidder agrees to hold the City harmless from any and all liability, loss, or expense caused by any such violation.
24. **CONFLICT OF INTEREST:** The contractor, by signing the bid form in the solicitation or by acceptance of any purchase order resulting from this solicitation, certifies that to the best of their knowledge or belief, no elected or appointed official of the City is financially interested, directly or indirectly, in the purchase of the goods or services specified on this order or in the contract.
25. **TAXES:** The City of Bentonville is not tax exempt from any taxes imposed by the State and/or Federal Government. Applicable taxes should be included on all vendor invoices.
26. **MANUFACTURER'S CERTIFICATION:** The City reserves the right to request from bidders a separate manufacturer certification of all statements made in the bid. Failure to provide any requested certification may result in rejection of bid or termination of contract for which the bidder must bear full liability.
27. **TERMINATION:** Subject to the following provisions, any contract resulting from this solicitation may be terminated by either party upon thirty (30) days advance written notice to the other party; but if any work or service is in progress but not completed as of the date of termination, then said contract may be extended upon written approval of the City until said work or services are completed and accepted. Types of termination include:
1. Termination for Convenience
In the event that the contract is terminated or cancelled upon request and for the convenience of the City, without the required thirty (30) days advance written notice, then the City shall negotiate reasonable termination costs, if applicable.
 2. Termination for Cause
Termination by the City for cause, default or negligence on the part of the contractor shall be excluded from the foregoing provision; termination costs, if any, shall not apply. The thirty (30) days advance notice requirement is waived in the event of termination for cause.
 3. Termination Due to Unavailability of Funds



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When funds are not appropriated or otherwise made available to support continuation of performance, the contract shall be cancelled at the discretion of the City.

28. **W-9 REQUIREMENT:** The City of Bentonville requires a Form W-9 (Request for Taxpayer Identification Number and Certification), updated annually, from all contractors that do business with the City of Bentonville. The Form W-9 verifies the Tax Identification Number of the contractor so the City can correctly report to the IRS all funds paid to the contractor.
29. **DEFAULT OF CONTRACT:** In case of default by the contractor, the City may procure the items or services from other sources and hold the contractor responsible for any excess costs caused by such procurement. Failure of a bidder to furnish the equipment, supplies, material, and/or services as specified is cause for elimination of the bidder from the active bidder's list for the products or services concerned.
30. **BID BOND:** If required in this solicitation, bidders shall include a bid guarantee in the form of a bid bond, certified check, cashier's check in the amount of five percent (5%) of the base bid, payable without condition to the City of Bentonville. Personal or company checks are not acceptable. The bid bond shall be accompanied by a power of attorney showing the authority of the person executing the bond on behalf of the surety company. Failure to include a bid bond or bid guarantee request with your bid submittal may be cause for rejection of your bid. Bid guarantees (submitted by certified or cashier's checks) will be returned to unsuccessful bidders when the successful bidder is determined and the contract is executed. **When noted, a certified check or bid bond in the amount of 5% of the total bid shall accompany bid if bid exceeds \$35,000.00 [pursuant to Arkansas Code Annotated Section 22-9-203].**
31. **PERFORMANCE BOND:** At the discretion of the City, a performance bond may be required under the contract resulting from this solicitation. Such bond must be of a type and amount suitable for the nature of the commodity or services purchased and the dollar amount of the contract as indicated in this solicitation. The performance bond shall be for the duration of the contract, guaranteeing the faithful performance of the contract, and otherwise conditioned as required by law. Performance bond shall be accompanied by a power of attorney showing the authority of the person executing the bond on behalf of the surety company. Bond forms must be executed with a surety company licensed to do business in the State of Arkansas. The cost of the bond shall be included in the bidder's offer.
32. **MODIFICATIONS FOR CHANGES:** No agreement or understanding to modify this solicitation and resultant purchase orders or contract shall be binding upon the City unless made in writing by the Purchasing Manager of the City of Bentonville.
33. **ORDER OF PRECEDENCE:** In the event of an inconsistency between provisions of the solicitation, the inconsistency will be resolved in the following order: (a) the schedule; (b) Instructions to Bidders and General Conditions; (c) special provisions; (d) other provisions of the contract, whether incorporated by reference or otherwise; and, (e) the specifications.
34. **WARRANTY:** Supplies or services furnished as a result of this solicitation shall be covered by the most favorable commercial warranties, expressed or implied, that the bidder and/or manufacturer gives to any customer. The rights and remedies provided herein are in addition to and do not limit any rights afforded to the City by any other clause of this bid. The City reserves the right to request from bidders a separate manufacturer certification of all statements made in the bid.
35. **PAYMENT:** Payment for materials or services received under this contract will be made upon completion of delivery for each purchase order and submission of invoice to the Accounts Payable Office, 117 West Central, Bentonville, AR 72712. Normal pay periods for the City are every other Friday.
38. **GOVERNING LAW:** Any agreement resulting from this solicitation shall be interpreted under and governed by the laws of the State of Arkansas.
39. **ESCALATION/DE-ESCALATION CLAUSE:** In the event prevailing market conditions warrant an adjustment in contract pricing, the following escalation/de-escalation clause shall be the only clause acceptable to the City:
1. Contractor shall give written notice to the Purchasing Manager of any proposed changes from contract prices not less than fifteen (15) calendar days prior to the effective date of price changes.
 2. Such notice must be accompanied by a copy of the supplier's notification to the contractor of a justifiable price change.
 3. No price escalation will be authorized in excess of the amount of the increase indicated on the supplier's notice.
 4. The approved price change shall be honored for all orders received by the contractor after the effective date of such price change.
 5. Approved price changes are not applicable to orders already issued and in process at time of price change.
 6. The City reserves the right to audit and/or examine any pertinent books, documents, papers, records, or invoice relating directly to the price increase after reasonable notice and during normal business hours.



CITY OF BENTONVILLE, ARKANSAS
PURCHASING OFFICE
CITY HALL
117 W. CENTRAL AVE
BENTONVILLE, ARKANSAS 72712
IFB-20-03

7. The Purchasing Manager retains the right to determine whether or not such proposed price changes are in the best interests of the City.
 8. If in the opinion of the Procurement Manager any proposed increase is found unacceptable, the Purchasing Manager reserves the right to cancel the contract upon fifteen (15) calendar days' written notice.
 9. Contractors must tie any price change clause to an industry-wide or otherwise nationally recognized index or some other form of verifiable document. Contractor will put the Procurement Manager on the mailing lists for such publications so the Purchasing Manager can monitor said changes. Such membership will be at no cost to the City.
 10. If parties to the contract cannot agree on renewal terms, it is understood that the contract will be cancelled and a new contract will be solicited.
40. **ADDITIONAL INFORMATION:** Additional information may be obtained from the Purchasing Office at (479) 271-3115.



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2020 Chevrolet Tahoe Police Pursuit Vehicle (PPV-9C1) 2WD 4DR, with Additional Equipment Installed

SPECIFICATIONS

Bidder must indicate, "AS SPECIFIED", by placing an "X" in the designated space provided. Bidders must also indicate or describe any item being offered to the City that does not meet specification but is being offered to the city as being "EQUIVALENT" or "EXCEEDS" the City's specifications. Bidder must also provide other information where indicated.

Specification Description	Bidder must use this column to indicate "AS SPECIFIED" by placing an "X" in this column. DO NOT use this column to present equivalent items.	Bidder must use this column to indicate/describe an "EQUIVALENT" item being offered to the City.	Bidder must use this column to indicate/describe an item that "EXCEEDS" the City's specification.
General:			
All four (4) units shall be of equal make, model, year, and specifications.	X		
The units shall meet or exceed all applicable Federal, State and Local transportation regulations, laws, ordinances and statutes.	X		
The units shall be 2020 production models.	X		
Wheels/Tires:			
Black steel wheels, 17 inch, with bolt-on center caps and P265/60R17 V rated police tires with a full size spare tire included.	X		
Engine:			
5.3 Liter V8 EcoTec Active Fuel Management Direct Injection	X		
Transmission :			
Heavy Duty Automatic 6 Speed Transmission with electronically controlled overdrive.	X		
Brakes:			
As listed in 9C1 package equipment	X		
Frame:			
As listed in 9C1 package equipment	X		
Front Bumper:			
As listed in 9C1 package equipment	X		



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Specification Description	Bidder must use this column to indicate "AS SPECIFIED" by placing an "X" in this column. DO NOT use this column to present equivalent items.	Bidder must use this column to indicate/describe an "EQUIVALENT" item being offered to the City.	Bidder must use this column to indicate/describe an item that "EXCEEDS" the City's specification.
Electrical:			
Wiring, grille lamps and siren speakers (6J3)	X		
Wiring, horn and siren circuit (6J4)	X		
Flasher system, headlamp and taillamp DRL compatible (6J7)	X		
Battery auxiliary 730CCA	X		
Minimum 170amp Alternator	X		
Power Supply 100 Amp auxiliary battery rear electrical center	X		
Power Supply 50 Amp power supply auxiliary battery	X		
Power Supply 120 Amp, (4) 30 Amp circuit primary battery	X		
Factory remote start with key fob. Two (2) key fobs shall be delivered to the City for each unit.	X		
Cab Interior:			
Audio System Chevrolet mylink radio with 8 inch diagonal screen (105)	X		
Seats, Front Cloth with rear vinyl Jet black (5T5)	X		
Vinyl Floor	X		
Adjustable Telescoping Tilt Steering Column	X		
Power Windows and Door Locks	X		
Seat delete third row	X		
Cab Exterior:			
Color – Summit White	X		
Spotlamp left hand (7X6)	X		
Paint scheme solid application	X		
Door handle body colored	X		
Luggage rack delete	X		
Exterior ornamentation delete	X		
Capless fuel fill	X		
Skidplate package	X		

Detail Notes (optional): _____



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ADDITIONAL EQUIPMENT SPECIFICATIONS

Numbers by descriptions of equipment are either Jotto Desk or Wheelen factory equipment numbers.

The Total Bid Price shall include installation of all equipment and all items standard in the furnishing and installation of this type of equipment.

Specification Description	Bidder must use this column to indicate "AS SPECIFIED" by placing an "X" in this column. DO NOT use this column to present equivalent items.	Bidder must use this column to indicate/describe an "EQUIVALENT" item being offered to the City.	Bidder must use this column to indicate/describe an item that "EXCEEDS" the City's specification.
GB2SP3BT WC 54" Legacy Lightbar tinted lenses (blue/white)	X		
CCRNT5 CENCOM Carbide with Speaker	X		
HG22PC62BW Side Runner (blue/white)	X		
425-6268 Jotto Desk Center Console with 425-6164	X		
425-3704 Cup Holder	X		
425-3816 Magnetic Mic Holder	X		
450-4103 CF 31 Computer Docking Station	X		
425-6411 Jotto Desk Arm Rest	X		
475-2010 Jotto Desk GR9 AR/870 Rifle Mount	X		
475-0866 Jotto Desk Partition	X		
475-0888 HSEP Barrier	X		
475-0961 Prisoner Transport Door Panel Kit	X		
475-0863 Cargo Barrier	X		
425-5542 Jotto Desk Console Side Mount Kit	X		
75832 Streamlight with Charger / piggy back with spare battery	X		
Wheelen IONB Grill Light X2 (blue)	X		
PRWS45 Wheelen Rear Pillar Lighting (blue)	X		
Wheelen Howler Speaker System w/mounts	X		
Panasonic Arbitrator Dash Cam System ARB-KIT-HD with the following ARB-M90 wireless mic ARB-SOFICVOP in car video ARB-WV-VC31-C backseat camera TGS-3DP G Force Sensor TKY-SHKG-SUP Antenna	X		
BSC0CDCCR Dome Lamp	X		



**CITY OF BENTONVILLE, ARKANSAS
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Bidder Detail Page

Bidders may use this page to convey additional details to the City, if desired or applicable. Bidders may also include supplemental information in their Bid Submission, such as informational sheets or detailed technical specification sheets.

[illegible]



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BIDDER'S ACKNOWLEDGEMENT OF REQUIRED DOCUMENTS

Bidders are required to verify that the following required documents have been included with their Bid submission. Incomplete Bid submissions may be rejected.

Description	Bidder's Initials
Invitation for Bid document, executed with <u>all fields</u> complete.	



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PRICING SHEET

Bid prices shall include all costs to the City, including but not limited to: all vehicles, equipment, installation, taxes and delivery fees to the City of Bentonville, Arkansas.

The City of Bentonville sales tax rate is 9.5%. It shall be the Bidder's responsibility to include tax in their Total Bid Price.

Delivery will be made to the City of Bentonville Street Department, located at 3200 Municipal Drive Bentonville, Arkansas.

The Bid Award will be based on the lowest and most responsible Total Bid Price. The City reserves the right to reject any or all bids, waive informalities or irregularities with respect thereto, and to award in the best interest of the City of Bentonville.

Item	Make/Model	Total Bid Price
2020 Chevrolet Tahoe Police Pursuit Vehicle (PPV-9C1) 2WD 4DR, with additional equipment installed, as specified.	<u>2020 CHEVROLET</u> <u>TAHOE PURSUIT</u> <u>PPV-9C1</u>	<u>\$207093.64</u> <u>Four(4) units</u>



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

AGENDA FORM

CITY COUNCIL MEETING OF:

February 11, 2020

Submitted by:

Charles Chadwick

Department

Airport Manager

Phone

271-3168

ACTION REQUIRED:

Resolution authorizing the Mayor and City Clerk to consent to the assignment of a land lease agreement for an existing hangar footprint located at the Bentonville Municipal Airport.

COST TO CITY:

Cost of this Request: #NAME?

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 RELATING TO THE ASSIGNMENT OF LEASE
BETWEEN CHARLES R. SCOTT AND BUFFALO INVESTMENT GROUP, LLC**

MEMORANDUM TO: Bentonville City Council

MEMORANDUM FROM: Charles "Chuck" Chadwick, Airport Manager, Bentonville Municipal Airport

DATE: January 30, 2020

This is a resolution necessary to provide consent for the assignment of a Land Lease on the east side of the Bentonville Municipal Airport. This is a request for a Resolution to assign an existing lease. The history of the lease agreement is set forth in the Assignment of Ground Lease Agreement document provided in the agenda package. Charles R. Scott and Buffalo Investment Group, LLC, are agreeable and participates fully to the Assignment.

City Staff approves of this process and wishes to move forward with the Assignment. I am familiar with the purpose and effect of the Assignment document as it relates to the City of Bentonville and I believe it is appropriate in this situation. By the time this matter is presented to the City Council for passage, it is anticipated that the Airport Advisory Board will have approved the document at its meeting on February 6, 2020. If that situation changes, I will so report to this Council before the Council meeting by additional memorandum.

I therefore ask for approval of the Assignment of Lease document and associated Resolution.

Assignment of Ground Lease Agreement

This assignment of a certain Lease Agreement (the "Assignment") is made this ____ day of _____, 2020 between Charles R. Scott (the "Assignor") and Buffalo Investment Group, LLC.(the "Assignee").

The original lease is dated March 26, 2001, between the Bentonville Airport Commission as Lessor and Daniel E. Shewmaker as Lessee. Said lease document is attached hereto and made a part hereof by reference, as if set out word for word.

The original lease was thereafter assigned by Daniel E. Shewmaker to Charles R. Scott, by assignment agreement dated May 17, 2005, and signed by the parties and Mayor Terry Coberly on June 9, 2005, on behalf of the City of Bentonville as Successor in Interest as Lessor. A copy of the Assignment of Hangar Lease Agreement is attached hereto and made a part hereof by reference, as if set out word for word.

The Bentonville Airport Advisory Board unanimously approved said Assignment of Hangar Lease Agreement on or about June 21, 2005.

Effective the ____ day of _____, 2020, the Assignor, Charles R. Scott, hereby assigns to the Assignee, the subject Bentonville Municipal Airport Lease Agreement attached hereto, The Assignee fully accepts all terms and conditions of the Agreement and this Assignment. The Assignee agrees to honor and comply with the terms and conditions for the duration of the Agreement, and further agrees to honor and comply with all Bentonville Municipal Airport Rules and Regulations and FAA Advisory Circulars and mandates, as all may exist, be adopted and/or amended from time to time.

Assignor:

By: _____ Date: _____
Charles R. Scott

Assignee:

By: _____ Date: _____
Austin Albers, Member & Manager
Buffalo Investment Group, LLC

This assignment is with the recommendation of the Airport Advisory Board and the consent of the City Council of Bentonville, AR, in accordance with the "Assignment" paragraph of the Lease Agreement, attached hereto.

By: _____ Date: _____
Stephanie Orman
Mayor, City of Bentonville

Attest: _____ Date: _____
Linda Spence
City Clerk

-1-

Acknowledgement

State of Arkansas)
) SS.
County of _____)

On this day before me, a Notary Public, duly commissioned, qualified and acting within and for the County and State aforesaid, personally appeared the within named Charles R. Scott, to me well known, who acknowledged himself to be the Lessee in the above and forgoing Lease Agreement, and Assignor in the above and foregoing Assignment, and that he, in such capacity, being so authorized, executed the forgoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this _____ day of _____ 2020

Notary Public

My Commission Expires:

Acknowledgement

State of Arkansas)
) SS.
County of _____)

On this day before me, a Notary Public, duly commissioned, qualified and acting within and for the County and State aforesaid, personally appeared the within named Austin Albers, to me well known, who acknowledged himself to be the Member and Manager of Buffalo Investment Group, LLC, an Arkansas limited liability company and the Assignee in the above and forgoing Agreement, and that he, in such capacity, being authorized so to do, executed the forgoing instrument for the purposes therein contained, by signing his name of said limited liability company as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this _____ day of _____ 2020

Notary Public

My Commission Expires:

**BENTONVILLE MUNICIPAL AIRPORT
LEASE AGREEMENT**

THIS LEASE AGREEMENT entered into this 26 day of March, 2001, between Bentonville Airport Commission, hereinafter referred to as "Lessor," and Daniel E. Stewmaker, hereinafter referred to as "Lessee."

WHEREAS, the Lessor does intend to lease certain real property consisting of approximately 1100 square feet marked and identified as HANGAR 2 of the SOUTH T-HANGARS being described as follows:

A portion of the Southeast Quarter, of the Southwest Quarter, of Section 6, Township 19 North, Range 20 West, Benton County, Arkansas; more particularly described as follows:

Commencing at the Southeast Corner, of the Southeast Quarter, of the Southwest Quarter, of Section 6; thence North 80°02'49"West, a distance of 821.71 feet to the TRUE POINT of BEGINNING; thence North 89°36'08"West, a distance of 50.00 feet; thence North 00°23'52"East a distance of 200.00 feet, thence South 89°36'08"East, a distance of 50.00 feet; thence South 00°23'52"West a distance of 200.00 feet to the TRUE POINT of BEGINNING.

Containing 10,000 square feet or 0.230 acres, more or less.

The Basis of Bearings for this description is the centerline of the airport runway as shown on the Bentonville Airport Commission 1999 Improvement Plans, Sheet No. 4. Said bearing is taken to be North 00°23'52"East.

NOW, THEREFORE, the Parties hereto agree as follows:

LEASEHOLD. The Lessor does hereby grant, demise and lease unto Lessee certain premises situated in Benton County, Arkansas, within the boundaries of the Bentonville Airport.

TERM. This lease's term is for thirty-five (35) years beginning on the 1 day of April, 2001, and ending at Midnight, March 31, 2036, unless sooner terminated as herein provided.

TERMS AND CONDITIONS. Lessee agrees to comply with and abide by all terms and conditions set forth in this original Agreement of Lease. Lessee shall pay all ad-valorem taxes and assessments, if any, upon the leased premises which are assessed during the lease term.

USE OF THE PREMISES. Lessee agrees that the leased premises shall be used and occupied only as an aircraft hangar and for related purposes.

AIRCRAFT. The Lessee shall hangar the following aircraft in the hangar.

Make: Beech
Model: A-36
Year: 2000
Tail Number: N52296

Make: _____
Model: _____
Year: _____
Tail Number: _____

In the event the above-described aircraft(s) is no longer stored in the hangar, Lessee shall notify the Bentonville Airport Manager, in writing, of the use of the hangar, and the description of

any subsequent aircraft stored in the hangar. In the event that Lessee uses the property for purposes other than aviation related uses, this lease shall terminate and Lessee shall return the premises to Lessor.

LEASE PAYMENT. Lessee shall pay to the City of Bentonville the annual rental of \$0.05 per square foot of total leased ground space. Leased ground space totals 1,112 square feet. Said rental is to be paid in advance in yearly installments on the 1 day of April, 2001, and a like payment the 1st day of each April (Year) during the lease term.

UTILITIES. Lessee shall be responsible for any electrical, gas or water service to the leasehold. The meter numbers and service provider are as follows:

Electrical: _____ Gas: _____
Water: _____

Lessor shall not be required to furnish to Lessee any facilities or services of any kind, such as, but not limited to, water, heat, gas or sanitary sewer, except electrical. Any such facilities or services required by Lessee for their use and purposes shall be their sole and exclusive responsibility and agree to hold Lessor harmless from any responsibility or liability therefore.

REPAIRS, MAINTENANCE AND APPEARANCE.

- (a) Lessee shall at all times during the term of this Lease Agreement, at Lessee's expense, keep and maintain in good repair and safe condition the leased premises and the equipment and appurtenances, both inside and outside, structural and non-structural, extraordinary and ordinary, whether or not necessitated by wear, tear, obsolescence or defects, latent or otherwise. When used herein, the term "repairs" shall include all necessary replacements, renewals, alterations, additions and betterment's. Lessee acknowledges that Lessee shall be responsible for the repairs and maintenance necessary to maintain the structural integrity of the hangar. Lessor will at all times keep the leasehold free and clean of all trash, refuse and any unsightly conditions or fire hazards.
- (b) The necessity for and adequacy of repairs to the leased premises, pursuant to subparagraph (a) hereof, shall be measured by the standard which is appropriate for improvements of similar construction and also shall meet the requirements and standards set out and promulgated by the City of Bentonville through its Airport Commission or other governmental agency or entity pursuant to the primary lease referred to above.
- (c) Lessee agrees to reimburse Lessor for all sums and expenses incurred in the repairs or maintenance required or caused to be made pursuant to the regulations and rules of the governing authority mentioned in subparagraph (b) above as a result of failure by Lessee to maintain or repair the demised premises as required.

ALTERATIONS AND IMPROVEMENTS. Lessee shall be entitled to make all alterations, additions and improvements Lessee deems necessary and desirable to the interior of the leased premises without the prior consent of the Lessor. Lessee shall not be entitled to make any major or material alterations, additions or changes to the exterior of the leased premises without Lessor's prior written consent. Lessee acknowledges and agrees that all such alterations, additions and improvements, including paneling, partitions, railings, floors, ceilings and the like, except removable fixtures, shall become the property of the City of Bentonville, Arkansas, upon the termination of the lease agreement.

INSURANCE. Lessee shall obtain and maintain property insurance coverage for the repair or replacement of the leasehold and any adjacent improvements, with an insurance company acceptable to the Bentonville Airport Commission, naming the Bentonville Airport Commission as an additional insured on the policy, and provide proof of such insurance during the term of this lease.

Lessee acknowledges that it is the Lessee responsibility to maintain insurance on Lessee's personal property.

ASSIGNMENT. Lessee shall not be entitled to assign Lessee's interest in this Lease Agreement without first obtaining the written permission of the Bentonville Airport Commission.

WAIVER. The waiving of any one or more breaches of the terms or provisions contained herein by the Lessor or Bentonville Airport Commission shall not be deemed a waiver of any other breaches of the terms of provisions.

TIME OF THE ESSENCE. It is understood that time is of the essence of this Lease Agreement.

DEFAULT. In the event the Lessee defaults under the terms of the agreement this lease may be terminated by the commission at a regular meeting. The commission must give written notice by certified mail, return receipt requested. Upon such notice, Lessee agrees to vacate the premises immediately. Should it become necessary for Lessor to resort to judicial process to enforce the terms of this agreement, or reclaim possession of the premises, Lessee agrees to pay a reasonable attorney's fee.

TERMINATION OF USE. In the event that the Bentonville Airport facility and property are no longer used for aviation purposes, the Bentonville Airport Commission or its assign shall purchase the remaining leasehold interest from Lessee at fair market value.

TAXES. Lessee shall pay all ad valorem taxes and assessments upon the leased premises and upon all personal property located upon the leased premises which are assessed during the lease term.

MORTGAGING OF LEASEHOLD. Lessee is hereby given the absolute right without the Lessor's consent to mortgage his interest in the leased premises, provided that no such mortgage shall extend to or affect the fee, the reversionary interest, or the estate of Lessor in and to the land and building (hangar facility complex) erected thereon.

IDEMNITY. Lessor shall not be liable for any personal injury to the Lessee or to his officers, agents, employees, invitees, licensees or to any other occupant of any part of the leased premises, or for any damage to any property of Lessee or of any other occupant of any part of the leased premises, irrespective of how such injury or damage may be caused, whether from action of the elements or occupants of adjacent properties. In the event an action, claim or suit is commenced against Lessor as a result of any such personal injury or damage occurring on the leased premises, Lessee agrees to hold Lessor harmless from any liability or responsibility therefor, including attorney's fees or costs of the action.

GRAMMATICAL USAGE. Whenever used herein: The singular number shall include the plural, the plural the singular, and any gender all genders in any place in which the context so requires.

APPROVED:
BENTONVILLE AIRPORT COMMISSION
By: _____
Chair _____
Attest _____
Secretary _____

ACKNOWLEDGMENT

State of Arkansas)

) ss.

County of Benton)

BE IT REMEMBERED that on this 10th day of May, 2001 appeared before me, a Notary Public, Seabra, the Lessee in the above and foregoing Lease Agreement, and acknowledged that they signed the same for the purpose and consideration therein stated. WITNESS my hand and official seal this 10th day of May, 2001.

Notary Public

My Commission Expires:

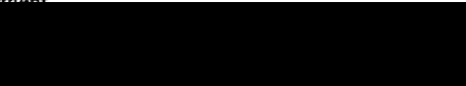
C. THOMAS HOLLIS
NOTARY PUBLIC, STATE OF ARKANSAS
MY COMMISSION EXPIRES 04-13-2008
BENTON COUNTY

Assignment of Hangar Lease Agreement

The assignment of a certain Lease Agreement (the "Assignment") is made this 17th day of May, 2005 between Daniel E. Shewmaker (the "Assignor") and Charles R. Scott (the "Assignee")

Effective 9 June, 2005, the Assignor assigns his Lease Agreement with the Bentonville Airport Commission dated March 26, 2001 (the "Assignment") to the Assignee.

The Assignee fully agrees to and accepts all terms and conditions of the Agreement and agrees to honor and adhere to these terms and conditions for the duration of the agreement

By:  Date: 9 June 2005
Daniel E. Shewmaker

By:  Date: 6-9-05
Charles R. Scott

This Assignment is with the permission of the Bentonville Airport Advisory Board and is in accordance with the "Assignment" paragraph of the Agreement, attached.

By:  Date: 6/9/05
Terry Coberly
Mayor, City of Bentonville

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE MAYOR AND
CITY CLERK TO CONSENT TO THE ASSIGNMENT OF
A LAND LEASE AGREEMENT FOR AN EXISTING
HANGAR FOOT PRINT LOCATED AT THE
BENTONVILLE MUNICIPAL AIRPORT.**

Whereas: the City of Bentonville is the Successor in Interest, as LESSOR, in a certain Bentonville Municipal Airport Lease Agreement, dated May 17, 2005, and;

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

Whereas: a request has been made by Buffalo Investment Group, LLC to be assigned the lease currently held by Charles R. Scott;

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

**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 consent to the Assignment of Ground Lease Agreement with Buffalo Investment Group, LLC for the property foot print of Hangar 2 of the "South T-Hangers" located at the Bentonville Municipal Airport. The provisions of the existing land lease 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 _____, 2020

APPROVED:

MAYOR

ATTEST:

CITY CLERK