BENTONVILLE CITY COUNCIL AGENDA

Note – The public, members of the City Council, and City staff, may have the option to attend this meeting by remote means. For public health reasons, those who attend in person should keep in mind hygiene, the use facial coverings, and social distancing.

Public comments can be submitted by email submitted to cc.comments@bentonvillear.com by at least 4:00 p.m. on the day of the meeting. Those comments will be communicated to the members of the Council and the Mayor. Accommodation has also been made to allow Bentonville citizens to make "live" public comments orally in the event they cannot attend the meeting in person. To do so, please send an email indicating a desire to make public comments remotely to cc.comments@bentonvillear.com by at least 1:00 p.m. on the day of the meeting and a reply email will be sent with instructions about how your comments can be made. Making comments will require you to register with your name, address, phone number and email address. The pre-existing limitations (3 minutes) and procedures with respect to oral public comments will still apply.

City Council Meeting **Tuesday, August 24, 2021 6:00 p.m.**
City Hall **305 S.W. "A" Street**
Planning Commission Meeting Room

***If you would like to attend virtually, please register at the following link by 4:00 p.m. on August 24, 2021:**
https://us02web.zoom.us/webinar/register/WN_iPytootSTQi9lX_RHxY3Ag

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: August 10, 2021

AGENDA

1. Planning:

1a. **Ordinance accepting a lot split of Lots 87 & 88 of Northaven Hills Subdivision Phase 1 to the City of Bentonville, Arkansas (Project Number: LS21-0036).**

(Pages 7-9)

The Planning Commission voted 6-0, recommending approval.

A lot split of Lot 86 of Northaven Hills Subdivision creating new Lot 87 (+/- 0.21 acres) and Lot 88 (+/- 0.20 acres) of Northaven Hills Subdivision. The plat dedicates right-of-way along Valley View Circle to meet the requirements of the Master Street Plan.

1b. **Ordinance changing real estate in the City of Bentonville, Arkansas, from its present zoning classification of R-1, Low Density Single Family Residential to DN-2, Downtown Medium Density Residential. (Project Number: RZ21-0045).**

(Pages 10-15)

The Planning Commission voted 7-0, recommending approval.

The Future Land Use Plan currently depicts this property as Medium-Density Residential. Medium-Density Residential areas typically include townhouses or duplex residential properties. These areas are found both near downtown and in some recent growth areas.

This rezoning request is consistent with the Bentonville Community Plan and the Future Land Use Plan. Additionally, this request is consistent with surrounding land-use patterns as there are existing DN-2 zoning districts in the surrounding area.

1c. **Planned Residential Development Amendment: Oz Village, Roth Family Inc., 806 NW A Street, PRD19-0006.**

(Pages 16-30)

The Planning Commission voted 7-0, recommending approval.

A planned residential development to develop 11 individual single-family homes on 1.36 acres with a maximum density of eight units/acre.

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.

1d. **Ordinance accepting a Final Plat of Aurora Subdivision Phase 1 to the City of Bentonville, Arkansas (Project Number: FP21-0001).**

(Pages 31-36)

The planning Commission voted 7-0, recommending approval.

The final plat consists of two hundred and twenty-six lots. Two Hundred and twenty-four of them are single-family residential lots, one lot will contain a clubhouse and another lot will be utilized for a storm water detention pond.

The final plat dedicates right-of-way along South Morning Star Road and SW Scroggins Road and the interior, public streets within the subdivision. The plat also dedicates utility drainage easements in various locations to serve the subdivision.

2. Recognition by City Council of Michelle and Bradley Shehan who reside at 700 SW 2nd Street. The property's landscaping was nominated by a Bentonville resident and is the August Residential Landscaping of the Month award winner. **(Pages 37-38)**

3. Public hearing and ordinance vacating a Drainage Easement requested for 103 NW Bodark Cove, White Oak Subdivision (VAC21-0015). **(Pages 39-42)**

4. Public hearing and ordinance vacating a Utility Easement requested for 1220 NE Buckingham Blvd of Kingsbury Subdivision PH1 (VAC21-0016). **(Pages 43-45)**

5. Public hearing and ordinance vacating a Utility and Access Easement requested for 1605/1703 SW 14th Street (VAC21-0017). **(Pages 46-49)**

6. Public hearing and ordinance vacating a Utility Easement requested for 1507 SW 14th Street (VAC21-0018). **(Pages 50-53)**

7. Resolution setting a public hearing for September 14, 2021 for a Utility/Drainage Easement Vacation requested for 4007 NE Cadbury Ave. of Kensington Subdivision (VAC21-0020). **(Pages 54-56)**

8. Resolution authorizing the Mayor to enter into an agreement with ARDOT, funding $242,258.69 from the Bond fund account allocated to the addition of stamped concrete to improve the aesthetics as per Change Order #21 of BB0903 project. **(Pages 57-62)**

9. Reappointment of Dr. Richard Ham to the Airport Advisory Board. His term expires on September 30, 2021. New term would expire 9-30-2024. **(Pages 63-64)**

10. Reappointment of Lisa Kelley to the Airport Advisory Board. Her term expires on September 30, 2021. New term would expire 9-30-2024.` **(Pages 65-66)**

11. Ordinance for creating the wholly private property of the 8th Street Market as an Entertainment District to be known as the 8th Street Outdoor Dining District. **(Pages 67-72)**

12. Resolution authorizing the Mayor and City Clerk enter into an agreement with Crossland Construction Company, in an amount not to exceed $75,000.00, to provide preconstruction services for the 8th Street Gateway Park Project. This Firm was selected in accordance with §14-58-1001, for Projects exceeding $2 million dollars. **(Pages 73-136)**

City Council Agenda Items

For City Council Meeting of August 24, 2021

From the August 17, 2021 Planning Commission Meeting

1. **Ordinance accepting a lot split of Lots 87 & 88 of Northaven Hills Subdivision Phase 1 to the City of Bentonville, Arkansas (Project Number: LS21-0036).**

   The Planning Commission voted 6-0, recommending approval.

   A lot split of Lot 86 of Northaven Hills Subdivision creating new Lot 87 (+/- 0.21 acres) and Lot 88 (+/- 0.20 acres) of Northaven Hills Subdivision. The plat dedicates right-of-way along Valley View Circle to meet the requirements of the Master Street Plan.

2. **Ordinance changing real estate in the City of Bentonville, Arkansas, from its present zoning classification of R-1, Low Density Single Family Residential to DN-2, Downtown Medium Density Residential. (Project Number: RZ21-0045).**

   The Planning Commission voted 7-0, recommending approval.

   The Future Land Use Plan currently depicts this property as Medium-Density Residential. Medium-Density Residential areas typically include townhouses or duplex residential properties. These areas are found both near downtown and in some recent growth areas.

   This rezoning request is consistent with the Bentonville Community Plan and the Future Land Use Plan. Additionally, this request is consistent with surrounding land-use patterns as there are existing DN-2 zoning districts in the surrounding area.

3. **Planned Residential Development Amendment: Oz Village, Roth Family Inc., 806 NW A Street, PRD19-0006.**

   The Planning Commission voted 7-0, recommending approval.

   A planned residential development to develop 11 individual single-family homes on 1.36 acres with a maximum density of eight units/acre.

   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.

4. **Ordinance accepting a Final Plat of Aurora Subdivision Phase 1 to the City of Bentonville, Arkansas (Project Number: FP21-0001).**

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Consent Agenda Items

For the Planning Commission meeting of August 17, 2021

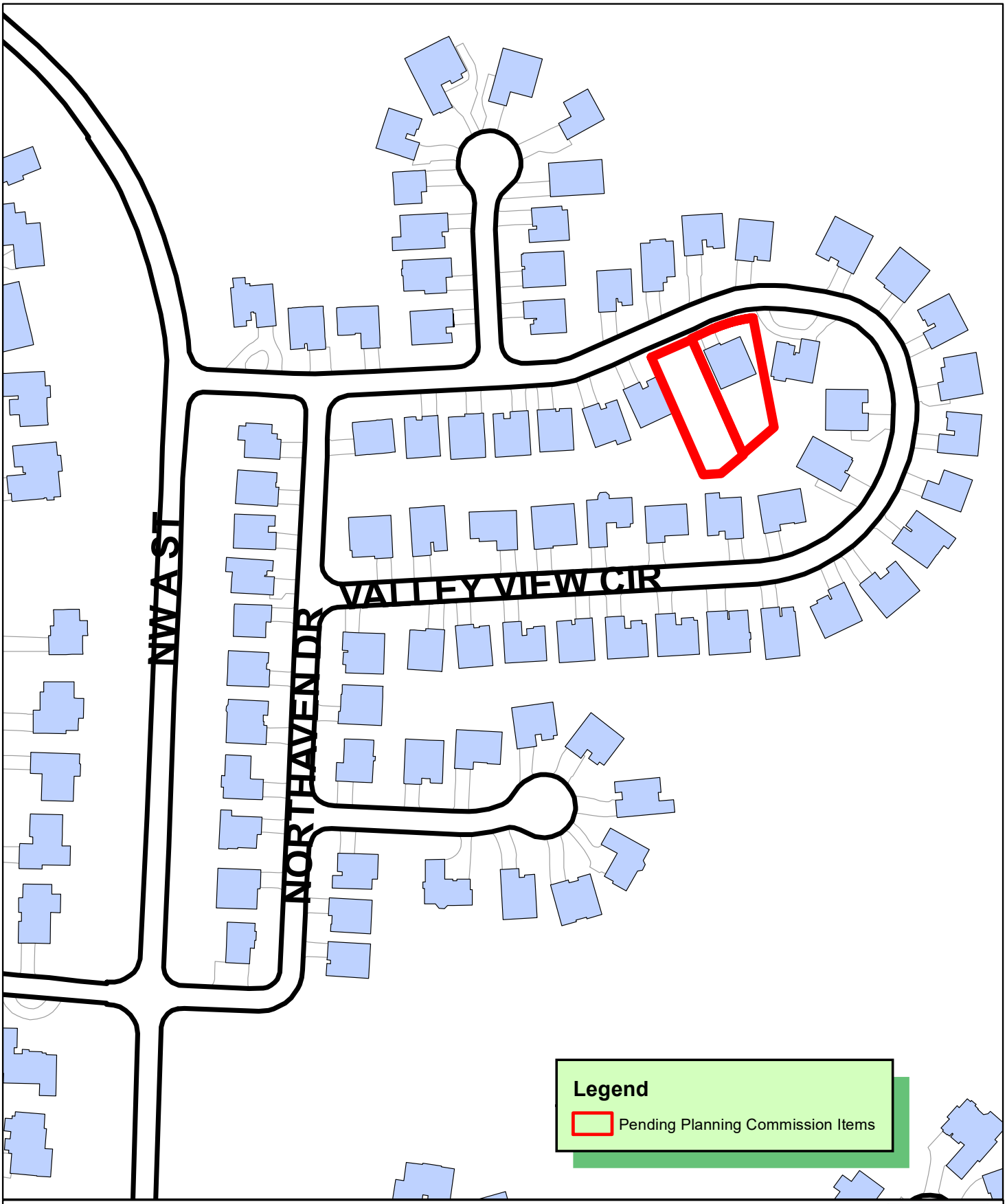
Reviewer: Elizabeth Johnson, Senior Planner, AICP

- At the Technical Review meeting held on August 10, 2021 the Planning Commission requested these items be placed on the consent agenda. The descriptions below shall serve as the staff report for each of the consent agenda items.

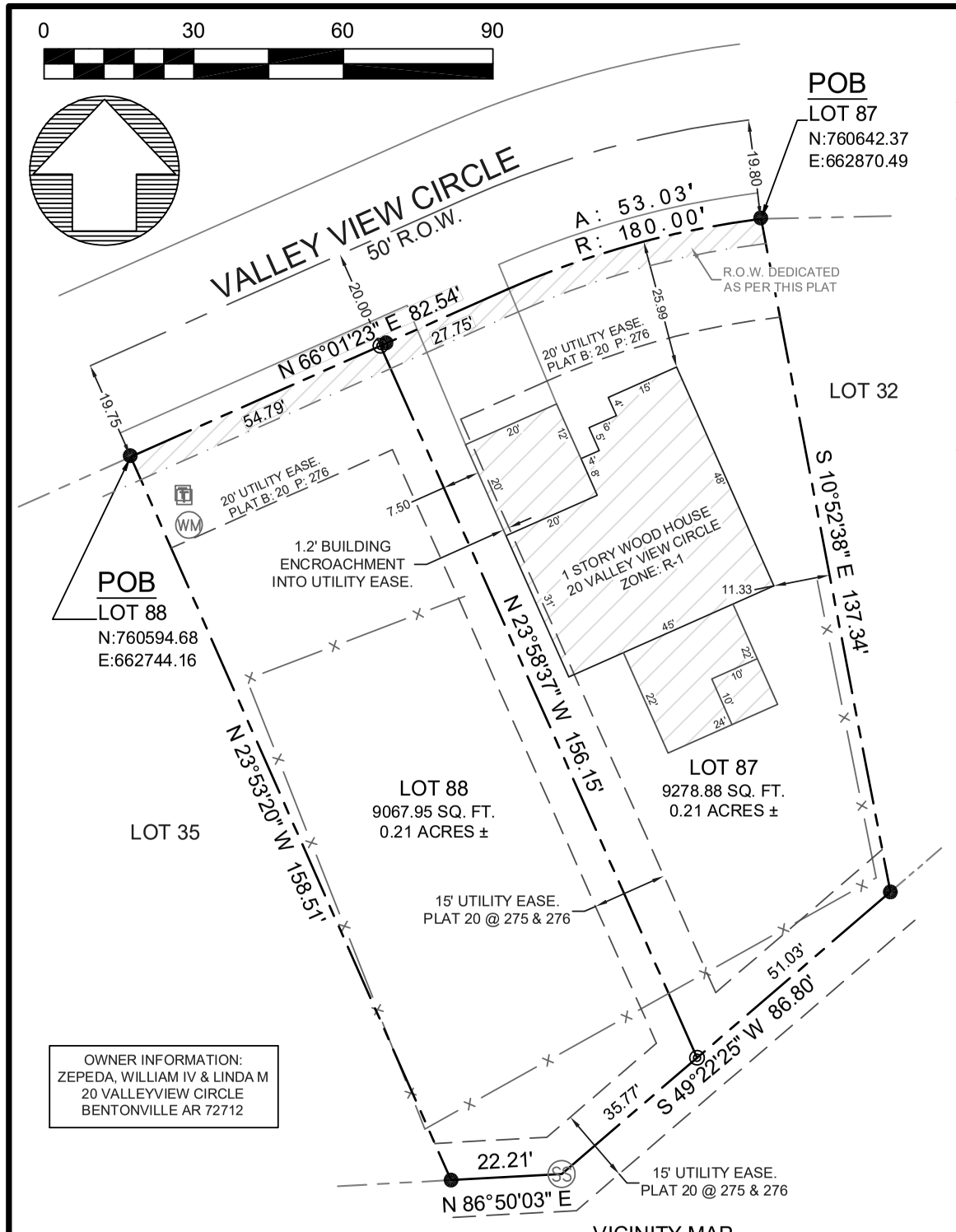
Lot Split: Lots 87 & 88 of Northaven Hills Subdivision, Phase 1, Zepeda, William IV & Linda M, 20 Valley View Circle, R-1, Low Density Single Family Residential, *LS21-0036*

A lot split of Lot 86 of Northaven Hills Subdivision creating new Lot 87 (+/- 0.21 acres) and Lot 88 (+/- 0.20 acres) of Northaven Hills Subdivision. The plat dedicates right-of-way along Valley View Circle 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)



LS21-0036
LOT SPLIT
NORTHAVEN HILLS SUB PH-1
LOT 86 CREATING LOTS 87-88



PARENT LOT 86 - P.N. #01-07283-000

LOT 86 OF NORTHAVEN HILLS SUBDIVISION PHASE 1 IN THE CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS.

DESCRIPTION FOR NEW LOT 87

A PART OF LOT 86 OF NORTHAVEN HILLS SUBDIVISION PHASE 1 IN THE CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NE CORNER OF SAID LOT 86; THENCE S 10°52'38" E A DISTANCE OF 137.34 FEET; THENCE S 49°22'25" W A DISTANCE OF 51.03 FEET; THENCE N 23°58'37" W A DISTANCE OF 156.15 FEET; THENCE N 66°01'23" E A DISTANCE OF 27.75 FEET; THENCE ALONG A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 180.00 FEET, A CENTRAL ANGLE OF 16°52'49", AN ARC LENGTH OF 53.03 FEET, AND A CHORD BEARING AND DISTANCE OF N 74°28'26" E, 52.84 FEET TO THE POINT OF BEGINNING, WITH AN AREA OF 9278.88 SQUARE FEET, OR 0.213 ACRES, MORE OR LESS, AND SUBJECT TO ALL RIGHTS-OF-WAY, EASEMENTS AND RESTRICTIVE COVENANTS OF RECORD OR FACT.

DESCRIPTION FOR NEW LOT 88

A PART OF LOT 86 OF NORTHAVEN HILLS SUBDIVISION PHASE 1 IN THE CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NW CORNER OF SAID LOT 86; THENCE N 66°01'23" E A DISTANCE OF 54.79 FEET; THENCE S 23°58'37" E A DISTANCE OF 156.15 FEET; THENCE S 49°22'25" W A DISTANCE OF 35.77 FEET; THENCE S 86°50'03" W A DISTANCE OF 22.21 FEET; THENCE N 23°53'20" W A DISTANCE OF 158.51 FEET TO THE POINT OF BEGINNING,WITH AN AREA OF 9067.95 SQUARE FEET, OR 0.208 ACRES, MORE OR LESS, AND SUBJECT TO ALL RIGHTS-OF-WAY, EASEMENTS AND RESTRICTIVE COVENANTS OF RECORD OR FACT.

NOTES:

1. EXCEPT AS SPECIFICALLY STATED OR SHOWN ON THIS PLAT, THIS SURVEY DOES NOT PURPORT TO REFLECT ANY OF THE FOLLOWING WHICH MAY BE APPLICABLE TO THE SUBJECT REAL ESTATE: EASEMENTS, OTHER THAN POSSIBLE EASEMENTS WHICH WERE VISIBLE AT THE TIME OF MAKING OF THIS SURVEY; BUILDING SETBACK LINES; RESTRICTIVE COVENANTS; SUBDIVISION RESTRICTIONS; ZONING OR OTHER LAND-USE REGULATIONS, AND ANY OTHER FACTS WHICH AN ACCURATE AND CURRENT TITLE COMMITMENT MAY DISCLOSE.
2. BASIS OF BEARINGS: ARKANSAS STATE PLANE COORDINATE SYSTEM, NORTH ZONE.
3. DECLARATION IS MADE TO ORIGINAL PURCHASER OF THE SURVEY. IT IS NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS.
4. THIS SURVEY IS VALID ONLY IF THE DRAWING INCLUDES THE SEAL AND SIGNATURE OF THE SURVEYOR.
5. SETBACKS SHALL BE PER THE CURRENT ZONING DISTRICT AS STATED IN THE MOST RECENT CITY OF BENTONVILLE ZONING CODE. FOR MORE INFO VISIT WWW.BENTONVILLEPLANNING.COM OR CALL THE PLANNING DEPARTMENT @ 479-271-3122.
6. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS OF RECORD, ENCUMBRANCES, RESTRICTIVE COVENANTS, OWNERSHIP, TITLE EVIDENCE, OR ANY OTHER FACTS WHICH AN ACCURATE AND CURRENT TITLE COMMITMENT MAY DISCLOSE.
7. SIDEWALKS SHALL BE THE RESPONSIBILITY OF THE BUILDER/OWNER AT TIME OF BUILDING PERMIT ISSUANCE.
8. THERE MAY NOT BE FENCES OR ANY OTHER STRUCTURES BUILT IN ANY DRAINAGE EASEMENTS.
9. OWNER/DEVELOPER SHALL COORDINATE WITH ALL LOCAL UTILITIES TO INSURE THAT EACH LOT HAS WATER, SEWER AND ELECTRIC SERVICE.
10. BEFORE ANY WORK IN THE RIGHT-OF-WAY COMMENCES, CONTRACTOR AND/OR OWNER IS TO OBTAIN RIGHT-OF-WAY PERMIT FROM THE CITY OF BENTONVILLE TRANSPORTATION DEPARTMENT.
11. ALL STRUCTURES MUST MAINTAIN MINIMUM OF 20' CLEARANCES FROM ALL ELECTRIC LINES.

CERTIFICATE OF SURVEY ACCURACY:

I, ROBERT J. CASTER HEREBY CERTIFY THAT THIS PLAT CORRECTLY REPRESENTS A BOUNDARY SURVEY MADE BY ME AND BOUNDARY MARKERS AND LOT CORNERS SHOWN HEREON ACTUALLY EXIST AND THEIR LOCATION, SIZE, TYPE AND MATERIAL ARE CORRECTLY SHOWN AND ALL MINIMUM REQUIREMENTS OF THE ARKANSAS MINIMUM STANDARDS FOR LAND SURVEYORS HAVE BEEN MET.

DATE OF EXECUTION _____

SIGNED: _____
REGISTERED LAND SURVEYOR
NO. 1370
STATE OF ARKANSAS

CERTIFICATE OF AUTHORIZATION
COA CERTIFICATE NUMBER: 3049

FLOOD CERTIFICATION:

I CERTIFY THAT I HAVE EXAMINED THE OFFICIAL FLOOD INSURANCE HAZARD RATE MAP PANEL NO. 05007C0090J (EFFECTIVE DATE 09/28/2007) AND FOUND IN THE DESCRIBED PROPERTY HEREON LIES IN ZONE "X", AN AREA HAVING NO SPECIAL FLOOD HAZARDS.

CERTIFICATE OF OWNERSHIP AND DEDICATION:

WE THE UNDERSIGNED, OWNERS OF THE REAL ESTATE SHOWN AND DESCRIBED HEREIN, DO HEREBY CERTIFY THAT WE HAVE LAID OFF, PLATTED, AND SUBDIVIDED AND DO HEREBY LAY OFF, PLAT, SUBDIVIDE SAID REAL ESTATE IN ACCORDANCE WITH THIS PLAT AND DO HEREBY DEDICATE TO THE USE OF THE PUBLIC THE STREETS, ALLEYS, DRIVES, EASEMENTS, ETC. AS SHOWN ON SAID PLAT.

DATE OF EXECUTION: _____

PRINT NAME: _____

SIGNATURE: _____

STATE OF ARKANSAS, COUNTY OF BENTON, SUBSCRIBED AND SWORN BEFORE ME THIS _____ DAY OF _____, 20__.

_____
NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

CERTIFICATE OF APPROVAL:

PURSUANT TO THE BENTONVILLE LAND DEVELOPMENT CODE AND ALL OTHER CONDITIONS AND APPROVAL HAVING BEEN COMPLETED, THIS DOCUMENT IS HEREBY ACCEPTED. THIS CERTIFICATE IS HEREBY EXECUTED UNDER THE AUTHORITY OF THE SAID RULES AND REGULATIONS.

DATE OF EXECUTION: _____

SIGNED _____
PLANNING COMMISSION CHAIRPERSON
DATE OF EXECUTION: _____

SIGNED _____
MAYOR, CITY OF BENTONVILLE

SIGNED _____
CITY CLERK, CITY OF BENTONVILLE

LS21-0036

CASTER & ASSOCIATES
LAND SURVEYING, INC.
2715 SE "I" Street, Suit 5
Bentonville, AR 72712
(479) 268-4464

REGISTERED
STATE OF ARKANSAS
NO.1370
SIGNATURE
ROBERT J. CASTER
PROFESSIONAL LAND SURVEYOR

SCALE: 1" = 30' | DATE: 05/21/2021

LOT SPLIT OF LOT 86
CREATING LOTS 87 & 88
NORTHAVEN HILLS SUB. PHASE 1

20 VALLEY VIEW CIRCLE
CITY OF BENTONVILLE
BENTON COUNTY, ARKANSAS

JOB #	DRAWN BY:	CHK'D BY:	PAGE
21-143	ASG	RJC	1 OF 1

ORDINANCE NO._____

AN ORDINANCE ACCEPTING A LOT SPLIT OF LOTS 87 & 88 OF NORTHAVEN HILLS SUBDIVISION, PHASE 1 TO THE CITY OF BENTONVILLE, ARKANSAS (PROJECT NUMBER: LS21-0036).

WHEREAS, pursuant to the provisions of the Land Development Code of the Bentonville Municipal Code, the lot split of Lots 87 & 88 of Northaven Hills Subdivision, Phase 1, Benton County, Arkansas, was submitted to the Bentonville Planning Commission on August 17, 2021; and,

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

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

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

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

Section 1: That the lot split of Lots 87 & 88 of Northaven Hills Subdivision, Phase 1 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 _____, 2021.

APPROVED:

_____
Stephanie Orman, Mayor

ATTEST:

_____
Kirby Romines, City Clerk

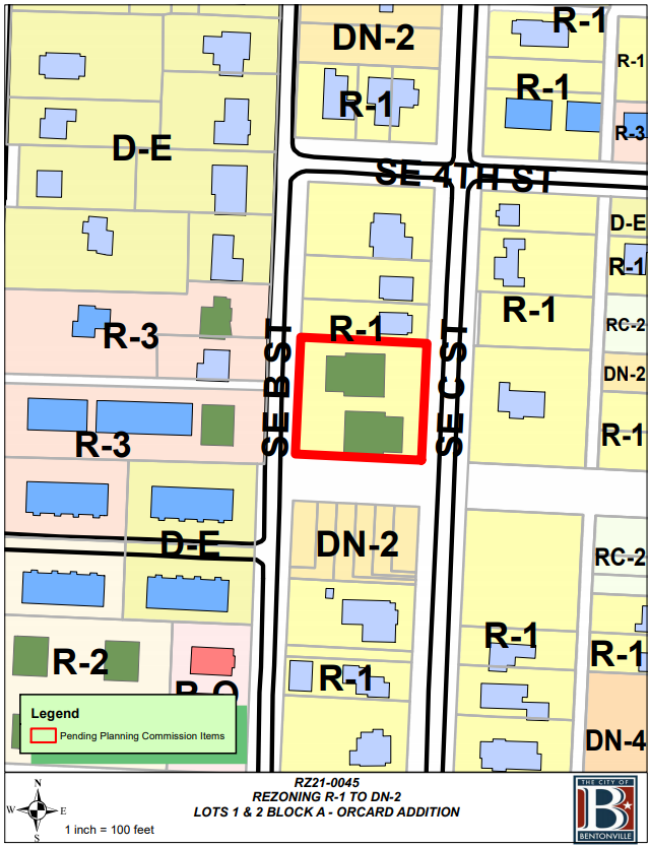
Carr Exempt Trust-Hannah Taylor

407 SE B Street and 410 SE C Street
PC Date: 8/17/2021
Reviewer: Elizabeth Johnson, Senior Planner, AICP

Project Number	RZ21-0045
Applicant / Current Owner	Carr Exempt Trust-Hannah Taylor
Site Area	+/- 0.56 acres
Current Zoning	R-1, Low Density Single Family Residential
Requested Zoning	DN-2, Downtown Medium-Density Residential
Future Land Use Map Designation	Medium Density Residential (MDR)

https://arcg.is/08HvK8

Location Map



Property Description
This property is located at 401 SE B Street and 410 SE C Street. The property is currently zoned R-1, Low Density Single Family Residential. Surrounding zoning districts are R-1, Low Density Single-Family Residential to the north and east, DN-2, Downtown Medium Density to the south and R-3, Medium-High Density Multifamily Residential to the west.

Relationship to the Bentonville Community Plan
The Future Land Use Plan currently depicts this property as Medium-Density Residential. Medium-Density Residential areas typically include townhouses or duplex residential properties. These areas are found both near downtown and in some recent growth areas. These areas may also include local amenities for residents, including neighborhood parks, places of worship, etc.

The property is located within Priority Area 2, Infill, as identified in Chapter 4 of the Land Use Plan. This area supports the development of vacant properties already served by infrastructure within the context of existing development. (pg. 44).

Public Comment
Staff has received public comments regarding this rezoning request.

Analysis
The intent of the DN-2 district is to allow for an increased single-family density through small lot widths where alleys and infrastructure support such development, and where small-lot single-family development provides an appropriate transition between large-lot residential areas and those of higher density.

This rezoning request is consistent with the Bentonville Community Plan and the Future Land Use Plan. Additionally, this request is consistent with surrounding land-use patterns as there are existing DN-2 zoning districts in the surrounding area.

Conclusion
This rezoning request is consistent with the Future Land Use Plan and is compatible with surrounding land uses. Staff recommends approval of the rezoning request.

410 SE C/ 407 SE B Street Rezone Narrative

Current Zoning Designation: R1- Single Family Residential
Proposed Zoning Designation: DN2- Downtown Medium Density Residential

Explanation: Newell Development proposes to rezone the property located at 410 SEC/ 407 SEB (parcel ID 10-03540-000) from R1 to DN2, in order to develop a future real estate project in compliance with DN2 development standards of the Bentonville Zoning Code. The current owner is Carr Exempt Trust/ Hannah Taylor (Mailing Address: 250 N. Water Tower Road, Bentonville, AR 72712) who endeavors to sell the property to NFD, LLC. Newell Development will serve as the property developer.

Reason to Rezone: The rezone from R1 to DN2 would allow for Newell Development to build townhomes on the .56-acre lot. Currently the property is zoned R1 and has two 2-unit residential dwellings.

Statement of how the property will relate to surrounding properties: The residential development proposed for this property will fit in form and scale outlined by the City of Bentonville DN2 building standards. This rezone would align with the future land use plan which is designated as medium density. Currently, surrounding properties have a variety of zoning designations from DN2 across the trail at 502 SE C to R3 at 421 SE A and DE at 502 SE B as a few examples.

Use: The parcel will be used for a future residential development that will complement and contribute to Priority Area 1 -Downtown Intensification- of the City Council adopted *Bentonville Community Plan* and offer additional housing options to accommodate Bentonville's current and anticipated population growth in the coming years.

Traffic: The additional units should not impact current traffic patterns on the existing infrastructure and could potentially encourage more pedestrian and cycling activity with its proximity to Downtown Bentonville as well as its location on the Downtown Trail.

Signage: None proposed at this time.

Appearance: Modern design standards, similar to other Newell Development projects in Downtown Bentonville, will be used to positively improve the character of the existing neighborhood and increase housing options on the southside of Downtown Bentonville. This development will be thoughtfully designed to offer similar esthetics, quality and community feel comparable to that of other Newell Development projects in Bentonville.

Water/ Sewer/ Electric: On-site.

Disclaimer: FOR INFORMATIONAL PURPOSES ONLY.
In cases of discrepancy between the information presented here and a city ordinance, the city ordinance will prevail.

DN-2, Downtown Medium Density Residential

The intent of the DN-2 district is to allow for an increased single-family density through small lot widths where alleys and infrastructure support such development, and were small-lot single-family development provides an appropriate transition between large-lot residential areas and those of higher density. In some instances, such as the end of blocks, townhouses may be appropriate in this district.

Building Types Allowed:

District	Single-family	Two-family	Townhouse		Multi-family		Mixed-use
			Block-end	Mid-block	Block-end	Mid-block	
DN-2	•	•	•				

Maximum Height Allowed:

District	Single-family	Two-family	Townhouse	Multi-family	Mixed-use
DN-2	36 ft.	36 ft.	36 ft.	--	--

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 lot
DN-2	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’		-	-
	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’	-	-	-
	Townhouse structure	7,500	2,500	75'	-	60%	65%

Minimum Setback Standards:

District	Building type	Front Yard		Side Yard				Rear Yard
				Exterior Side Yard		Interior Side Yard		
		Min.	Max.	Min.	Max.	Detached Yard	Attached Yard	
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’

Residential Tree Planting: For newly constructed single and two-family residential structures: 1 shade tree planted in each yard adjacent to roadway and 1 shade tree planted in each right-of-way adjacent to roadway.

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DN-2, Downtown Medium Density Residential

Garage Setback Standards (generally for DN districts – additional requirements may apply):

Prohibited in front yards. Garages, parking lots or designated parking spaces are prohibited in the front yard and corner side yard.

Attached garages. Garages may be attached to the primary structure. However, if the garage is attached, it must be located and oriented in such a way that it does not protrude from the side façade of the primary building in order to be visible from the public street.

Detached garages. Detached garages shall be located to the rear of the primary structure.

Corner lot. On a corner lot, the garage shall not be located closer than 20' to the corner side lot line in order to allow for outdoor vehicular parking entirely on the lot.

Detached garages. Detached garages must be separated from the primary structure by a minimum of 10'.

Garages with alley access. Garages with alley access must be setback 8' from the alley.

Accessory Structures & Uses: (i.e. garages, storage sheds, separate dwelling units)

	Detached Non-residential	Detached Accessory Dwelling	Attached Accessory Dwelling
% of floor area of primary structure	40%	50%	50%
Maximum footprint	720 sq. ft.	720 sq. ft.	-
Front setback	As required by the district	As required by the district	As required by the district
Side setback	7'	7'	As required by the district
Rear setback	7'	7'	As required by the district

On corner lots: Structure shall not project beyond the building line of the primary structure of existing primary structure on the adjacent lot

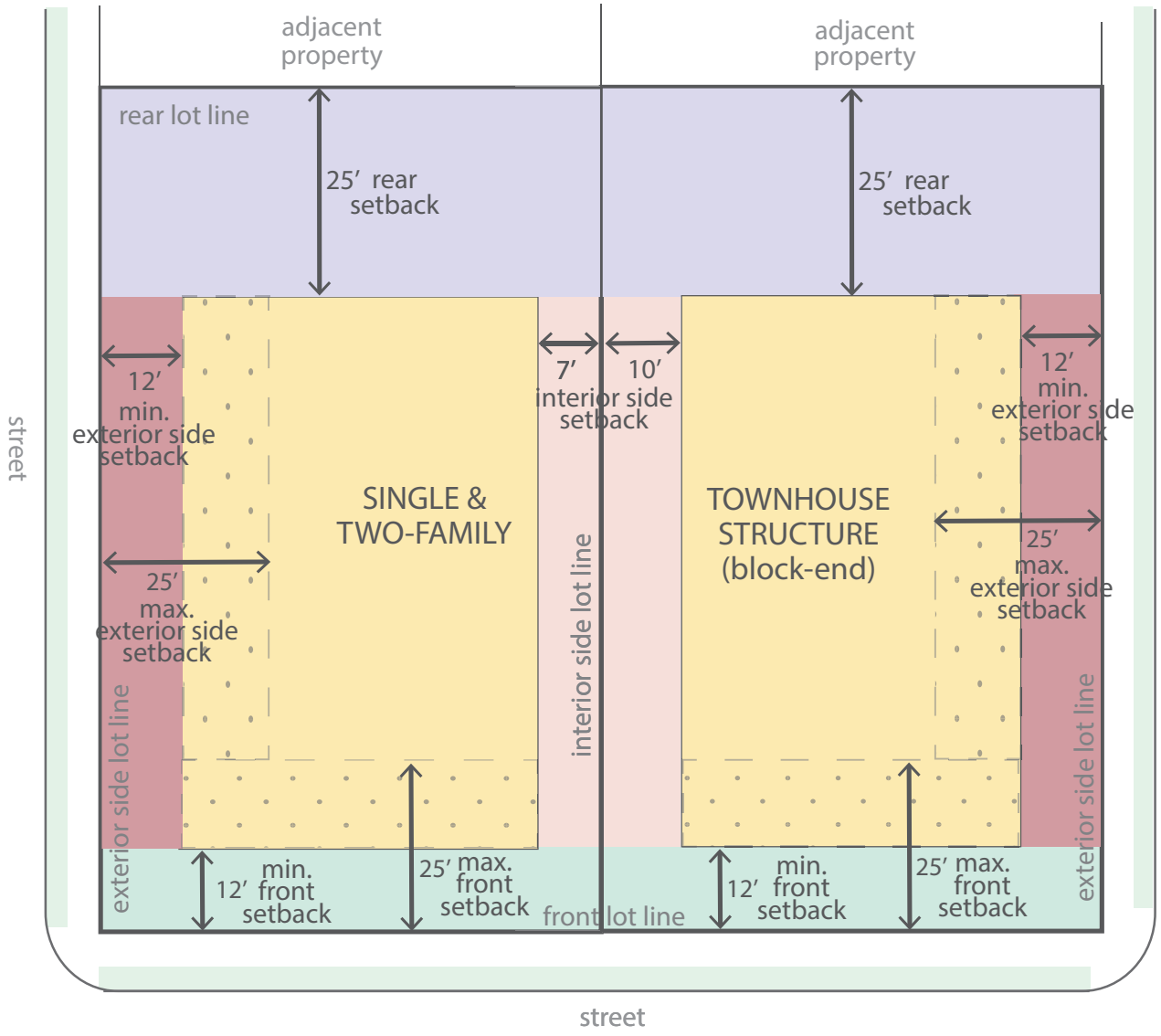
Land Uses:

ALLOWED BY RIGHT	CONDITIONAL	ACCESSORY
Residential Dwelling - modular Dwelling - single family Dwelling - townhouse or rowhouse – end block Dwelling - two-family **Recreation, Education & Assembly** Park - mini Park - neighborhood **Services** Child care - residential (4 children)	**Agriculture and Animals** Urban farm **Residential** Home occupation - type b **Recreation, Education & Assembly** Educational facility Museum Religious facilities **Services** Adult day care Cemetery or mausoleum Child care - residential (5-10 children) Lodging - bed & breakfast Public safety services **Transportation / Utilities** Utility facility Wireless communication facility (cell towers) **Other** Temporary uses	**Agriculture and Animals** Community garden **Residential** Dwelling – accessory Home occupation - type a **Transportation Utilities** Solar energy system Wind energy system, small **Other** Building, accessory - nonresidential

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DN-2, Downtown Medium Density Residential

Setback Illustration



ORDINANCE NO. _____

AN ORDINANCE CHANGING REAL ESTATE IN THE CITY OF BENTONVILLE, ARKANSAS, FROM ITS PRESENT ZONING CLASSIFICATION OF R-1, LOW DENSITY SINGLE FAMILY RESIDENTIAL TO DN-2, DOWNTOWN MEDIUM-DENSITY RESIDENTIAL (PROJECT NUMBER: RZ21-0045).

WHEREAS, Carr Exempt Trust-Hannah Taylor 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, Low Density Single Family Residential to DN-2, Downtown Medium-Density Residential to be used in accordance with city zoning laws and state laws, which property is described as follows:

Lot's 1 & 2, Block A of Orchard Addition to Bentonville, Benton County, Arkansas, as shown on plat filed under Book 22 and Page 235, 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 August 17, 2021 in the Council Chambers of the City of Bentonville; and,

WHEREAS, public notice of said hearing having been published in the Northwest Arkansas Democrat-Gazette 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, Low Density Single Family Residential to DN-2, Downtown Medium-Density 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, Low Density Single Family Residential to DN-2, Downtown Medium-Density Residential to be used in accordance with the city zoning laws and state laws.

PASSED AND APPROVED this_____ day of _____, 2021.

APPROVED:

_____
Stephanie Orman, Mayor

ATTEST:

_____
Kirby Romines, City Clerk

REZONING STAFF REPORT

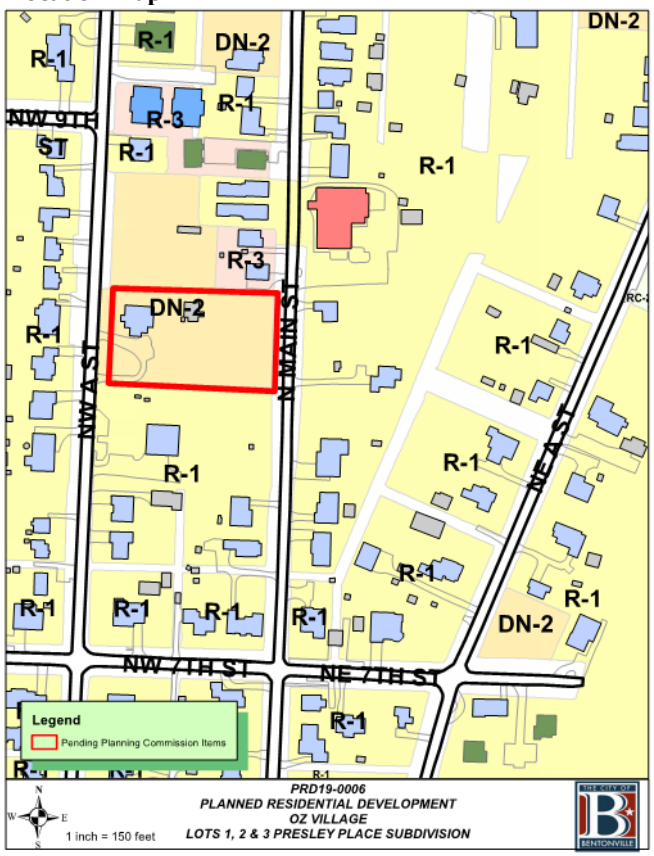
OZ Village

806 NW A Street
PC Date: 2/17/2020
Reviewer: Jon Stanley, Senior Planner

Project Number	PRD19-0006
Applicant / Current Owner	Yellow Brick Road, LLC Harry D Marley, Jr. 15602 Putnam Rogers, AR 72756
Site Area	1.36 acres
Current Zoning	PRD, Planned Residential Development
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 residents. 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.

The applicant has submitted an addendum to the originally approved PRD to update architectural designs and materials. While the style of the development will remain the same as the previously approved modern craftsman style, the building materials are changing to allow for more brick.

The mix of material previously approved still remains the same as the applicant intends to utilize brick, stone, wood, stucco, concrete and cementitious board siding.

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, as are the proposed changes, staff recommends approval.

An Addendum to OZ Village (LSD20-029) PRD 19-0006 for Architectural Upgrades

Developer: Yellow Brick Road, LLC
Harry D. Marley, Jr.
15602 Putman Road
Rogers, AR 72756
Dmarley77@gmail.com

The proposed addendum to the previously approved Large Scale Development (June 17, 2020) is for an updated architecture design change. The style for the development remains the same which is a modern craftsman style architecture. The building materials mix is being changed to allow for more brick which will change the material per centages.

The Large Scale Development phase has been completed and accepted by the City of Bentonville.

Compliance with all PRD criteria has been met.

The Development Standards are all the same with a single request to reduce the size of the garage on Lot 7 from 19' wide X 21' deep to 14 ½ wide to 21' deep. The 18' minimum parking apron between drive and the garage remains the same. This is necessary to allow same spacing between the homes and less area for this home due to the diagonal sanitary sewer easement that crosses the center of the project.

The architectural design change is to allow for more useable square footage in the homes and improve ingress/egress through a few windows. Furthermore, we are requesting approval to increase the amount of masonry material for more brick and flexibility in the material mix.

The material mix remains the same: stone, brick, wood, stucco, concrete and cementitious board siding.

Oz Village

Exterior Elevations / Design Inspiration

Original Elevations 1 / Colored – Lot 8 & 9



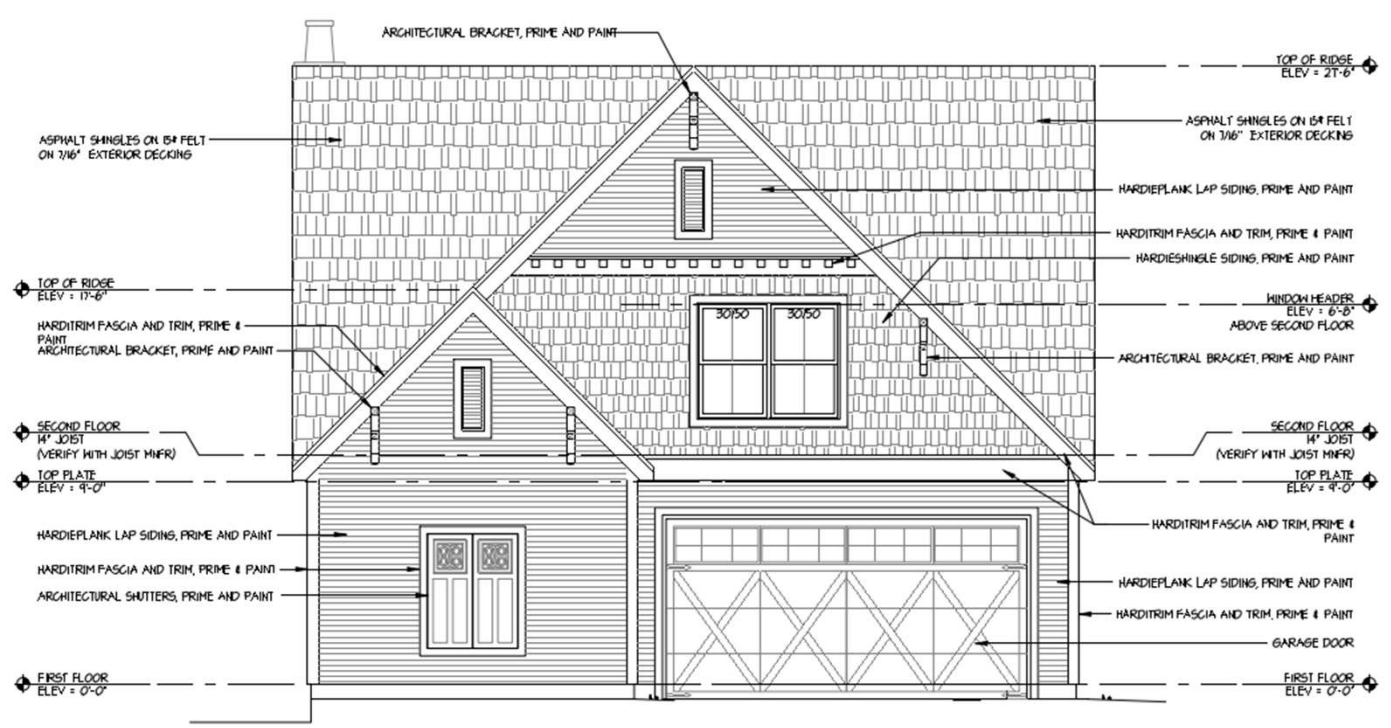




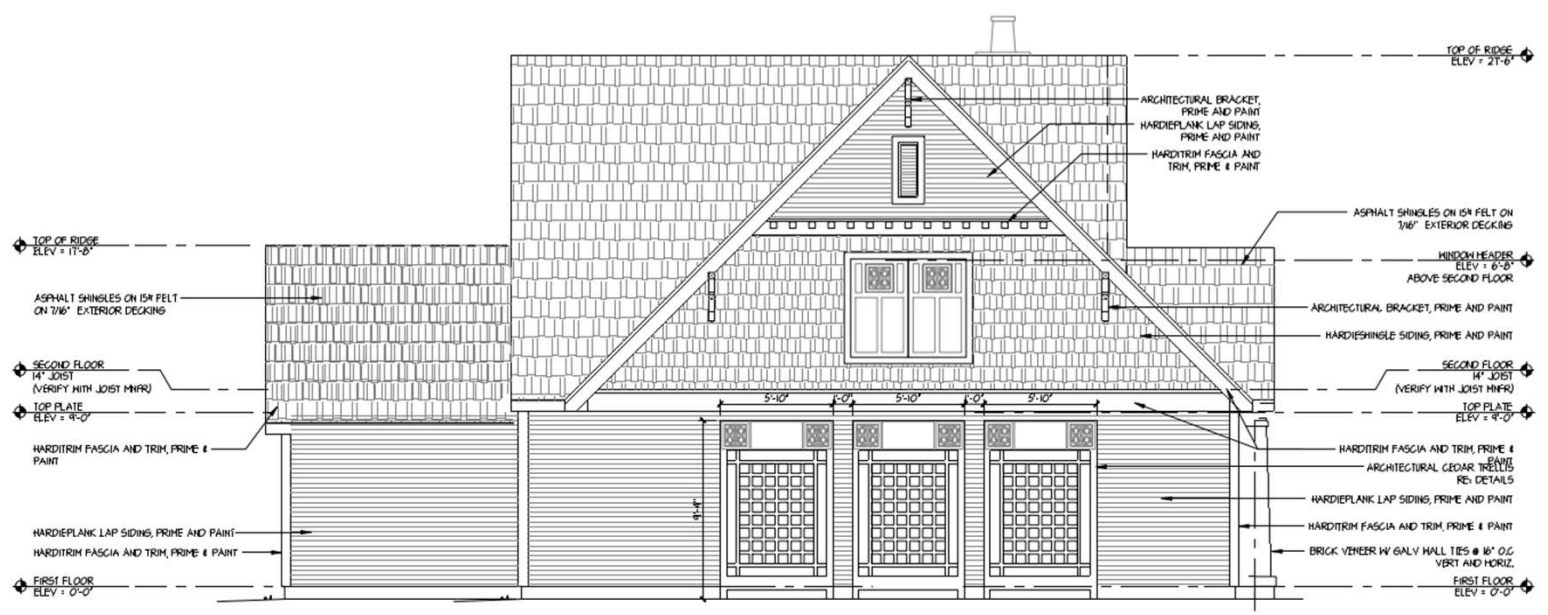


Original Elevations 1 – Lot 8 & 9

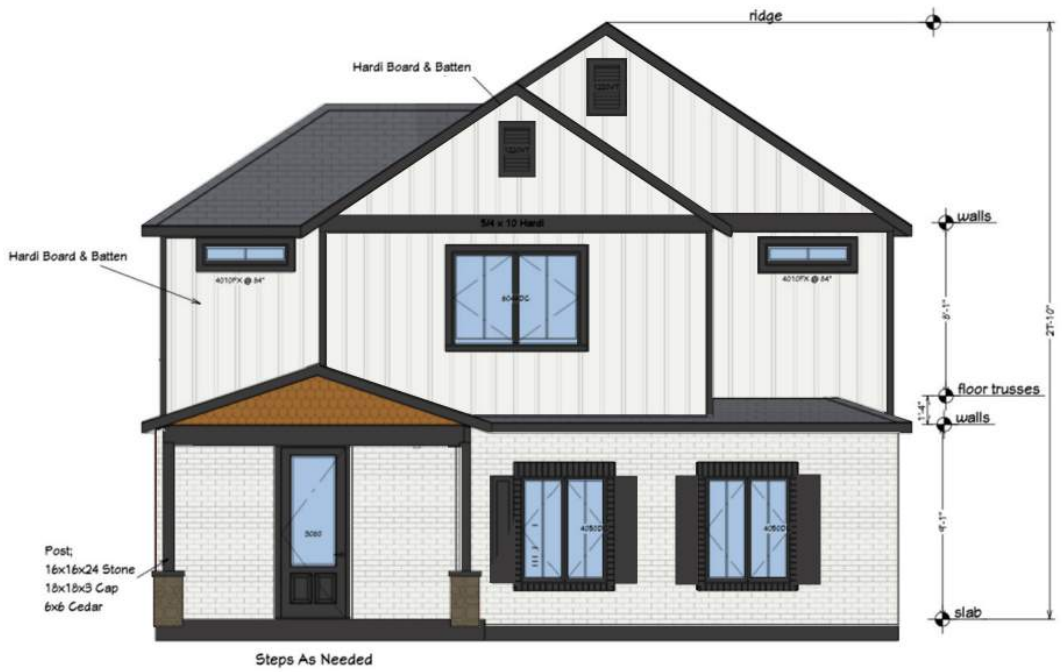






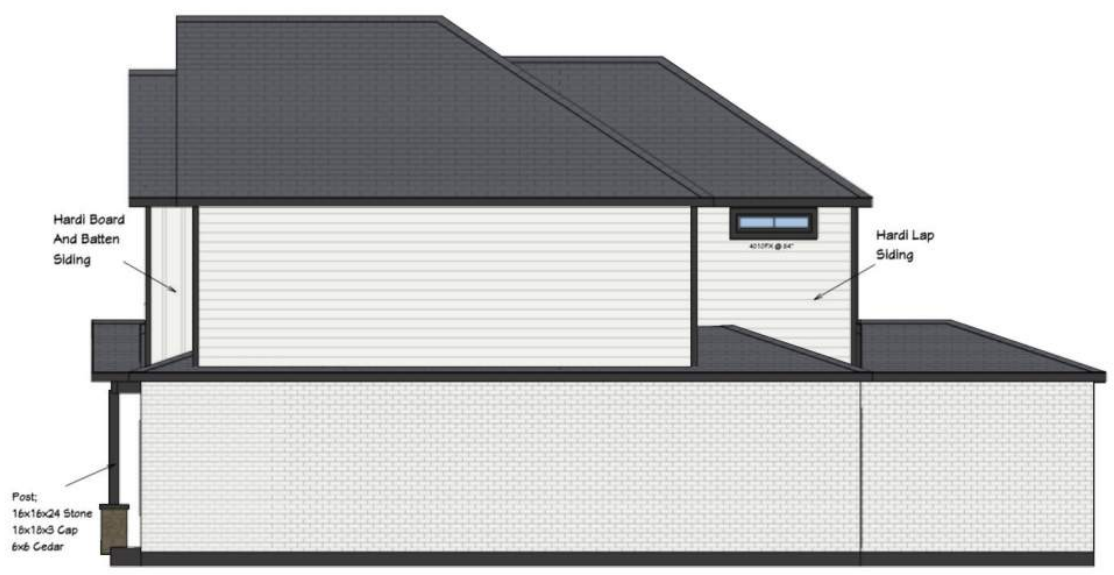


Updated Elevations 1 – Lot 8 & 9 / Increased Masonry & Changed Roof



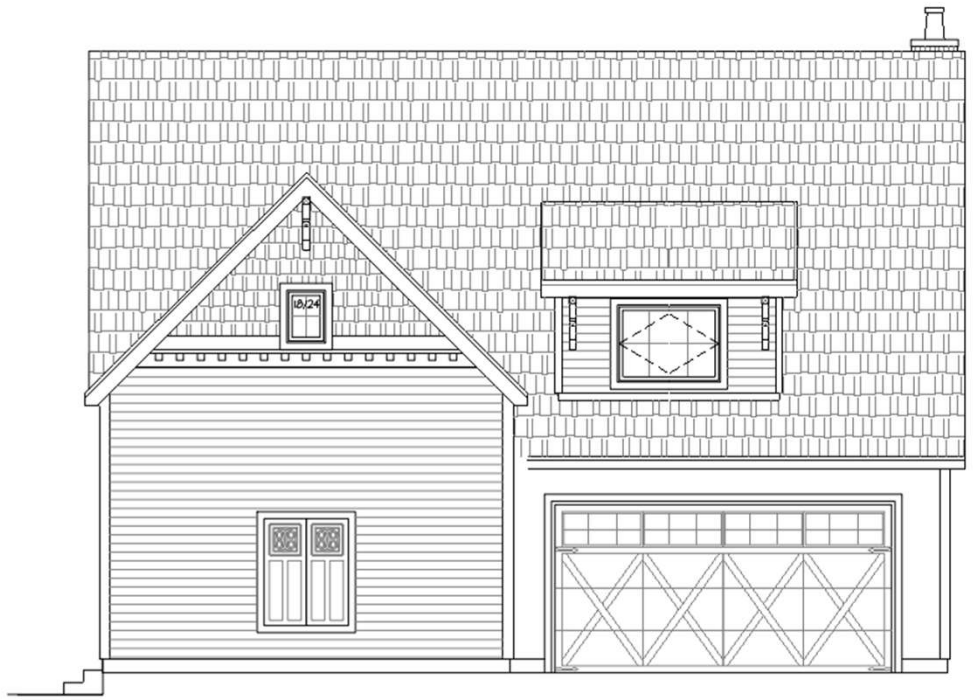




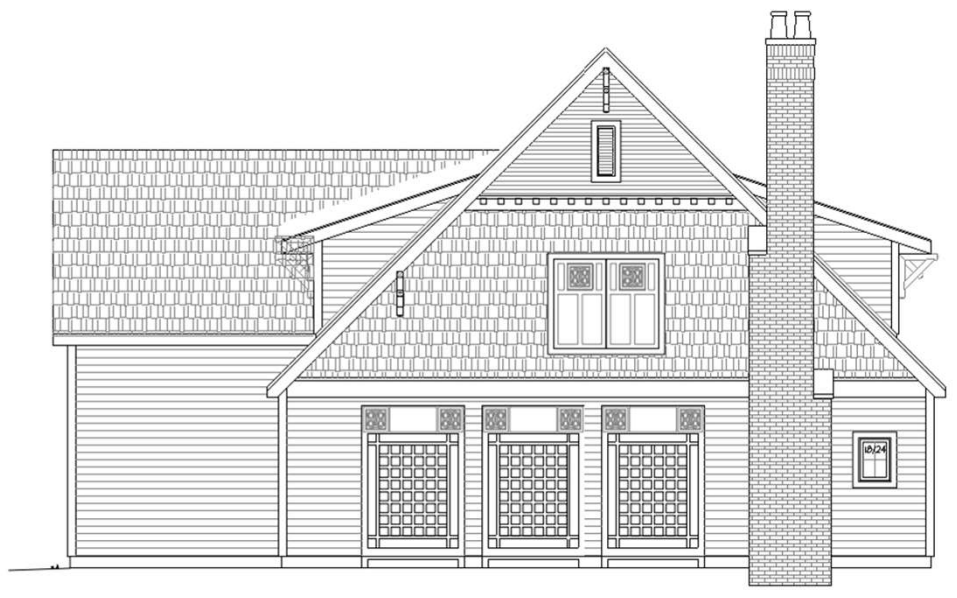


Original Elevations 2 – Lot 10 & 11

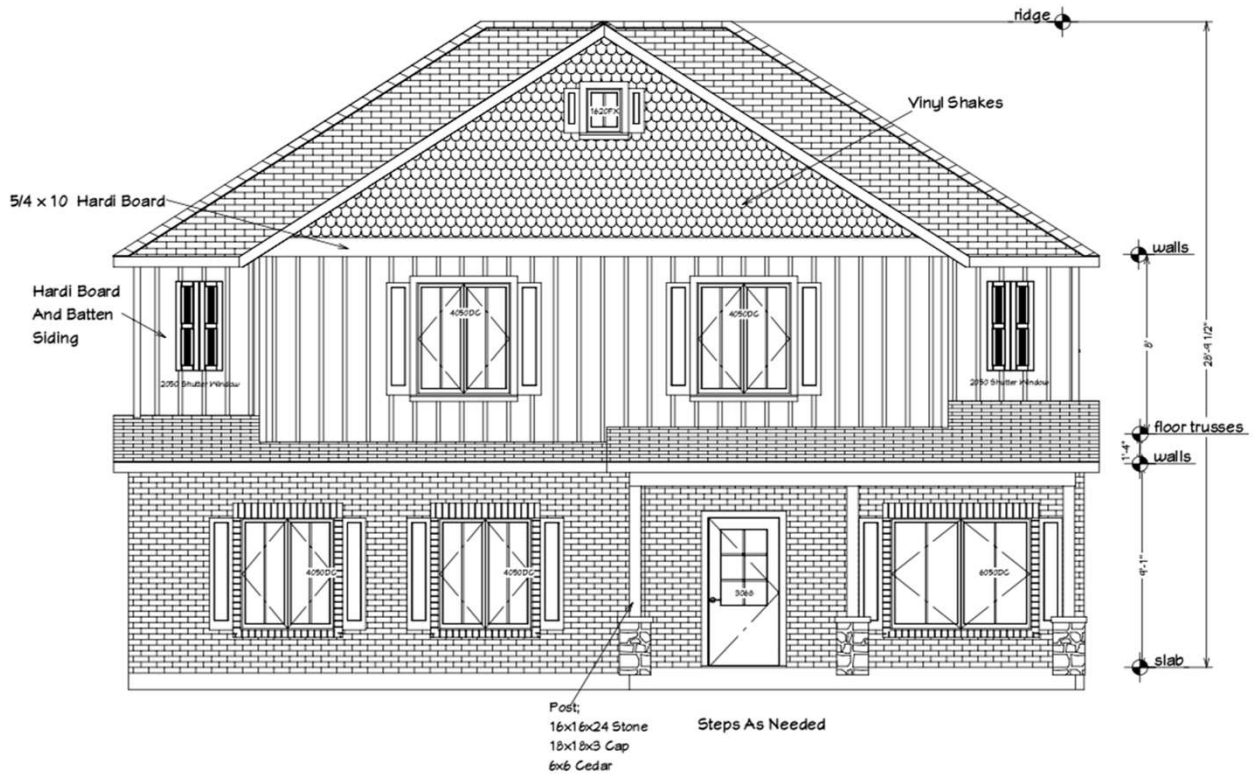




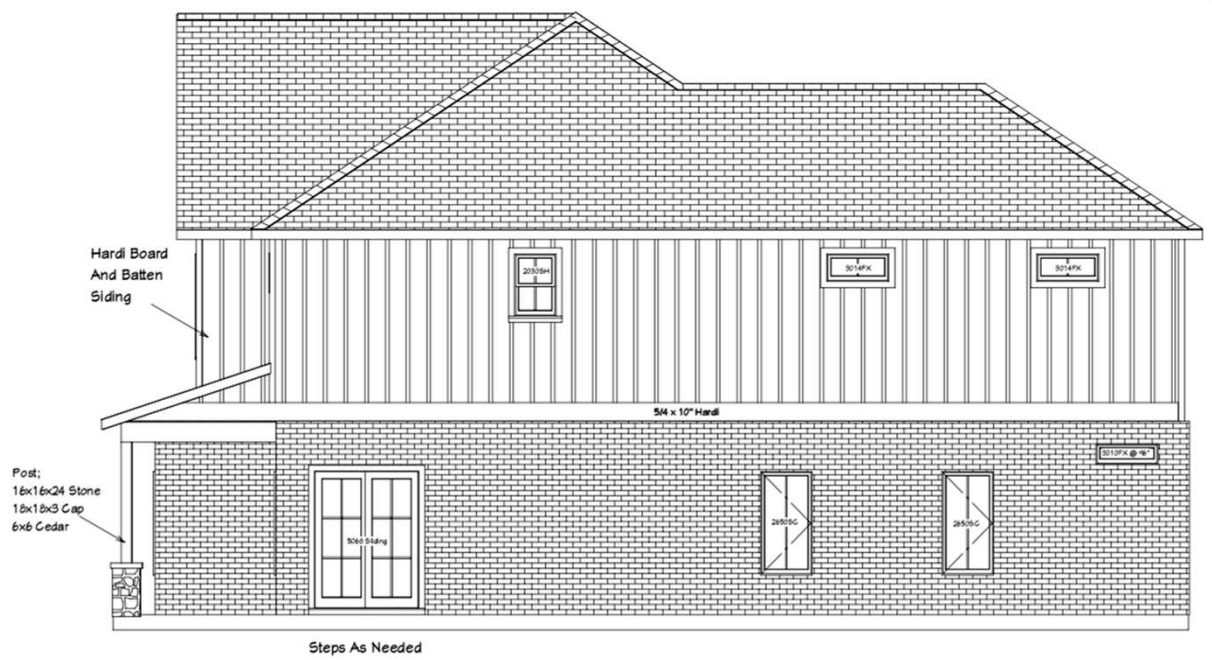


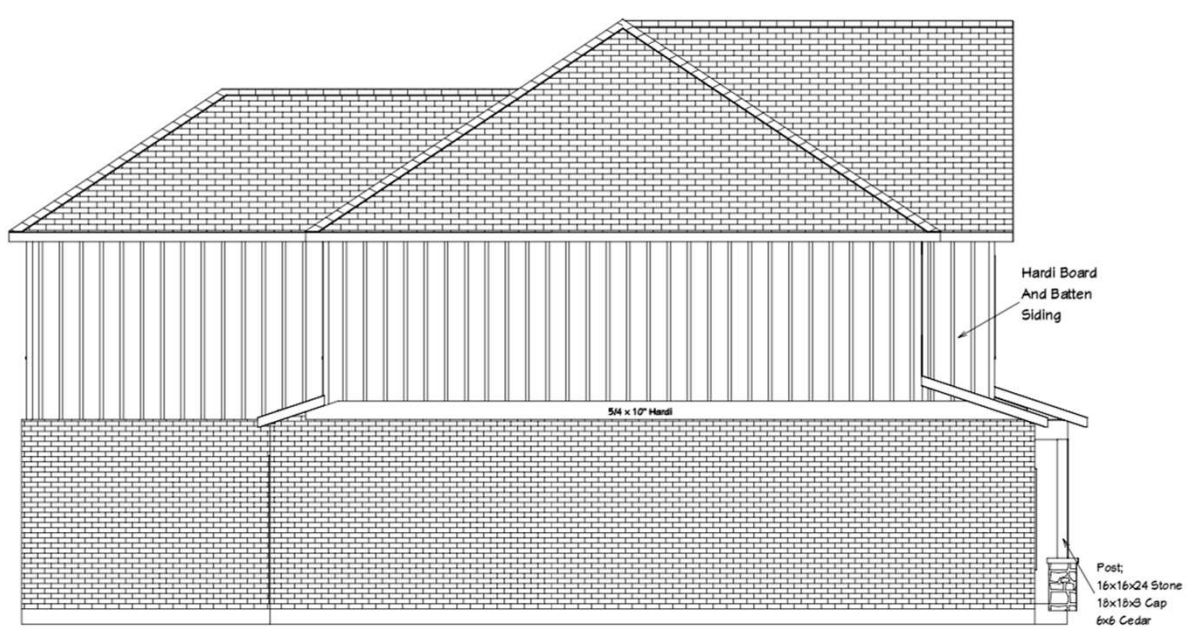


Updated Elevations 2 – Lot 10 & 11 / Increased Masonry & Changed Roof









Original Elevations 3 – Lot 1, 2, 3, 4, 5, & 6

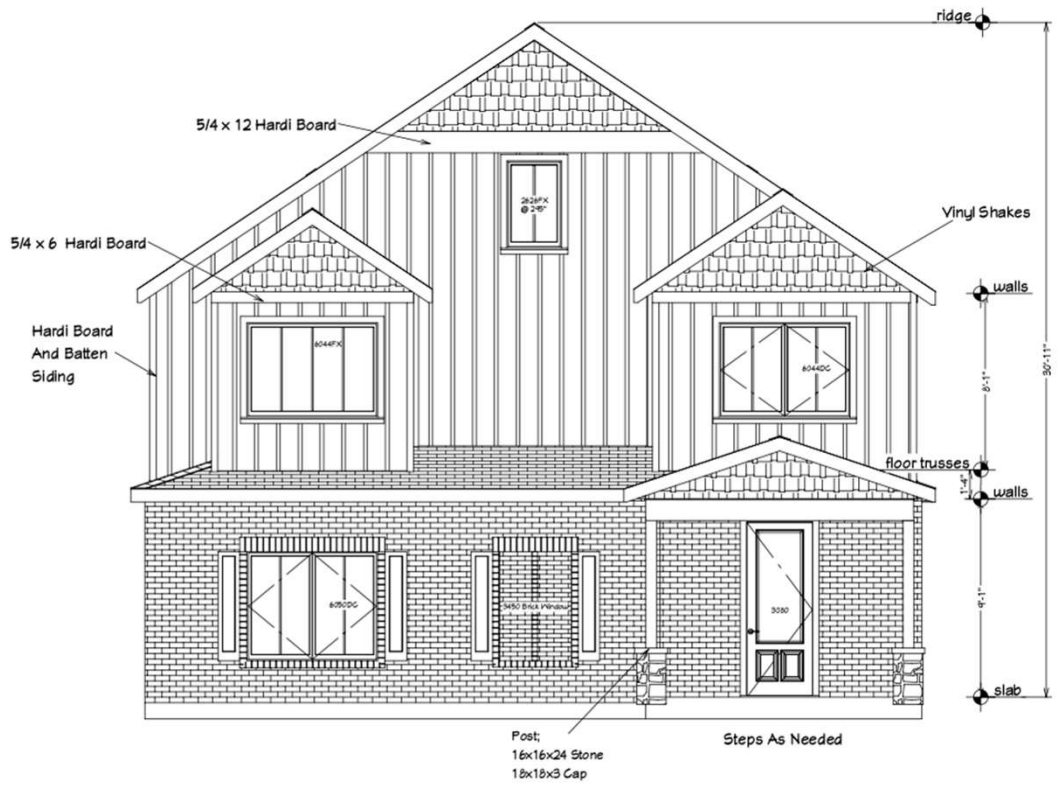


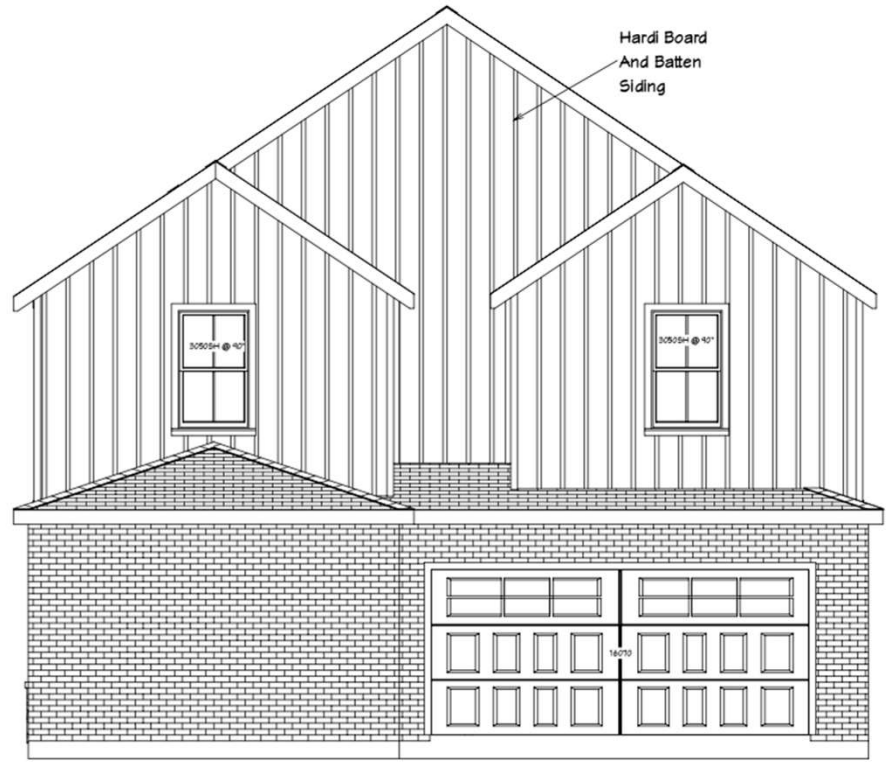




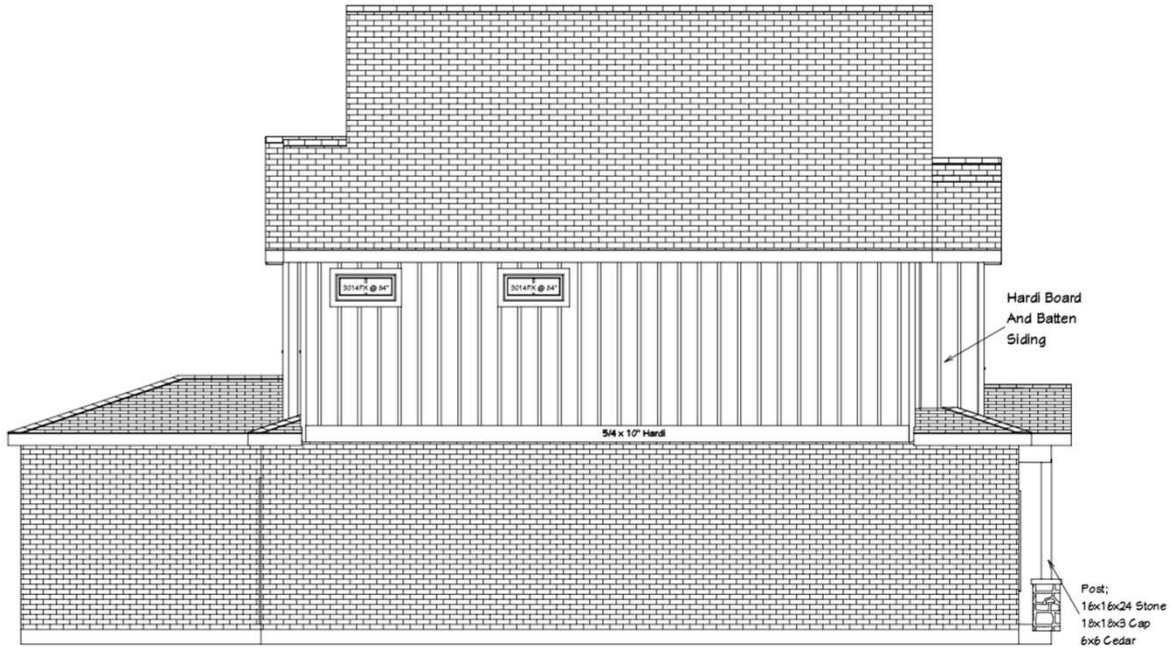


Updated Elevations 3 – Lot 1, 2, 3, 4, 5, & 6 / Increased Masonry & Changed Roof

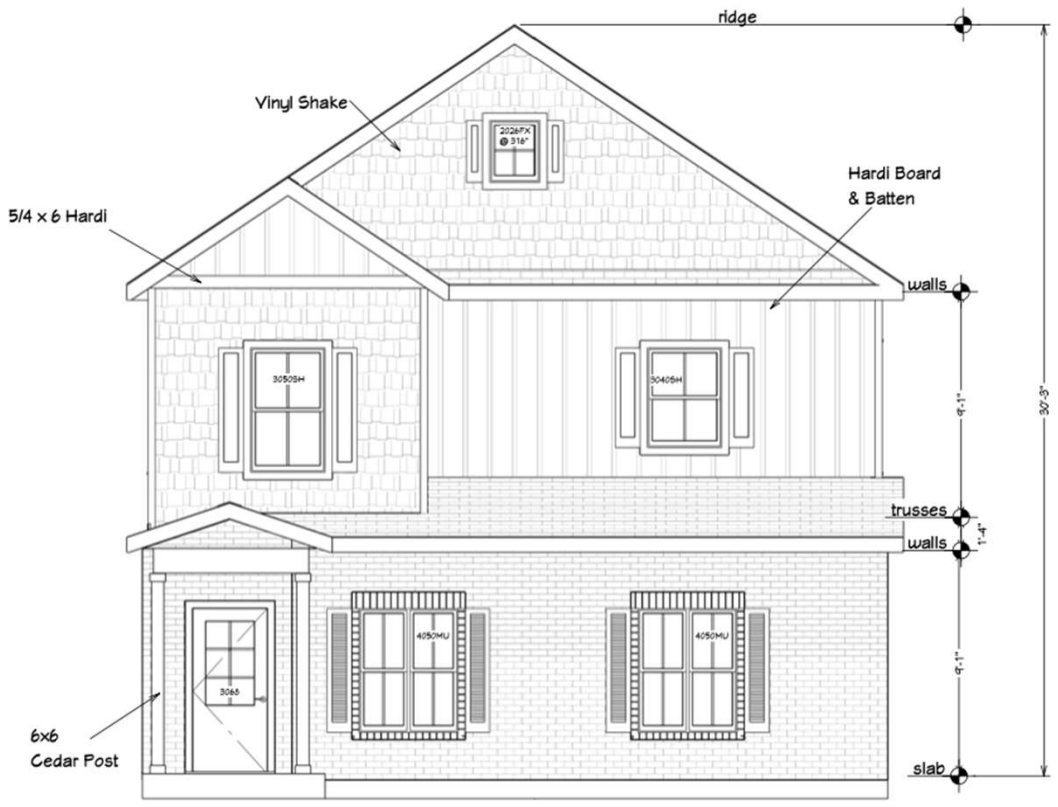


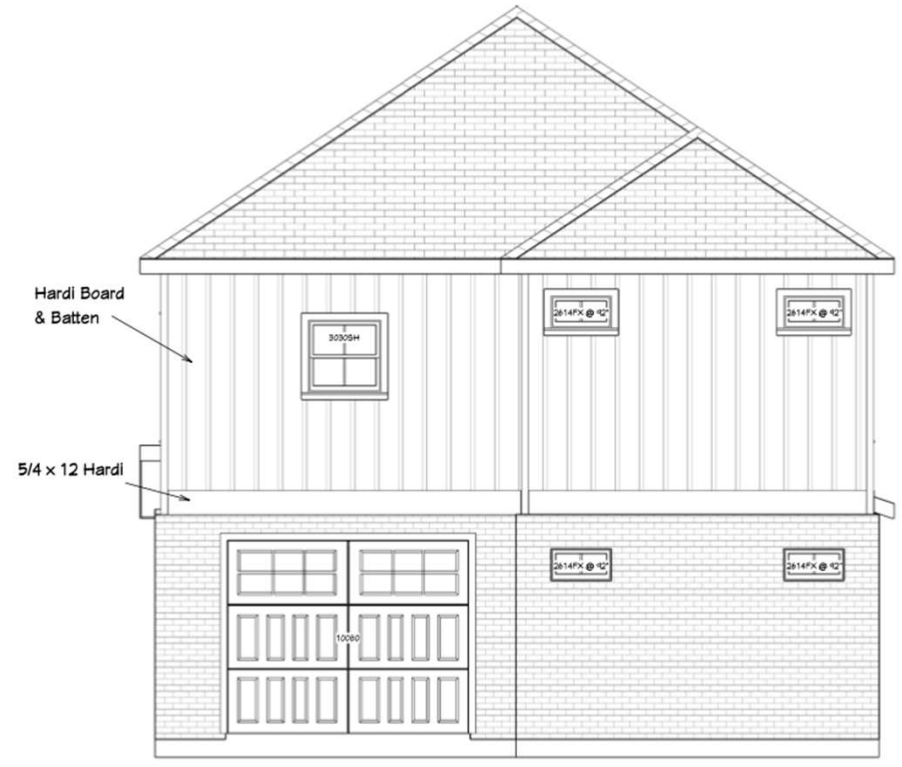






New Elevations 4 – Lot 7 / Increased Masonry & Smaller Garage









Disclaimer: FOR INFORMATIONAL PURPOSES ONLY.

In cases of discrepancy between the information presented here and a city ordinance, the city ordinance will prevail.

PRD, Planned Residential Development

The primary purpose of a PRD is to enhance the design of a residential development by allowing for flexibility and variation from the established site requirements and development standards of the zoning and subdivision codes. The PRD is a mechanism by which the city may allow for variation in the design and arrangement of structures as well as provide for the coordination of project characteristics with features of a particular site in a manner that is consistent with the public health, safety, and welfare of the community. A PRD allows for innovations and special features in site development, including the locations and type of structures, the conservation of natural features, the conservation of energy, the efficient use of open space, and allowances for housing serving varying price points.

The intent of the PRD district is to encourage the use of Smart Growth principals and Traditional Neighborhood Design, to provide a variety of housing types and densities available to the general public, and to promote high quality residential developments while allowing greater flexibility in the design of such developments. The PRD shall produce:

(1) A maximum choice in the types of environment and living units available to the public;

(2) A variety of housing types that effectively meets the varying price points of the community;

(3) Energy-efficient site design or building features;

(4) A minimum of fifteen percent (15%) common, useable open space and recreation areas;

(5) A pattern of development which preserves natural features and prevents soil erosion;

(6) A creative approach to the use of land and related physical development;

(7) Efficient use of land resulting in smaller networks of utilities and streets and thereby lowering costs;

(8) Environment of stable character in harmony with the surrounding development;

(9) Efficient use of infrastructure, and,

(10) High quality architectural design, placement, relationship and orientation of structures.

Smart Growth and Traditional Neighborhood Design (TND): The PRD district shall incorporate Smart Growth principles, including Traditional Neighborhood Design elements into the development by such means as:

(1) Offer a range of housing opportunities and choices;

(2) Foster walkable, “close-knit” neighborhoods;

(3) Promote distinctive, attractive communities with a strong “sense of place”;

(4) Preserve open space, farmland, natural beauty, and critical environmental areas;

(5) Strengthen and encourage growth in existing communities;

(6) Provide an interconnected network of narrow streets that are safe and pleasant for pedestrians and which provide a variety of routes for local traffic; and,

(7) Provide high quality public spaces such as greenbelts, parks, plazas, squares, courtyards, and streets that are an organizing feature and gathering place for the neighborhood.

Minimum Area: None

Zoning / Site Plan: The PRD is a combination of zoning designation, master site plan and architectural renderings. A detailed site plan is required for approval. Once approved, the site plan becomes a zoning district by city ordinance in the same manner as any other zoning parcel. Development must follow the site plan exactly.

Maximum Height: As proposed by the applicant and shown on the approved site plan.

Density: As proposed by the applicant and shown on the approved site plan by land use category.

Lot and Area Standards:

District	Min. lot area (sq. ft.)	Min. land area / dwelling unit (sq. ft.)	Min. lot width	Max. lot coverage	
				Interior lot	Exterior lot
PUD	As proposed by applicant and shown on the approved site plan.	As proposed by applicant and shown on the approved site plan.	As proposed by applicant and shown on the approved site plan.	As proposed by applicant and shown on the approved site plan.	As proposed by applicant and shown on the approved site plan.

Minimum Setbacks:

District	Front	Side		Rear
		Interior	Exterior	
PUD	As proposed by applicant and shown on the approved site plan.	As proposed by applicant and shown on the approved site plan.	As proposed by applicant and shown on the approved site plan.	As proposed by applicant and shown on the approved site plan.

Garage Setbacks: As proposed by applicant and shown on the approved site plan.

Uses Allowed: Residential and accessory uses as proposed by applicant and approved with the zoning ordinance.

Development Criteria:

(1) Open Space.

a. *Minimum area:* 15% of the total project area, exclusive of public right-of-way and parking lots, shall be devoted to common open space.

b. *Equitable distribution*. Open space should be distributed more or less equitably throughout the PUD district in relationship to the dwelling units and other use areas that are intended to be served by the common open space.

c. *Preservation*. Adequate guarantees must be provided that the common open space areas as contained in the plan for the PUD district are preserved and maintained for those purposes only. A property owners' association shall be required if other arrangements satisfactory to the planning commission have not been made for improving, operating and maintaining all such common open space areas. At the time the final plan and plat is submitted, the articles of incorporation and bylaws of the property owners' association shall be reviewed and approved by the planning

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commission. Additionally, the restrictive covenants which run with the land must be submitted and include similar provisions to preserve all open space areas.

d. *Accessible*. Common useable open space shall be open to tenants and customers within the PUD. Access by the general public is desired.

e. *Common open space options*. The required common open space may include:
   1. wetlands and water bodies;
   2. lawns – five percent (5%) maximum of total percentage required;
   3. pedestrian paths, trails, sidewalks (exclusive of those required by ordinance) and covered walkways;
   4. central gathering spaces such as plazas, parks, or courtyards;
   5. vegetated / landscape areas, excluding required parking lot landscaping requirements; and,
   6. recreational areas / facilities such as public pools, tennis courts, basketball courts, baseball fields, soccer fields, or similar outdoor recreation facilities that is open to the residents and users of the PRD.

(2) **Structural Design Standards.** The PRD shall meet the following structural design standards.

a. Buildings shall be sensitive to the natural environmental conditions and should be oriented around a public gathering space such as a plaza, park, or courtyard, or respond in design to a prominent feature, such as a corner location, or other manmade or natural feature.

b. Buildings and site design shall provide inviting entry orientation.

c. Main entrances shall be oriented toward the adjoining street.

d. All structures shall have a common architectural theme.

e. Human scale features shall be provided.

f. Provide a variety of building height and varied roofline articulation.

g. Aluminum, vinyl, or fiberglass siding materials on the facades or sides of the building shall not constitute over fifty percent (50%) of the structure; soffit and fascia shall not be included within this 50% calculation.

h. Rear and side loading garages shall be setback a minimum of 30 ft. for a rear loading garage and twenty feet (20') for a side loading street facing garage. Front loading garages shall be setback a minimum of 30 ft. from the property line.

ORDINANCE NO. _____

AN ORDINANCE CHANGING REAL ESTATE IN THE CITY OF BENTONVILLE, ARKANSAS, FROM ITS PRESENT ZONING CLASSIFICATION OF PRD, PLANNED RESIDENTIAL DEVELOPMENT 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 PRD, Planned Residential Development 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 August 17, 2021 in the Council Chambers of the City of Bentonville; and,

WHEREAS, public notice of said hearing having been published in the Northwest Arkansas Democrat-Gazette 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 PRD, Planned Residential Development 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 PRD, Planned Residential Development to PRD, Planned Residential Development to be used in accordance with the city zoning laws and state laws.

PASSED AND APPROVED this_____ day of _____, 2021.

APPROVED:

_____
Stephanie Orman, Mayor

ATTEST:

_____
Kirby Romines, City Clerk

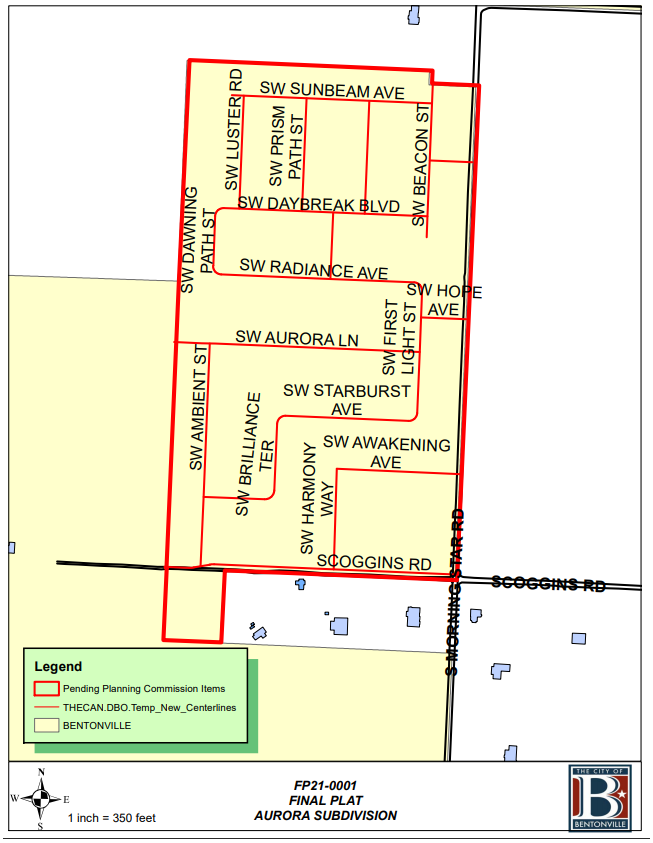
Aurora Subdivision Phase 1

8936 South Morning Star Road
PC Date: 8/17/2021
Reviewer: Jon Stanley, Senior Planner, ASLA, APA

Project Number	FP21-0001
Applicant / Current Owner	Aurora Development Company, LLC
Site Area	+/-70 Acres
Current Zoning	PRD, Planned Residential Development
Future Land Use Map Designation	Low Density Residential (LDR)

https://arcg.is/08HvK8

Location Map



Property Description
This property is located at 8936 South Morning Star Road. The approximately 70 acre tract of land is zoned PRD, Planned Residential Development.

Project Details
The final plat consist of two hundred and twenty-six lots. Two Hundred and twenty-four of them are single-family residential lots, one lot will contain a clubhouse and another lot will be utilized for a stromwater detention pond.

The final plat dedicates right-of-way along South Morning Star Road and SW Scroggins Road and the interior, public streets within the subdivision. The plat also dedicates utility drainage easements in various locations to serve the subdivision.

All non-bondable items and guarantees of improvements must be completed and a final inspection preformed and approved prior to final plat approval.

Waivers
There are no waivers requested with this final plat.

Analysis and Recommendation
The plat does meet the minimum requirements of the subdivision regulations 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.
3. The plat shall not be filed until a final inspection has been completed and accepted.

NOTES

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

Final Plat of Aurora Subdivision, Phase I

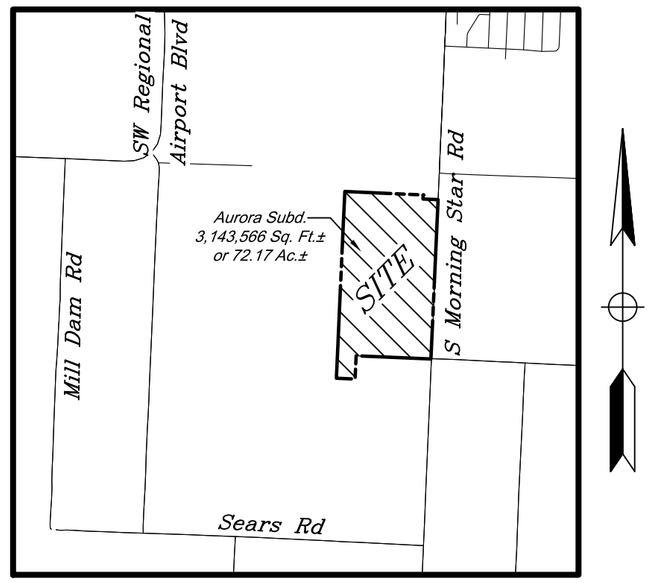
S. Morningstar Road

Bentonville, Benton County, Arkansas

REVISION		
NO.	DESCRIPTION	DATE
1	City Comments	07/27/2021

NOTES:

1. *Except as specifically stated or shown on this plat, the survey does not purport to reflect any of the following which may be applicable to the subject real estate: Easements, other than possible easements which were visible at the time of making of this survey; building setback lines; restrictive covenants; subdivision restrictions; zoning or other land-use regulations, or any other facts which an accurate and current title search may disclose.*
2. *Every document of record reviewed and considered as a part of this survey is noted hereon. Only the documents noted hereon were supplied to the surveyor.*
3. *This plat represents a Final Plat of the parcels 01-08215-335 & 01-08215-355 as recorded in Warranty Deed Records, Book 2016, Page 31964 in the public records of Benton County, Arkansas.*
4. *The contractor must determine that proposed structures are clear of all boundary lines, easements, and meet building setback requirements before construction begins.*
5. *Basis of Bearings: NAD83, State Plane Coordinate System, AR North Zone based on GPS observation using OPUS.*
6. *This survey is valid only if the drawing includes the seal and signature of the surveyor.*
7. *This survey meets current "Arkansas Standards of Practice for Property Boundary Surveys and Plats."*
8. *This survey is based on a 50 Year Search, Invoice #17-34618-007 supplied by Elite Title Company, and dated July 18, 2017,*
9. *No attempt was made to show zone building setback lines graphically on the survey. The assignment, vacation, or orientation of setbacks that impact the usage rights of the property are determined by the local governing jurisdictional agency. Setback dimensions will be based on the orientation of the building(s) to be constructed as approved.*
10. *By scaled map location and graphical plotting only. This property is located in Zone "X" which are areas determined to be outside the 0.2% annual chance floodplain determined by the National Flood Insurance Program, Flood Insurance Rate Map for Benton County, Arkansas.*
    Map Number: 05007C0245K
    Map Revised: June 5, 2012
11. *Subsurface and environmental conditions were not examined nor considered a part of this survey.*
12. *Underground utilities were located by visible above ground markings as marked by utility locators and shown hereon as located by CEI Engineering Associates, Inc. survey field crews. All utility locations shown hereon are approximate. All utilities may not have been marked/located by the appropriate locators. No excavation has taken place as of this date to determine the exact location of existing underground utilities shown on this survey.*
13. *Arkansas State Law. The Underground Facilities Damage Act, requires two working days advance notification through the Arkansas One-Call System Center before excavating using mechanized equipment or explosives (except in the case of an emergency). The One-Call System Telephone Number is 1-800-482-8998. The contractor is advised that there is a severe penalty for not making this call. Not all utility companies are members of the Arkansas One-Call Systems. Therefore the contractor is advised to contact all non-members as well as the One-Call System.*
14. *There shall be a 20' utility easement along the front of each lot.*
15. *Current zoning PUD was approved by City Council on 2-13-18.*
16. *At the time of survey there was no evidence of wetland areas delineated by "Wetlands Mapping Services" published by U.S. Fish and Wildlife Service, Division of Habitat and Resource Conservation.*
17. *Surveyor is not aware of a septic system being used on the subdivision.*
18. *Owners/Developers shall coordinate with local utilities to insure that each lot has water, sewer and electric service*
19. *Before any work in the Right-of-Way commences, Contractor and or owner is to contact the City of Bentonville Engineering and Transportation Department and notify said departments on the intent and type of the work that will take place with-in the Right-of-Way. Work in right-of-way require a separate permit.*
20. *Lot 184 was intentionally removed and combined with Lot 226*
21. *Sidewalks shall be the responsibility of the builder/owner at time of building permit issuance.*
22. *There may not be fences or any other structures built in any drainage easements.*



Vicinity Map

Not to Scale

Latitude: 36°18'41"N
Longitude: 94°15'10"W

Sheet Index

Sheet 1	*Cover / Notes / Signatures*
Sheet 2	*Final Plat "Overall"*
Sheet 3	*Final Plat "North"*
Sheet 4	*Final Plat "South"*
Sheet 5	*Area Lot Tables / Description*
Sheet 6	*Curve Tables / Details*

Zone Setback Table

Zone	Garage**	Front	Interior Side	Exterior Side	Rear	Lot #
Zone 1	21'-4"	20'	7'	20'	25'	98-227
Zone 2	0'	0'	0' & 10'	20'	0'	228
Zone 3	18'	20'	5'	20'	10'	47-97
Zone 4	21'-4"	20'	5'	20'	20'	1-46

Note:
Where easements are larger than the indicated setbacks, the easement shall become the setback.

***Zone 1 and Zone 4 require the garage to be recessed from the front of the home by 1'-4" per Board of Adjustments decision on 1-24-2018*

Owners/Developer:

Parcel #01-08215-355
Parcel #01-08215-335
Parcel #01-08215-375
Aurora Development Company, LLC
3227 E. 31st. Street
Tulsa, OK 74105
Ph. 918-808-6792

Certificate of Ownership:

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

Date of Execution: _____

Signed : _____
Write Name

Signed : _____
Print Name

Source of Title: *Deed Bk. L201944826 & Deed Bk. L201944883* ___

Certificate of Recording:

This document filed for record _____ *day, 202___ in Plat Book No.* _____,

page _____.

Signed: _____
Circuit Clerk

Certificate of Approval:

Pursuant to the Bentonville Subdivision Regulations and all other conditions and approval having been completed, this document is hereby accepted. This Certificate is hereby executed under the authority of the said rules and regulations.

Date of Execution: _____

Signed _____
Bentonville Planning Commission Chairman

Signed _____
Mayor City of Bentonville

Signed _____
City Clerk, City of Bentonville

Certificate of Surveying Accuracy:

I, *James Barnett* *hereby certify that this plat correctly represents a boundary survey made by me and boundary markers and lot corners shown hereon actually exist and their location, type and material are correctly shown and all minimum requirements of the Arkansas Minimum Standards for Land Surveyors have been met.*

Date of Execution: _____

_____
Registered Land Surveyor
State of Arkansas
Registration No. 1666

City of Bentonville Project # *FP21-0001*

ATLAS PAGE: *565*

State Survey Code: 500-19N-31W-0-23-304-04-1666

CIVIL ENGINEERING ▪ LANDSCAPE ARCHITECTURE ▪ LAND SURVEYING ▪ PLANNING

BENTONVILLE | DALLAS | FRESNO | HOUSTON | JACKSONVILLE | MINNEAPOLIS | PHILADELPHIA | PHOENIX

CEI ENGINEERING ASSOCIATES, INC.
3108 SW REGENCY PKWY
BENTONVILLE, AR 72712
PHONE: (479) 273-9472
FAX: (479) 273-0844
CORPORATE TBPLS FIRM #10031500

3030 LBJ FREEWAY, SUITE 100
DALLAS, TX 75234
PHONE: (972) 488-3737
FAX: (972) 488-6732
BRANCH TBPLS FIRM #10194234

Final Plat of Aurora Subdivision, Phase I
S. Morningstar Road
Bentonville, Benton County, Arkansas

Preliminary
This document shall not be recorded for any purpose and shall not be used or viewed or relied upon as a final survey document

PROFESSIONAL OF RECORD	JKB
DESIGNER	TLP
FIELD WORK	KCD
CEI PROJECT NUMBER	30234
DATE	8/2/2021
REVISION	REV-1

Final Plat

SHEET TITLE

SHEET NUMBER

1 OF 6

DRAWING LOCATION - S:\30000\30234\DRAWINGS SURVEY\30234 FINAL PLAT_WORKING\30234FP.DWG -- SAVED BY - TPRIVETT

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N86°41'07"W 21.86' to MAGNAIL

S56°00'09"W 17.68' to MAGNAIL W/ WASHER

NW Corner Section 23 T-19-N, R-31-W EYE BOLT IN CONC. COLUMN

S87°32'13"E 1320.21'

NE Corner NE1/4, NW1/4 Section 23 T-19-N, R-31-W Computed from Plat Bk. 2006, Pg. 384

S87°32'13"E 1322.15'

NE Corner, NW1/4 Section 23 T-19-N, R-31-W CPF

N22°47'28"E 47.72' to Wood Post

S22°17'37"E 49.24' to 3" Metal Post

S66°07'59"W 36.35' to 60D IN POWERPOLE

316.49'

S02°46'25"W

S02°34'47"W 375.51'

Parcel #18-09126-000 James Family Trust, Melvin D.& Patsy Yvonne Deed Bk. L202032026 In County

1/2" REBAR LS1005

S87°33'16"E 214.58'

CPF

1/2" REBAR N=728418.2' E=648124.9'

S87°32'30"E 1108.63'

1/2" REBAR LS1005

S02°34'02"W 59.18'

994.08'

940.46'

SW SUNBEAM AVE

SW LUSTER RD

SW PRISM PATH ST

SW LUNA LN

SW BEACON ST

SW HALO PL

Parcel #18-09128-000 James Family Trust, Melvin D.& Patsy Yvonne Deed Bk. L202032026 Deed Bk. 414, Pg. 312 In County

NE1/4, NW1/4 Section 23 T-19-N, R-31-W

Parcel #18-09123-000 Whitaker, Larry C. & Linda & Whitaker Revocable Trust Deed Bk. 91, Pg. 8122 In County

N02°46'25"E

SW Corner NE1/4, NW1/4 Section 23 T-19-N, R-31-W 1/2" REBAR

SW DAYBREAK BLVD

SW DAYBREAK BLVD

SW DAWNING PATH ST

SW STELLAR ST

S. Morningstar Road

S02°34'47"W

S36°23'37" 13.84' to 1/2" Rebar 1/2" REBAR

SW RADIANCE AVE

SW RADIANCE AVE

SE Corner NE1/4, NW1/4 Section 23 T-19-N, R-31-W CPF

SW FIRST LIGHT ST

SW HOPE AVE.

Matchline "North"

Matchline "South"

Matchline "North"

Matchline "South"

SW AURORA LN

SW AURORA LN

SE1/4, NW1/4 Section 23 T-19-N, R-31-W

1322.69'

SW AMBIENT ST

SW FIRST LIGHT ST

1315.90'

S. Morningstar Road

Parcel #01-08215-340 Amazing Land Company, LLC Deed Bk. L2017062669 Zone: A-1

N02°28'00"E

SW STARBURST AVE

SW BRILLIANCE TER

SW AWAKENING AVE (PRIVATE STREET)

SW ARRAY AVE

SW HARMONY WAY (PRIVATE STREET)

Parcel #18-09123-000 Whitaker, Larry C. & Linda & Whitaker Revocable Trust Deed Bk. 91, Pg. 8122 In County

S02°34'47"W

P.O.B. RR SPIKE SWC, SE1/4, NW1/4 Section 23 T-19-N, R-31-W

1/2" REBAR LS1005

SW SCOGGINS RD

SE Corner SE1/4, NW1/4 Section 23 T-19-N, R-31-W CPF N=726048.2' E=649342.6

N87°35'45"W 1058.85'

Parcel #01-08215-348 Daniel, Russell & Jamie Deed Bk. L201900865 Zone: A-1

N02°38'48"E 328.73'

S02°41'37"W 328.81'

1/2" REBAR LS1005

Lot 1 & 2 Osborna Acres Plat 2016, Page 23 Parcel #15-18606-000 Parcel #15-18607-000 Simpson, James & Linda WD Bk. 2016, Pg. 41204 In County

Parcel #18-09131-001 Simpson, James D. & Linda D. Deed Bk. L202023419 In County

NE1/4 SW1/4 Section 23 T-19-N, R-31-W

S25°03'22"W 9.55' to 1/2" Rebar Benchmark 1/2" REBAR (Top Hole) Elevation=1258.34'

Lot 2, Block 1 Morningstar Estates Plat 04-1239 Parcel #15-16670-000 Reder, Diane SWD Bk. 2013, Pg.44894 In County

5/8" REBAR

N87°34'44"W 264.86'

5/8" REBAR 1005

1/2" REBAR 1005

CPF

LEGEND

- Boundary Line
- Lot/Deed Line
- Adjoining Boundary Line
- Easement Line
- Centerline
- Section Line
- Proposed Boundary Corner to be set with 5/8" Rebar w/Cap #1666
- Found Magnail
- Found Rebar (As Noted)
- Found Monument (As Noted)
- Found Cotton Picker Spindle
- Centerline Bearing & Distance Change
- Calculated Corner

0 200' 300' 400'

SCALE IN FEET

GRID

Convergence -1°18'43"
Combined Scale Factor: 0.999960503
At a Found Railroad Spike at the SW corner of the SE1/4 of the NW1/4 of Section 23, T-19-N, R-31-W

Northing: 726103.8 US Ft.
Easting: 648019.8 US Ft.
Elevation = 1240.87'

ATLAS PAGE: 565

City of Bentonville Project # FP21-0001

State Survey Code: 500-19N-31W-0-23-304-04-1666

REVISION

NO.	DESCRIPTION	DATE
1	City Comments	07/27/2021

CEI ENGINEERING ASSOCIATES, INC.
3108 SW REGENCY PKWY
BENTONVILLE, AR 72712
PHONE: (479) 273-9472
FAX: (479) 273-0844
CORPORATE TBPLS FIRM #10031500

3030 LBJ FREEWAY, SUITE 100
DALLAS, TX 75234
PHONE: (972) 488-3737
FAX: (972) 488-6732
BRANCH TBPLS FIRM #10194234

Final Plat of Aurora Subdivision, Phase I

S. Morningstar Road
Bentonville, Benton County, Arkansas

Preliminary
This document shall not be recorded for any purpose and shall not be used or viewed or relied upon as a final survey document

PROFESSIONAL OF RECORD	JKB
DESIGNER	TLP
FIELD WORK	KCD
CEI PROJECT NUMBER	30234
DATE	8/2/2021
REVISION	REV-1

Final Plat—Overall

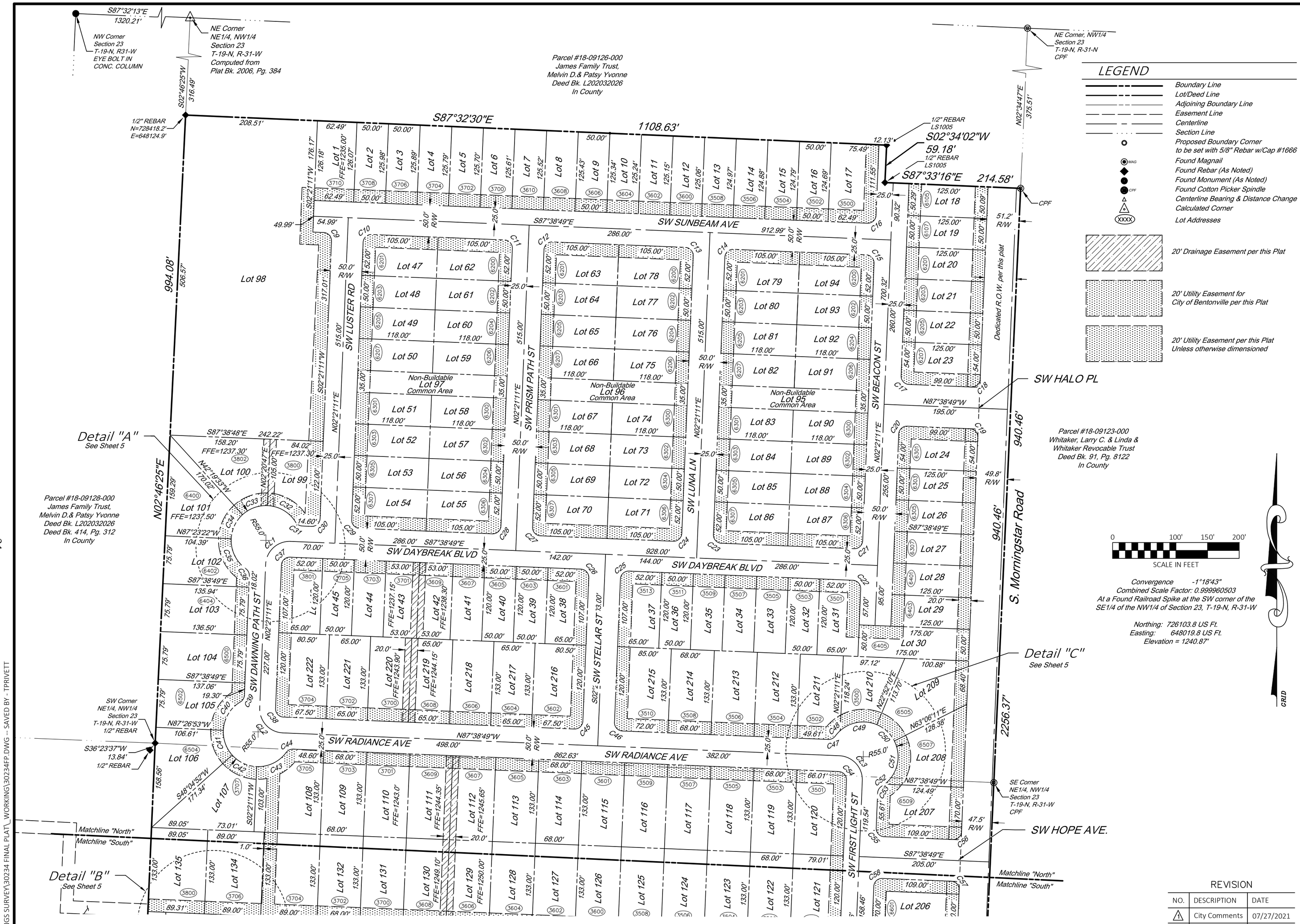
SHEET TITLE

SHEET NUMBER

2 OF 6

DRAWING LOCATION - S:\30000\30234\DRAWINGS SURVEY\30234 FINAL PLAT_WORKING\30234FP.DWG -- SAVED BY - TPRIVETT

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REVISION

NO.	DESCRIPTION	DATE
1	City Comments	07/27/2021

ATLAS PAGE: 565

City of Bentonville Project # FP21-0001

State Survey Code: 500-19N-31W-0-23-304-04-1666

CEI Solutions for Land and Life

CEI ENGINEERING ASSOCIATES, INC.
3108 SW REGENCY PKWY
BENTONVILLE, AR 72712
PHONE: (479) 273-9472
FAX: (479) 273-0844
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3030 LBJ FREEWAY, SUITE 100
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Final Plat of Aurora Subdivision, Phase I

S. Morningstar Road
Bentonville, Benton County, Arkansas

Preliminary
This document shall not be recorded for any purpose and shall not be used or viewed or relied upon as a final survey document

PROFESSIONAL OF RECORD	JKB
DESIGNER	TLP
FIELD WORK	KCD
CEI PROJECT NUMBER	30234
DATE	8/2/2021
REVISION	REV-1

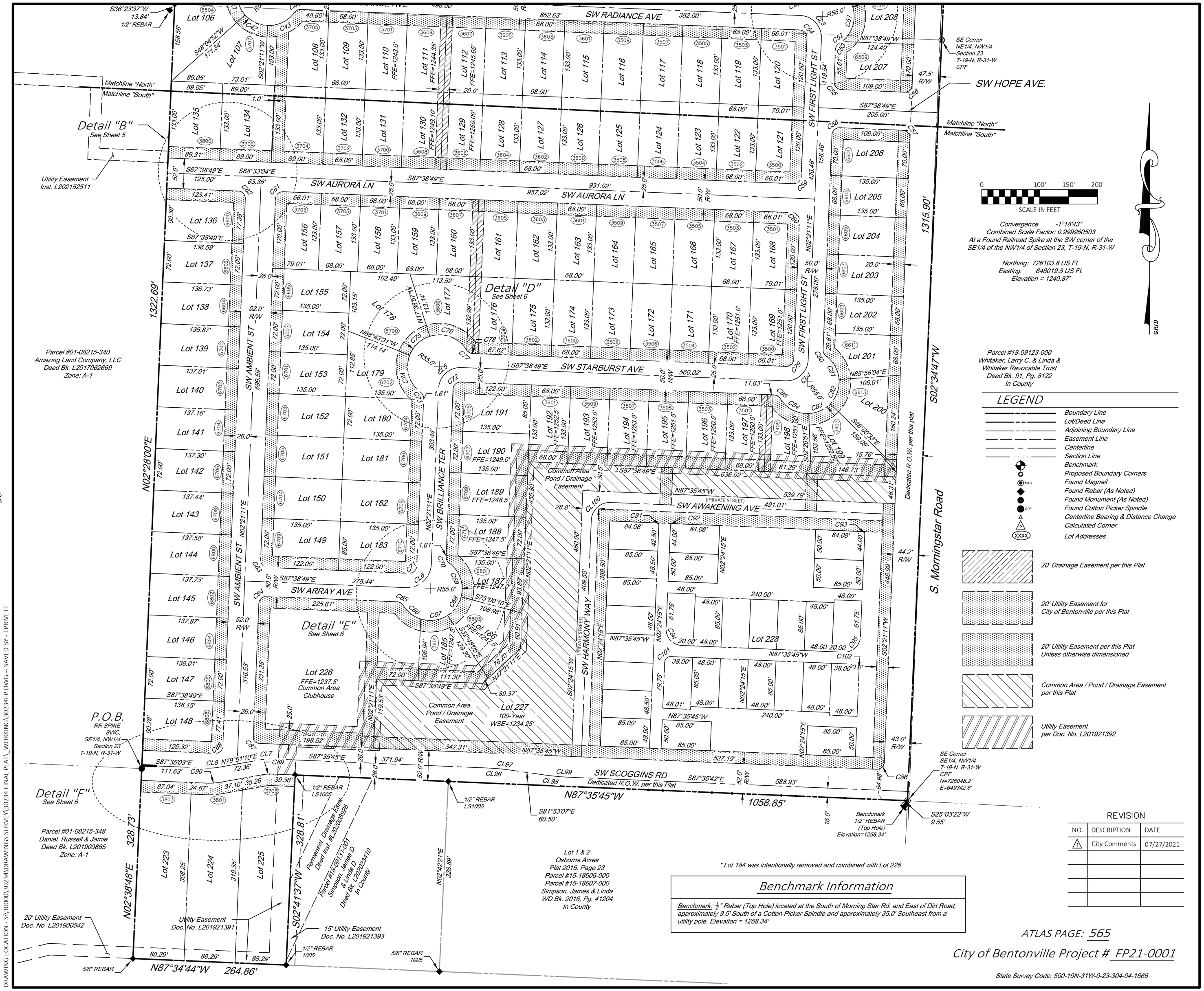
Final Plat–North
SHEET TITLE

SHEET NUMBER

3 OF 6

DRAWING LOCATION - S:\30000\30234\DRAWINGS SURVEY\30234 FINAL PLAT_WORKING\30234FP.DWG -- SAVED BY - TPRIVETT

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* Lot 184 was intentionally removed and combined with Lot 226

Benchmark Information

Benchmark: ½" Rebar (Top Hole) located at the South of Morning Star Rd. and East of Dirt Road, approximately 9.5' South of a Cotton Picker Spindle and approximately 35.0' Southeast from a utility pole. Elevation = 1258.34'

ATLAS PAGE: 565

City of Bentonville Project # FP21-0001

State Survey Code: 500-19N-31W-0-23-304-04-1666

REVISION

NO.	DESCRIPTION	DATE
1	City Comments	07/27/2021

CEI Solutions for Land and Life

CEI ENGINEERING ASSOCIATES, INC.
3108 SW REGENCY PKWY
BENTONVILLE, AR 72712
PHONE: (479) 273-9472
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3030 LBJ FREEWAY, SUITE 100
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Final Plat of Aurora Subdivision, Phase I

S. Morningstar Road
Bentonville, Benton County, Arkansas

Preliminary
This document shall not be recorded for any purpose and shall not be used or viewed or relied upon as a final survey document

PROFESSIONAL OF RECORD	JKB
DESIGNER	TLP
FIELD WORK	KCD
CEI PROJECT NUMBER	30234
DATE	8/2/2021
REVISION	REV-1

Final Plat – South

SHEET TITLE

SHEET NUMBER

4 OF 6

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DRAWING LOCATION - S:\30000\30234\DRAWINGS SURVEY\30234 FINAL PLAT_WORKING\30234FP.DWG -- SAVED BY - TPRIVETT

ORDINANCE NO._____

AN ORDINANCE ACCEPTING A FINAL PLAT OF AURORA SUBDIVISION PHASE 1 TO THE CITY OF BENTONVILLE, ARKANSAS (PROJECT NUMBER: FP21-0001).

WHEREAS, pursuant to the provisions of the Land Development Code of the Bentonville Municipal Code, the final plat of Aurora Subdivision Phase 1, to the City of Bentonville, Benton County, Arkansas, was submitted to the Bentonville Planning Commission on August 17, 2021; and,

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

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

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

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

Section 1: That the final plat of Aurora Subdivision Phase 1 to the City of Bentonville, Arkansas, should be and the same is hereby accepted and approved for all purposes.

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

PASSED AND APPROVED this_____ day of _____, 2021.

APPROVED:

_____

Stephanie Orman, Mayor

ATTEST:

_____

Kirby Romines, City Clerk

Agenda Item Form

Date of City Council Meeting	**8/24/2021**
Department	**Comprehensive Planning**
Submitted by	**Shelli Kerr, AICP**
Phone	**(479) 271-6822**

Item Type: (*Check Applicable Item Type)*

☐ Budget Adjustment	☐ Change Order	☑ Informational	☐ Ordinance	☐ Resolution	☐ Bid Award

Recommendation/Suggested Action *(Enter recommendation in space below):*

Recognition by City Council of Michelle and Bradley Shehan who reside at 700 SW 2nd Street. The property's landscaping was nominated by a Bentonville resident and is the August Residential Landscaping of the Month award winner.

Estimated Cost	**$**
Is this Item Budgeted?	☐ Yes ☐ No

If no, please explain how item will be funded *(briefly explain in space below)* :

MEMO

Date: August 24, 2021
To: Bentonville City Council
From: Shelli Kerr, AICP, Comprehensive Planning Manager
RE: Residential Landscaping of the Month Award

The Tree and Landscape Advisory Committee has awarded Michelle and Bradley Shehan of 700 SW 2nd Street as the winner for the August Residential Landscaping of the Month Award. The property was nominated by a Bentonville resident.







Mrs. Shehan explained that they love beautiful flowers and plants. They are originally from California where water conditions made it difficult to have colorful gardens. Now in Bentonville for three years, they are happy to have landscaping they love that the community is enjoying as well. Blue Ribbon installed the landscaping (except the pots on the front porch) and Mr. Shehan is in charge of the watering. They particularly love the Sun impatiens from Matkins Nursery.

About the Award

The Residential Landscaping of the Month Award recognizes the hard work and pride exhibited by Bentonville residents because we are proud to have a community that strives to beautify their homes, neighborhoods, and the City of Bentonville.

The award was created to recognize Bentonville residents who have improved and maintained the exterior landscaping of their homes. The award is intended to inspire others to take pride in their home, improve their landscaping, pick up litter, and to improve the quality of life in the City of Bentonville.

Award winners are honored by the Mayor with a certificate and are presented with a decorative yard sign designating their landscaping as a winner. A photograph of the award winning landscaping will be placed in the next edition of the City of Bentonville's newsletter, the Bentonville Focus.

Agenda Item Form

Date of City Council Meeting	**8/24/2021**
Department	**ENGINEERING**
Submitted by	**TRACY BILLINGS**
Phone	**(479) 696-0229**

Item Type: (*Check Applicable Item Type)*

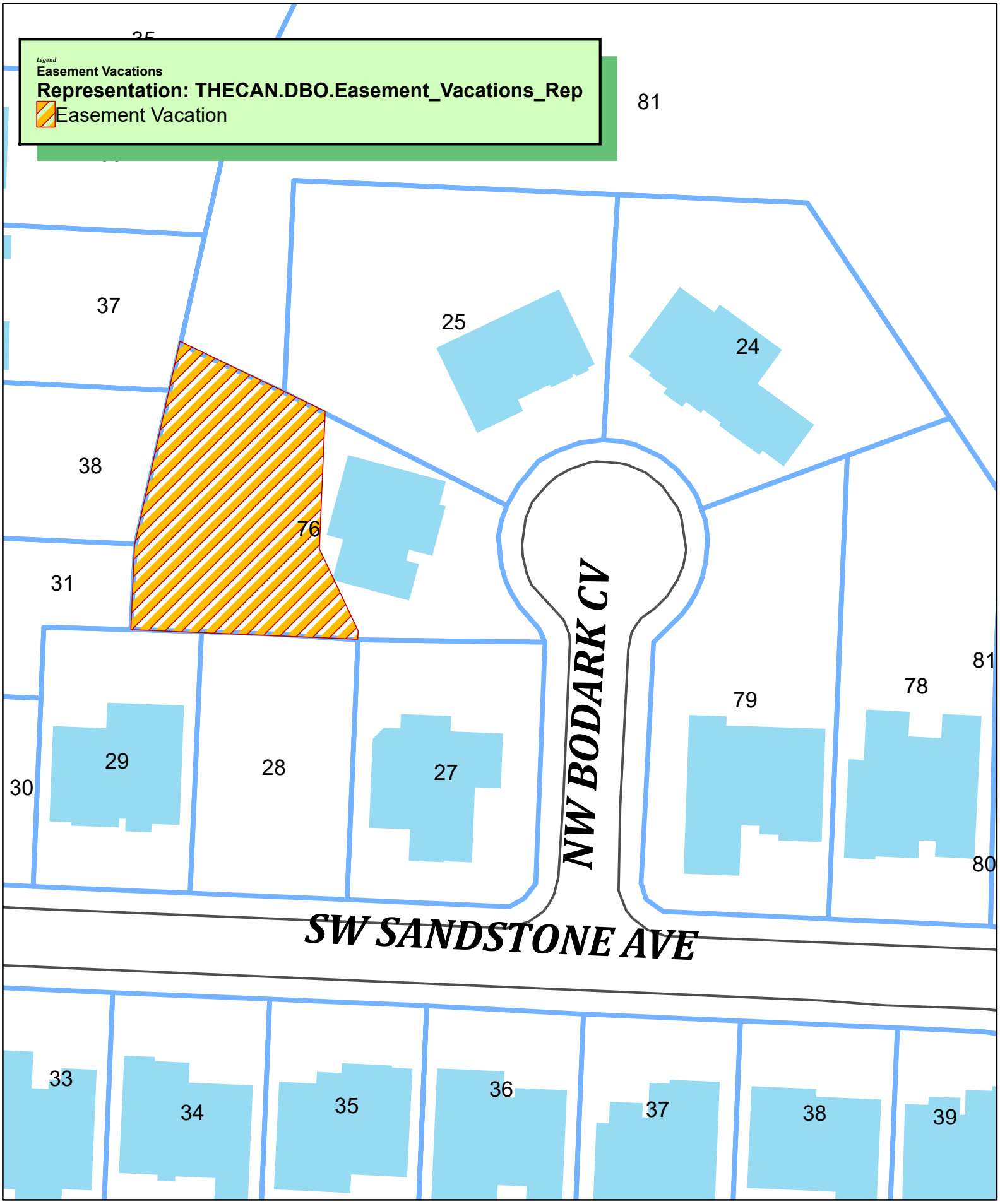
☐ Budget Adjustment	☐ Change Order	☐ Informational	☑ Ordinance	☐ Resolution	☐ Bid Award

Recommendation/Suggested Action *(Enter recommendation in space below):*

Public hearing and ordinance vacating a Drainage Easement requested for 103 NW Bodark Cove, White Oak Subdivision (VAC21-0015).

Estimated Cost	**$**
Is this Item Budgeted?	☐ Yes ☑ No

If no, please explain how item will be funded *(briefly explain in space below)* :



N
W E
S

1 inch = 58 feet

VAC21-0015
Proposed Drainage Easement Vacation
103 NW Bodark Cove

ORDINANCE NO_____

AN ORDINANCE VACATING A DRAINAGE EASEMENT LOCATED AT LOT 76 OF WHITE OAK SUBDIVION TO THE CITY OF BENTONVILLE, ARKANSAS, BENTON COUNTY ARKANSAS. (VAC21-0015)

WHEREAS, a petition was filed with the City Council of the City of Bentonville, Arkansas, by Sand Creek Engineering asking the City Council to vacate a drainage easement located in the City of Bentonville, Benton County, Arkansas, which portion is more particularly described as follows:

BEING A PART OF LOT 76 OF THE WHITE OAK SUBDIVISION AS RECORDED IN PLAT BK.2013 PG.683 IN THE OFFICIAL PUBLIC RECORDS OF BENTON COUNTY, ARKANSAS MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 76, THENCE N02°27'48"E 40.38 FEET; THENCE N12°34'39'E 99.75 FEET; THENCE S64°15'36"E 76.97' FEET; THENCE S02°27'48"W 65.75 FEET; THENCE S25°19'52"E 43.32 FEET; THENCE S02°27'48"W 4.09 FEET; THENCE N87°32'12"W 108.42 FEET TO THE POINT OF BEGINNING, CONTAINING 10,760 SQFT OR .25 AC. MORE OR LESS.

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

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

Section 1: The City of Bentonville Arkansas releases, vacates and abandons all of its rights together with the rights of the public generally, in and to a drainage easement designated as follows:

> BEING A PART OF LOT 76 OF THE WHITE OAK SUBDIVISION AS RECORDED IN PLAT BK.2013 PG.683 IN THE OFFICIAL PUBLIC RECORDS OF BENTON COUNTY, ARKANSAS MORE PARTICULARLY DESCRIBED AS:
>
> BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 76, THENCE N02°27'48"E 40.38 FEET; THENCE N12°34'39'E 99.75 FEET; THENCE S64°15'36"E 76.97' FEET; THENCE S02°27'48"W 65.75 FEET; THENCE S25°19'52"E 43.32 FEET; THENCE S02°27'48"W 4.09 FEET; THENCE N87°32'12"W 108.42 FEET TO THE POINT OF BEGINNING, CONTAINING 10,760 SQFT OR .25 AC. MORE OR LESS.

Section 2: A copy of this Ordinance, duly certified by the City Clerk, shall be filed in the Office of the Recorder of Benton County, Arkansas and recorded in the deed records of the County.

Section 3: This Ordinance shall take effect and be in force from and after its passage. The above and foregoing Ordinance was passed, approved, and adopted the _____ day of _____, 2021 at a regular meeting of the City Council of the City of Bentonville, Arkansas.

_____	_____
Kirby Romines, City Clerk	**Stephanie Orman, Mayor**
Bentonville, Arkansas	**City of Bentonville, Arkansas**

Agenda Item Form

Date of City Council Meeting	**8/24/2021**
Department	**ENGINEERING**
Submitted by	**TRACY BILLINGS**
Phone	**(479) 696-0229**

Item Type: (*Check Applicable Item Type)*

☐ Budget Adjustment	☐ Change Order	☐ Informational	☑ Ordinance	☐ Resolution	☐ Bid Award

Recommendation/Suggested Action *(Enter recommendation in space below):*

Public hearing and ordinance vacating a Utility Easement requested for 1220 NE Buckingham Blvd of Kingsbury Subdivision PH1 (VAC21-0016).

Estimated Cost	**$**
Is this Item Budgeted?	☐ Yes ☑ No

If no, please explain how item will be funded *(briefly explain in space below)* :



1 inch = 54 feet

Proposed Easement Vacation
1220 NE Buckingham Blvd

ORDINANCE NO_____

AN ORDINANCE VACATING A UTILITY EASEMENT LOCATED AT 1220 NE BUCKINGHAM BLVD. OF KINSBURY SUBDIVISION TO THE CITY OF BENTONVILLE, ARKANSAS, BENTON COUNTY ARKANSAS (VAC21-0016).

WHEREAS, a petition was filed with the City Council of the City of Bentonville, Arkansas, by Norris Hawkins asking the City Council to vacate a utility easement located in the City of Bentonville, Benton County, Arkansas, which portion is more particularly described as follows:

The West 20' of a 30' Utility Easement that is squarely off the East Side of Lot 18 of Kingsbury Subdivision Phase 1 as shown on Plat Record Book P3 Page 960 and Recorded in the Benton County Clerk's Office, Bentonville, Arkansas.

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

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

Section 1: The City of Bentonville Arkansas releases, vacates and abandons all of its rights together with the rights of the public generally, in and to a utility easement designated as follows:

The West 20' of a 30' Utility Easement that is squarely off the East Side of Lot 18 of Kingsbury Subdivision Phase 1 as shown on Plat Record Book P3 Page 960 and Recorded in the Benton County Clerk's Office, Bentonville, Arkansas.

Section 2: A copy of this Ordinance, duly certified by the City Clerk, shall be filed in the Office of the Recorder of Benton County, Arkansas and recorded in the deed records of the County.

Section 3: This Ordinance shall take effect and be in force from and after its passage. The above and foregoing Ordinance was passed, approved, and adopted the _____ day of _____, 2021 at a regular meeting of the City Council of the City of Bentonville, Arkansas.

_____
Kirby Romines, City Clerk
and Recorder
City of Bentonville, Arkansas

_____
Stephanie Orman, Mayor
City of Bentonville, Arkansas

Agenda Item Form

Date of City Council Meeting	**8/24/2021**
Department	**ENGINEERING**
Submitted by	**TRACY BILLINGS**
Phone	**(479) 696-0229**

Item Type: (*Check Applicable Item Type)*

☐ Budget Adjustment	☐ Change Order	☐ Informational	☑ Ordinance	☐ Resolution	☐ Bid Award

Recommendation/Suggested Action *(Enter recommendation in space below):*

Public hearing and ordinance vacating a Utility and Access Easement requested for 1605/1703 SW 14th Street (VAC21-0017).

Estimated Cost	**$**
Is this Item Budgeted?	☐ Yes ☑ No

If no, please explain how item will be funded *(briefly explain in space below)* :



1 inch = 125 feet

VAC21-0017
Proposed Utility & Drive Vacation

ORDINANCE NO_____

AN ORDINANCE VACATING A UTILITY AND ACCESS EASEMENT LOCATED AT 1605/1703 SW 14TH STREET TO THE CITY OF BENTONVILLE, ARKANSAS, BENTON COUNTY ARKANSAS (VAC20-0033).

WHEREAS, a petition was filed with the City Council of the City of Bentonville, Arkansas, by Jack Singh asking the City Council to vacate a utility and access easement located in the City of Bentonville, Benton County, Arkansas, which portion is more particularly described as follows:

All of the 20' Utility and Drive Easement along and adjacent to the east line of Tract 2B, Jim Stanley Replat, filed for record in Plat Book 4 at page 317, June 5, 1984, said Tract 2B being part of the Fractional Northeast Quarter of the Northwest Quarter (Frac. NE1/4 NW1/4) of Section 1, Township 19 North, Range 31 West, Benton County, Arkansas, and said easement being more particularly described as follows:

COMMENCING at the southwest corner of the Fractional Northeast Quarter of the Northwest Quarter (Frac. NE1/4 NW1/4) of Section 1; thence South 88°51' East 615.20 feet; thence North 00°25' East 975.00 feet to the southeast corner of said Tract 2B and the POINT OF BEGINNING; thence North 89°24' West along the south line of said Tract 2B a distance of 20.00 feet; thence North 00°25' East parallel with the east line of said Tract 2B a distance of 222.60 feet, more or less, to the north line of said Tract 2B and the south line of AR Highway 102; thence South 89°24' East along said north line 20.00 feet to the northeast corner of said Tract 2B; thence South 00°25' West a distance of 222.60 feet, more or less, to the Point of Beginning.

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

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

Section 1: The City of Bentonville Arkansas releases, vacates and abandons all of its rights together with the rights of the public generally, in and to a utility easement designated as follows:

All of the 20' Utility and Drive Easement along and adjacent to the east line of Tract 2B, Jim Stanley Replat, filed for record in Plat Book 4 at page 317, June 5, 1984, said Tract 2B being part of the Fractional Northeast Quarter of the Northwest Quarter (Frac. NE1/4 NW1/4) of Section 1, Township 19 North, Range 31 West, Benton County, Arkansas, and said easement being more particularly described as follows:

COMMENCING at the southwest corner of the Fractional Northeast Quarter of the Northwest Quarter (Frac. NE1/4 NW1/4) of Section 1; thence South 88°51' East 615.20 feet; thence North 00°25' East 975.00 feet to the southeast corner of said Tract 2B and the POINT OF BEGINNING; thence North 89°24' West along the south line of said Tract 2B a distance of 20.00 feet; thence North 00°25' East parallel with the east line of said Tract 2B a distance of 222.60 feet, more or less, to the north line of said Tract 2B and the south line of AR Highway 102; thence South 89°24' East along said north line 20.00 feet to the northeast corner of said Tract 2B; thence South 00°25' West a distance of 222.60 feet, more or less, to the Point of Beginning.

Section 2: A copy of this Ordinance, duly certified by the City Clerk, shall be filed in the Office of the Recorder of Benton County, Arkansas and recorded in the deed records of the County.

Section 3: This Ordinance shall take effect and be in force from and after its passage. The above and foregoing Ordinance was passed, approved, and adopted the _____ day of _____, 2021 at a regular meeting of the City Council of the City of Bentonville, Arkansas.

_____
Kirby Romines, City Clerk
and Recorder
City of Bentonville, Arkansas

_____
Stephanie Orman, Mayor
City of Bentonville, Arkansas

Agenda Item Form

Date of City Council Meeting	**8/24/2021**
Department	**ENGINEERING**
Submitted by	**TRACY BILLINGS**
Phone	**(479) 696-0229**

Item Type: (*Check Applicable Item Type)*

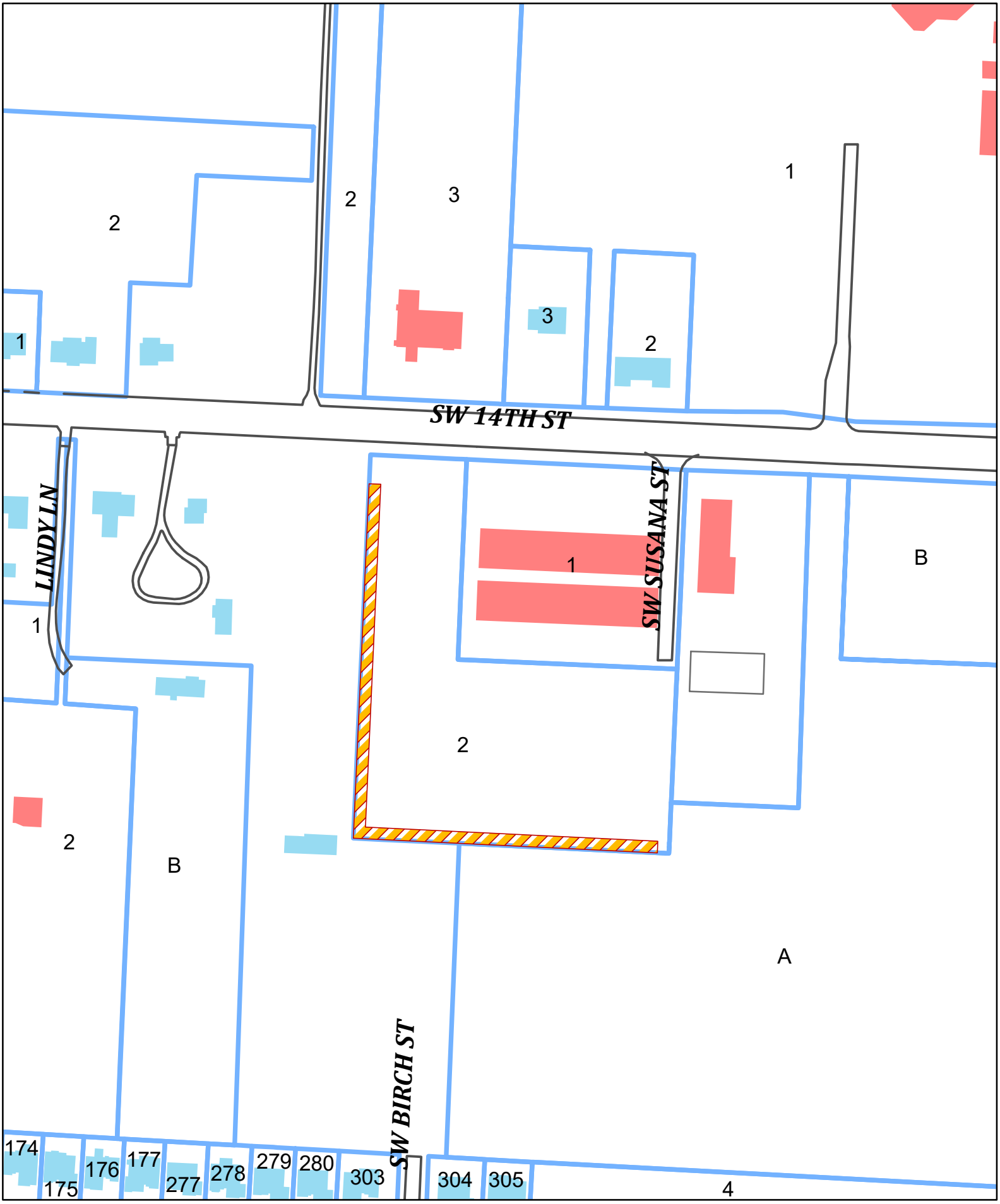
☐ Budget Adjustment	☐ Change Order	☐ Informational	☑ Ordinance	☐ Resolution	☐ Bid Award

Recommendation/Suggested Action *(Enter recommendation in space below):*

Public hearing and ordinance vacating a Utility Easement requested for 1507 SW 14th Street (VAC21-0018).

Estimated Cost	**$**
Is this Item Budgeted?	☐ Yes ☑ No

If no, please explain how item will be funded *(briefly explain in space below)* :



1 inch = 208 feet

VAC21-0018
Proposed Easement Vacation

ORDINANCE NO_____

AN ORDINANCE VACATING A UTILITY EASEMENT LOCATED AT 1507 SW 14th STREET TO THE CITY OF BENTONVILLE, ARKANSAS, BENTON COUNTY ARKANSAS (VAC21-0018).

WHEREAS, a petition was filed with the City Council of the City of Bentonville, Arkansas, by Jack Singh asking the City Council to vacate a utility easement located in the City of Bentonville, Benton County, Arkansas, which portion is more particularly described as follows:

A strip of land dedicated as a twenty foot (20') utility easement on a part of Lot 2, Mac's Addition to the City of Bentonville, Benton County, Arkansas and filed for record at Book 2017 Page 402, more particularly described as follows:

Commencing at a five-eighths inch (5/8") rebar accepted as the Southeast Corner of the Fractional Northeast Quarter of the Northwest Quarter of Section 1: thence North 02°33'57" East a distance of 543.84 feet to the Southeast Corner of Lot 2, Mac's Addition; thence North 87°14'11" West along the south line of Lot 2, a distance of 20.00 feet to the Point of Beginning; thence North 87°14'11" West a distance of 523.12 feet to the Southwest Corner of Lot 2; thence North 02°32'55" East a distance of 610.15 feet to the south line of an existing fifty foot (50') general utility easement filed for record at Book 2015 Page 19606; thence along the south line of said general utility easement, South 87°16'38" East a distance of 20.00 feet; thence departing said easement line, South 02°32'55" West a distance of 590.16 feet; thence South 87°14'11" East a distance of 503.12 feet to the west line of an existing utility easement filed for record at Book 2017 Page 402; thence along said easement line, South 02°33'57" West a distance of 20.00 feet to the Point of Beginning.

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

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

Section 1: The City of Bentonville Arkansas releases, vacates and abandons all of its rights together with the rights of the public generally, in and to a utility easement designated as follows:

A strip of land dedicated as a twenty foot (20') utility easement on a part of Lot 2, Mac's Addition to the City of Bentonville, Benton County, Arkansas and filed for record at Book 2017 Page 402, more particularly described as follows:

Commencing at a five-eighths inch (5/8") rebar accepted as the Southeast Corner of the Fractional Northeast Quarter of the Northwest Quarter of Section 1: thence North 02°33'57" East a distance of 543.84 feet to the Southeast Corner of Lot 2, Mac's Addition; thence North 87°14'11" West along the south line of Lot 2, a distance of 20.00 feet to the Point of Beginning; thence North 87°14'11" West a distance of 523.12 feet to the Southwest Corner of Lot 2; thence North 02°32'55" East a distance of 610.15 feet to the south line of an existing fifty foot (50') general utility easement filed for record at Book 2015 Page 19606; thence along the south line of said general utility easement, South 87°16'38" East a distance of 20.00 feet; thence departing said easement line, South 02°32'55" West a distance of 590.16 feet; thence South 87°14'11" East a distance of 503.12 feet to the west line of an existing utility easement filed for record at Book 2017 Page 402; thence along said easement line, South 02°33'57" West a distance of 20.00 feet to the Point of Beginning.

Section 2: A copy of this Ordinance, duly certified by the City Clerk, shall be filed in the Office of the Recorder of Benton County, Arkansas and recorded in the deed records of the County.

Section 3: This Ordinance shall take effect and be in force from and after its passage. The above and foregoing Ordinance was passed, approved, and adopted the _____ day of _____, 2021 at a regular meeting of the City Council of the City of Bentonville, Arkansas.

_____	_____
Kirby Romines, City Clerk	Stephanie Orman, Mayor
Bentonville, Arkansas	City of Bentonville, Arkansas

Agenda Item Form

Date of City Council Meeting	**8/24/2021**
Department	**ENGINEERING**
Submitted by	**TRACY BILLINGS**
Phone	**(479) 696-0229**

Item Type: (*Check Applicable Item Type)*

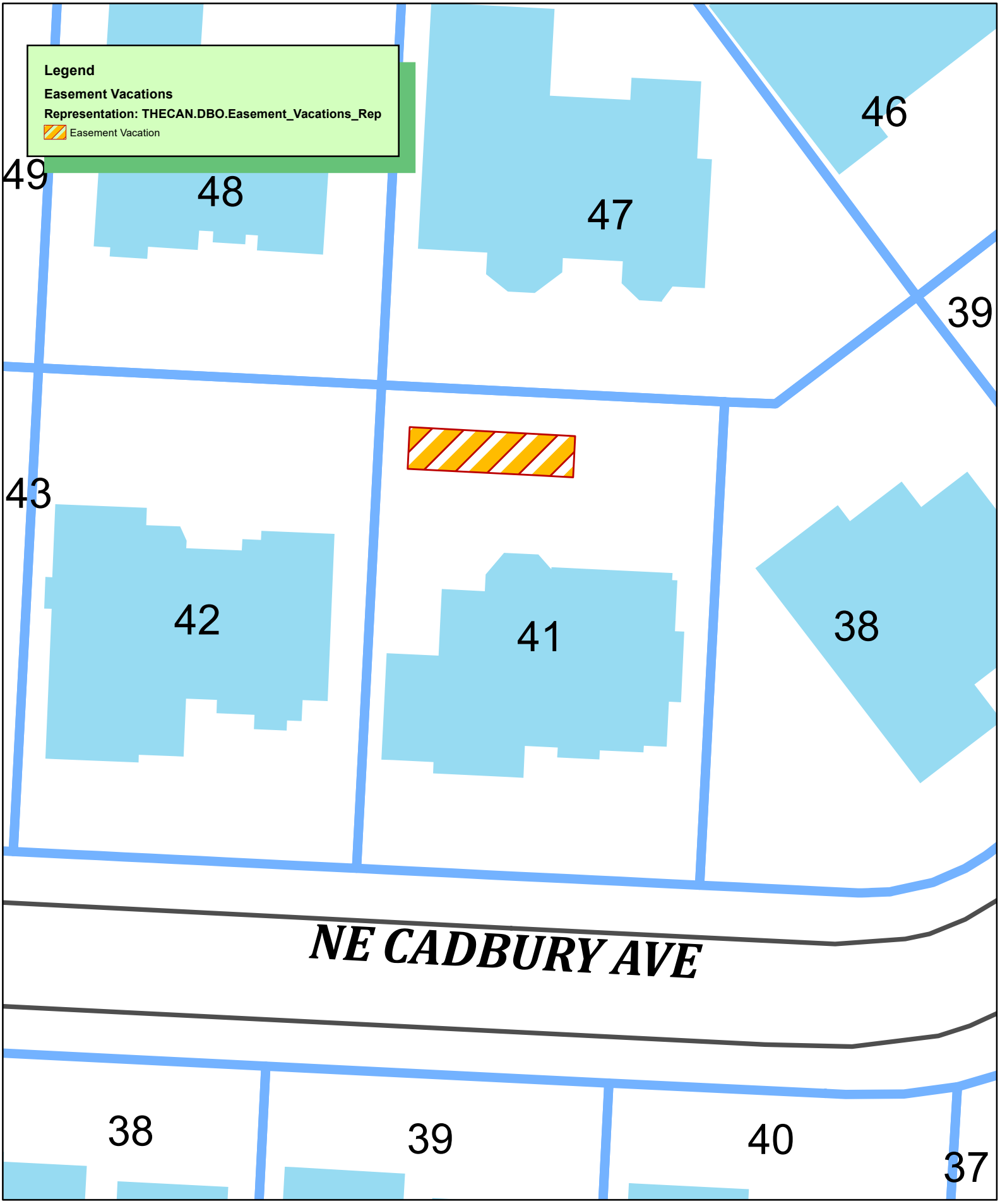
☐ Budget Adjustment	☐ Change Order	☐ Informational	☐ Ordinance	☑ Resolution	☐ Bid Award

Recommendation/Suggested Action *(Enter recommendation in space below):*

Resolution setting a public hearing for September 14, 2021 for a Utility/Drainage Easement Vacation requested for 4007 NE Cadbury Ave. of Kensington Subdivision (VAC21-0020).

Estimated Cost	**$**
Is this Item Budgeted?	☐ Yes ☑ No

If no, please explain how item will be funded *(briefly explain in space below)* :



N
W E
S
1 inch = 30 feet

Proposed Utility and Drainage Easement Vacation
4007 NE Cadbury Ave

THE CITY OF BENTONVILLE

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 PDM Designs, Inc. requesting a utility easement vacation (VAC21-0018) within the City of Bentonville, Arkansas be vacated, which said utility/drainage easement is described as follows:

A vacation of part of a platted utility and drainage easement on the North Side of Lot 41 Kensington Subdivision Phase 2 as shown on Plat Record Book 2002 Page 157 in the Benton County Clerk's Office, Benton County, Arkansas and more particularly described as follows:

Commencing at the Northwest Corner of said Lot 41.
Thence S33°50'04"E, 12.53' to the Point of Beginning.
Thence S86°47'10"E, 41.00';
Thence S02°56'05"W, 10.17';
Thence N87°03'57"W, 41.00';
Thence N02°56'10"E, 10.37' 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/drainage easement is set for a hearing on August 24, 2021 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 _____ 2021 at a regular meeting of the City Council of the City of Bentonville, Arkansas.

_____
Kirby Romines, City Clerk
Bentonville, Arkansas

_____
Stephanie Orman, Mayor
City of Bentonville, Arkansas

Agenda Item Form

Date of City Council Meeting	**8/24/2021**
Department	**Transportation**
Submitted by	**Dennis Birge**
Phone	**(479) 271-5964**

Item Type: (*Check Applicable Item Type)*

☐ Budget Adjustment	☑ Change Order	☐ Informational	☐ Ordinance	☑ Resolution	☐ Bid Award

Recommendation/Suggested Action *(Enter recommendation in space below):*

Resolution authorizing the Mayor to enter into an agreement with ARDOT, funding $242,258.69 from the Bond fund account allocated to the addition of stamped concrete to improve the aesthetics as per Change Order #21 of BB0903 project.

Estimated Cost	**$242,258.69**
Is this Item Budgeted?	☐ Yes ☑ No

If no, please explain how item will be funded *(briefly explain in space below)* :

This change order will be funded through the Street Bond fund.

Memorandum

To: City Council, Mayor Orman

From: Dennis Birge, Transportation Director

Date: Friday, August 13, 2021

Re: BB0903 – Request for Change Order #21 Approval

Staff recommends City Council approval of a resolution authorizing the Mayor to enter into an agreement with Arkansas Department of Transportation, allowing Change Order #21 to the ARDOT BB0903 S.P.U.I. (Single Point Urban Interchange) project located at exit 85. The resolution would allow for City funding required to construct Stamped Concrete to enhance the aesthetics of the planned concrete flatwork to the current City Of Bentonville standards.

The City portion of funding will come from the Street Bond fund totaling $242,258.69.

Thank you for your consideration of this request and please do not hesitate to contact me with any questions or concerns at dbirge@bentonvillear.com or 479-271-5964.

ARKANSAS STATE HIGHWAY COMMISSION

CHANGE ORDER

Job Name Hwy. 71B Intchng. Impvts. (S) **Route & Section** 49, Section 29

Job No. BB0903 **FAP No.** NHPP-540-1(78)85 **County** Benton

Changes located 92+43 to 121+34 **Change Order No.** 21

DESCRIPTION OF CHANGE:
Reduce the quantities of the items "Concrete Riprap", and "Concrete Island". Add and establish to the Contract the items "Stamped Concrete (5" Bentonville under bridge)", "Stamped Concrete (5" Rogers under bridge)", "Stamped Concrete (8" Bentonville)", and "Stamped Concrete (8" Rogers)".

REASON FOR CHANGE:
The Cities of Bentonville and Rogers have requested to construct Stamped Concrete to enhance the aesthetics of the planned concrete flatwork in the immediate vicinity of the interchange. The 5" will replace the planned concrete riprap under the overpass, and the 8" will replace the planned concrete median islands in Hwy 71 Business.

Note: The Cities of Bentonville and Rogers have agreed to pay the costs for the items "Stamped Concrete (5" Bentonville under bridge)", "Stamped Concrete (5" Rogers under bridge)", "Stamped Concrete (8" Bentonville)", and "Stamped Concrete (8" Rogers)". and will participate 100% in this Change Order.

ATTACHMENTS: Special Provision for Stamped Concrete, Schedule of Quantities, Plan View, Correspondence and Copy of Payment

NOTE: UNIT PRICES FOR "STAMPED CONCRETE (5" BENTONVILLE UNDER BRIDGE)", "STAMPED CONCRETE (5" ROGERS UNDER BRIDGE)", "STAMPED CONCRETE 8" BENTONVILLE", AND "STAMPED CONCRETE 8" ROGERS" ARE CONTINGENT UPON THE EXECUTION OF A SUPPLEMENTAL AGREEMENT.

SUMMARY

Item No.	Item	Unit	Unit Price	PRESENT		REVISED	
				Quantity	Amount	Quantity	Amount
SS&632	Concrete Island	SQYD	44.50	2,279.00	101,415.50	0.00	0.00
816	Concrete Riprap	CUYD	625.00	159.00	99,375.00	158.00	98,750.00
SP	Stamped Concrete 5" Rogers under bridge	SQYD	171.89	0.00	0.00	492.72	84,692.78
SP	Stamped Concrete 5" Bentonville under bridge	SQYD	171.89	0.00	0.00	492.72	84,692.78
SP	Stamped Concrete 8" Rogers	SQYD	196.55	0.00	0.00	918.00	180,432.90
SP	Stamped Concrete 8" Bentonville	SQYD	196.55	0.00	0.00	1,361.00	267,504.55
					200,790.50		716,073.01

Overrun $515,282.51

Job Name Hwy. 71B Intchng. Impvts. (S) **Route & Section** 49, Section 29

Job No. BB0903 **FAP No.** NHPP-540-1(78)85 **County** Benton

Changes located 92+43 to 121+34 **Change Order No.** 21

Concurrence By:

	Date	Initials	Remarks

Recommended _____

Steve Lawrence, District Engineer

APPROVED _____

David B. Henning, Construction Engineer

Authorized _____

Steve Frisbee, Assistant Chief Engineer

Requested _____

David Bushey, Resident Engineer

Bentonville totals	Unit Price	QTY	Unit	Amount
Concrete Island	$ 44.50	-1361	CUYD	$ (60,564.50)
Concrete Riprap	$ 625.00	-79	CUYD	$ (49,375.00)
Stamped Concrete 5" Bentonville under bridge	$ 171.89	492.7	LS	$ 84,693.64
Stamped Concrete 8" Bentonville	$ 196.55	1361	EA	$ 267,504.55
Bentonville totals				**$ 242,258.69**

Rogers totals	Unit Price	QTY	Unit	
Concrete Island	$ 44.50	-918	CUYD	$ (40,851.00)
Concrete Riprap	$ 625.00	-79	CUYD	$ (49,375.00)
Stamped Concrete 5" Rogers under bridge	$ 171.89	492.7	LS	$ 84,693.64
Stamped Concrete 8" Rogers	$ 196.55	918	EA	$ 180,432.90
Rogers totals				**$ 174,900.54**

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CLERK TO ENTER INTO AN AGREEMENT WITH THE ARKANSAS DEPARTMENT OF TRANSPORTATION RELATED TO CERTAIN IMPROVEMENTS.

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

Section 1: That the Mayor and Clerk be and are hereby authorized to enter into an agreement with the Arkansas Department of Transportation to fund $242,258.69 for the addition of stamped concrete as per Change Order #21 of the BB0903 project, as set forth in the agreement attached hereto as Exhibit A.

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

PASSED and APPROVED this _____ day of _____, 2021.

APPROVED:

_____
MAYOR

ATTEST:

_____
CITY CLERK

Agenda Item Form

Date of City Council Meeting	**8/24/2021**
Department	**Administration**
Submitted by	**Debbie Griffin**
Phone	**(479) 271-2028**

Item Type: (*Check Applicable Item Type)*

☐ Budget Adjustment	☐ Change Order	☑ Informational	☐ Ordinance	☐ Resolution	☐ Bid Award

Recommendation/Suggested Action *(Enter recommendation in space below):*

Reappointment of Dr. Richard Ham to the Airport Advisory Board. His term expires on September 30, 2021. New term would expire 9-30-2024.

Estimated Cost	**$**
Is this Item Budgeted?	☐ Yes ☐ No

If no, please explain how item will be funded *(briefly explain in space below)* :

August 19, 2021

To: City Council Members & City Clerk

From: Mayor Stephanie Orman

Subject: Reappointment of Dr. Richard Ham to the City of Bentonville's Airport Advisory Board.

I recommend Dr. Richard Ham for reappointment to the City of Bentonville's Airport Advisory Board. Dr. Ham's term will expire on September 30, 2024.

SO

Stephanie Orman

Agenda Item Form

Date of City Council Meeting	**8/24/2021**
Department	**Administration**
Submitted by	**Debbie Griffin**
Phone	**(479) 271-2028**

Item Type: (*Check Applicable Item Type)*

☐ Budget Adjustment	☐ Change Order	☑ Informational	☐ Ordinance	☐ Resolution	☐ Bid Award

Recommendation/Suggested Action *(Enter recommendation in space below):*

Reappointment of Lisa Kelley to the Airport Advisory Board. Her term expires on September 30, 2021. New term would expire 9-30-2024.

Estimated Cost	**$**
Is this Item Budgeted?	☐ Yes ☐ No

If no, please explain how item will be funded *(briefly explain in space below)* :

August 19, 2021

To: City Council Members & City Clerk

From: Mayor Stephanie Orman

Subject: Reappointment of Lisa Kelley to the City of Bentonville's Airport Advisory Board.

I recommend Lisa Kelley for reappointment to the City of Bentonville's Airport Advisory Board. Ms. Kelley's term will expire on September 30, 2024.

SO

Stephanie Orman

Agenda Item Form

Date of City Council Meeting	**8/24/2021**
Department	**Administration**
Submitted by	**Debbie Griffin**
Phone	**(479) 271-2028**

Item Type: (*Check Applicable Item Type)*

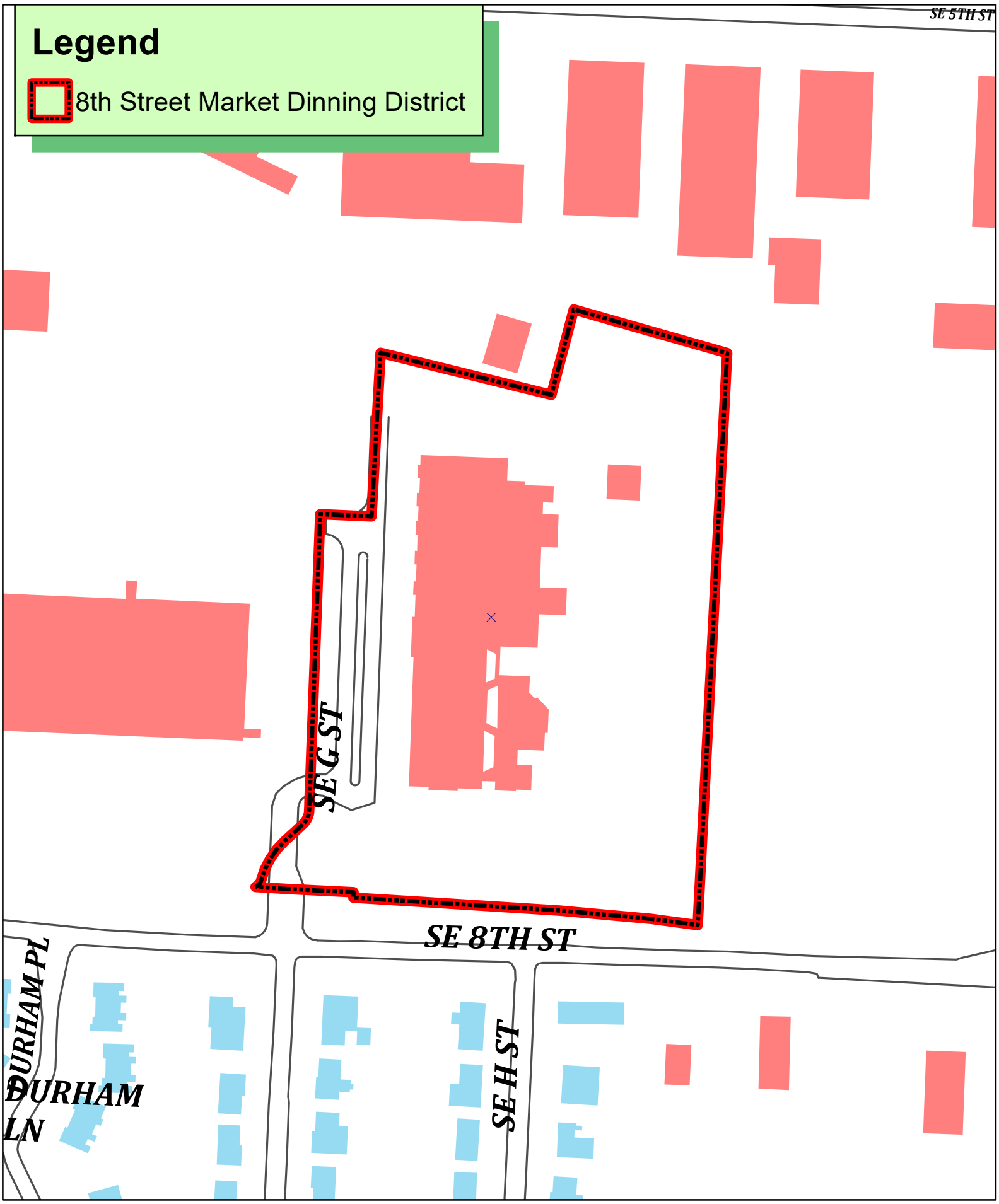
☐ Budget Adjustment	☐ Change Order	☐ Informational	☑ Ordinance	☐ Resolution	☐ Bid Award

Recommendation/Suggested Action *(Enter recommendation in space below):*

Ordinance for creating the wholly private property of the 8th Street Market as an Entertainment District to be known as the 8th Street Outdoor Dining District.

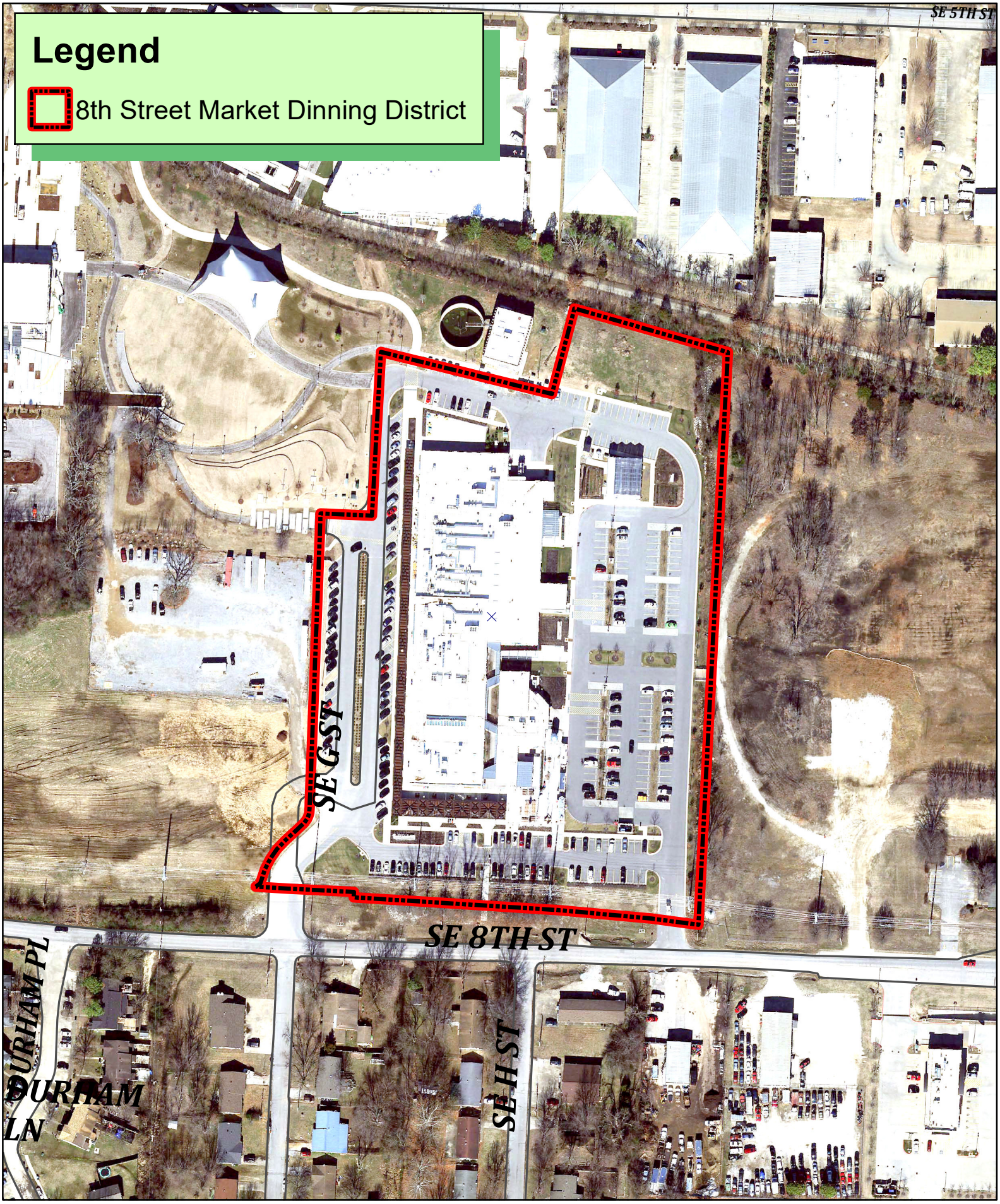
Estimated Cost	**$**
Is this Item Budgeted?	☐ Yes ☐ No

If no, please explain how item will be funded *(briefly explain in space below)* :



1 inch = 167 feet

Proposed 8th Street Market Dinning District



N
W E
S
1 inch = 167 feet

Proposed 8th Street Market Dinning District

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING AN ENTERTAINMENT DISTRICT TO BE KNOWN AS THE 8TH STREET MARKET OUTDOOR DINING DISTRICT ; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES.

WHEREAS, Act 812 of 2019, codified at Ark Code Ann. §14-54-1412, authorizes cities collecting a gross receipts tax on prepared food or hotel and motel accommodations under Ark. Code Ann. §§ 26-75-602, et seq., and located in a county authorized to sell alcoholic beverages, to create a designated entertainment district and to set reasonable standards for the regulation of alcohol possession with the boundaries of the district;

WHEREAS, the City Council has determined the creation of the 8th Street Market Outdoor Dining District on wholly private property located at the 8th Street Market as a pilot project to attract patrons and business to help ensure long term economic and social sustainability by promoting an atmosphere that highlights restaurants and hospitality options; and

WHEREAS, the City Council finds that it is in the best interests of the City and its residents to create a designated entertainment district located to be known as the 8th Street Market Outdoor Dining District on private property, subject to the regulations set forth in this ordinance.

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

SECTION 1: That the Bentonville Municipal Code should be and is hereby amended to include the following section"

Sec 18-3 8th Street Outdoor Dining District

(a) Pursuant to the authority granted by Act 812 of 2019, an entertainment district to be known as the 8th Street Market Outdoor Dining District ("District") is hereby created and established on private property, within the boundaries as set forth and designated on the map that is attached as Exhibit A and incorporated by reference. The City Council shall have the authority to review and recommend expansion of the boundaries of the District, subject to the provisions of Ark. Code Ann. §14-54-1412(a) and this Ordinance.

(b) The following regulations shall apply to the 8th Street Market Outdoor Dining District:

1) Restaurants, bars, and breweries, within the District boundaries, as well as licensed vendors within the District boundaries, may serve alcoholic beverages that may be carried out of the establishment and consumed within the designated boundaries of the District between the hours of 11:00 a.m. and 11 p.m. daily, as long as the beverage is contained in a designated District cup provided by a participating business in the District.

2) The boundaries of the District will be designated by signage placed along the boundaries of the District.

3) As needed trash and recycling receptacles will be placed at the boundaries of the District.

4) A document will be prepared showing the boundaries of the District, participating bars and restaurants, information regarding the regulations of the district, and frequently asked questions. The document will be available on the 8th Street Market website, and posted in public areas including but not limited to hallways, bathrooms, and doors.

5) Participating restaurants and bars may not allow alcoholic beverages to be removed from the premises in glass containers and it shall be unlawful for any person to possess alcoholic beverages in glass containers within the boundaries of the District.

6) No alcoholic beverages purchased outside the District shall be allowed in open containers in the District

7) Nothing in this ordinance shall be construed to allow any person to possess open containers of alcoholic beverages or to consume alcoholic beverages in a motor vehicle.

8) No person shall be permitted to remove an open alcoholic beverage container from the District. All unfinished quantities of alcoholic beverages must be properly disposed of prior to the individual leaving the District

9) Any owner within the district may allow a customer to exit the owner's premises during the hours designated within the defined District with no more than one (1) open container of alcoholic beverages and for consumption of said alcoholic beverages within the confines of the District.

10) No owner shall allow a customer to exit its premises with an open container of alcoholic beverage until the owner has placed a designated physical identifier on the customer, and it shall be unlawful for any person to exit such licensed premises with an open container without the required physical identifier.

11) It shall be unlawful for a customer to enter any business regulated by the Arkansas Alcoholic Beverage Control Division with any alcoholic beverage that was not acquired at that location. A customer may not enter any other establishment with an open or

closed container of alcoholic beverage without the consent of the owner or manager of the establishment.

12) No container in which an alcoholic beverage is dispensed and removed from the licensed premises shall exceed sixteen (16) fluid ounces in size.

(c) This Ordinance does not diminish the requirement of the Alcoholic Beverage Control Division of the Department of Finance and Administration concerning permits issued within the designated entertainment district.

(d) Pursuant to Ark. Code Ann. §14-54-1412(b)(4), the City Clerk shall, within ten (10) days from passage of this Ordinance, provide notice to the Alcoholic Beverage Control Division of the Department of Finance and Administration of the creation of this Entertainment District.

PASSED AND APPROVED this _____ day of _____, 2021.

APPROVED:

_____
MAYOR

ATTEST:

_____
CITY CLERK

Agenda Item Form

Date of City Council Meeting	**8/24/2021**
Department	**Parks and Recreation**
Submitted by	**Wade Tomlinson, Parks and Recreation**
Phone	**(479) 464.7275**

Item Type: (*Check Applicable Item Type)*

☐ Budget Adjustment	☐ Change Order	☐ Informational	☐ Ordinance	☑ Resolution	☐ Bid Award

Recommendation/Suggested Action *(Enter recommendation in space below):*

Resolution authorizing the Mayor and City Clerk enter into an agreement with Crossland Construction Company, in an amount not to exceed $75,000.00, to provide preconstruction services for the 8th Street Gateway Park Project. This Firm was selected in accordance with §14-58-1001, for Projects exceeding $2 million dollars.

Estimated Cost	**$75,000.00**
Is this Item Budgeted?	☐ Yes ☑ No

If no, please explain how item will be funded *(briefly explain in space below)* :

Project funded with bond revenue.

Memo

To:	City Council, Mayor Orman
Thru:	David Wright, Parks and Recreation Director
From:	Wade Tomlinson, Parks Planner
Date:	July 24, 2021
Re:	Resolution for contracting with Crossland Construction Co., Inc. (Crossland) for Construction Management of the Future 8th Street Gateway Park

---

Resolution – Staff requests City Council approval for a Resolution authoring the Mayor and City Clerk to enter into a professional services agreement with Crossland to provide preconstruction service of the development of the future the future 8th Street Park Project for an amount not to exceed $75,000.

Upon contract execution Crossland will collaborate with the project designer PORT Urbanism to provide input in finalizing the drawings, cost estimates and associated project services.

The services rendered will include assistance with construction cost estimating, project constructability analysis, value engineering and other construction efficiency input and analysis.

The agreement allows for an amendment to move to construction services. Acting on the amendment will require additional City Council action.

The 8th Street Park Project will provide the city's first centrally located destination Public Park. The new 100+ acre park will host many diverse attractions that will suit the recreational needs of a variety of people. The park will provide open spaces, undisturbed natural areas, walking trails, biking trails, paved walkways, playgrounds, a wheeled sports garden, rest areas, group areas and many other amenities. The park will also be a hub that will connect to trails that lead to other citywide destinations.

Funding for this project comes from the 2021 bond election and a grant from the Walton Family Foundation.

If you have any questions regarding this item, please call me at 479.464.7275 or email wtomlinson@bentonvillear.com.

Attachments:
Agreement with Crossland

AIA® Document A133™ – 2019

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 20th day of July in the year 2021
(In words, indicate day, month, and year.)

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

City of Bentonville
305 SW A Street
Bentonville, AR 72712
Client Representative: Wade Tomlinson

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

Crossland Construction Co., Inc.
1800 S. 52nd Street, Suite 410
Rogers, AR 72758

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

8th Street Gateway Park

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

Port
53 West Jackson Blvd.
Chicago, IL 60604

The Owner and Construction Manager agree as follows.

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

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

AIA Document A201™–2017, 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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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

§ 1.1.2 The Project's physical characteristics:
(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

100+ acre park west of the corner of 8th & I street

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:
(Provide total and, if known, a line item breakdown.)

$24M

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§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

TBD

.2 Construction commencement date:

TBD

.3 Substantial Completion date or dates:

TBD

.4 Other milestone dates:

TBD

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

NA

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

NA

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

Wade Tomlinson

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address and other contact information.)

NA

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§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

NA

.2 Civil Engineer:

EDG
216 W Birch Street
Rogers, AR 72756

.3 Other, if any:
(List any other consultants retained by the Owner, such as a Project or Program Manager.)

§ 1.1.11 The Architect's representative:
(List name, address, and other contact information.)

Sean McKay

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

Scott Wuerdeman

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

NA

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

Follow state procurement laws

§ 1.1.15 Other Initial Information on which this Agreement is based:

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§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 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 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 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. 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. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 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.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. 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.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. 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

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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.

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

§ 3.1.3 Consultation

§ 3.1.3.1 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.

§ 3.1.3.2 Subject to limitations on the Construction Manager's obligations set forth herein and in the A201-2017, the Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. Subject to limitations on the Construction Manager's obligations set forth herin and in the A201-2017, the Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; 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. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using 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.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 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 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 in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

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

§ 3.1.6.2 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, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The

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Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

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

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered 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.

§ 3.1.13 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.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

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§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 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 3.2.2;

.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, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; 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.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or 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.

§ 3.2.6 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.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents of which Construction Manager becomes aware.

§ 3.2.9 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 and effective, at the time the Guaranteed Maximum Price Amendment is executed. In the event a sales, consumer, use, or similar tax for the Work provided by the Construction Manager is enacted and becomes effective during the course of the Project, the parties shall execute a change order to address the increased cost.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

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§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

§ 3.3.2.1 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 of the meetings to the Owner and Architect.

§ 3.3.2.2 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 a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report

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.

§ 3.3.2.4 Daily Logs

The Construction Manager shall 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.

§ 3.3.2.5 Cost Control

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 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 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.

§ 4.1.2 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. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 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 Article 7, (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.

§ 4.1.4 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.

§ 4.1.4.1 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.

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§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other 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.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include 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.

§ 4.1.5 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.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 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 A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 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.

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

$75,000 Lump Sum

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

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

Individual or Position	Rate

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§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within 12 ( ) 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.

§ 5.2 Payments

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

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid 45 ( ) 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.)

%

§ 5.3 Payment Instructions

All payments made by Wire Transfer or ACH must be made by using instructions that are provided to Owner separately prior to or at the time this Agreement is executed by Crossland Construction Company, Inc. By Owner's signature on this Agreement, Owner acknowledges that it has received the Crossland Construction Company, Inc. Wire Transfer/ACH instructions. **This information will not change for the duration of the contract unless via change order executed by both parties.**

In the event Owner pays by check, please send check to the following address. **This information will not change for the duration of the contract unless via change order executed by both parties:**

Crossland Construction Company, Inc.
Attn: Accounts Receivable
833 S. East Avenue
P.O. Box 45
Columbus, KS 66725

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 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.)

2.5%

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

$0-$50K=10%, $50K-$100K=7%, $100K-$500K=5%, Over $500K=2.5%

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

10%

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§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed percent (0 %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

NA

§ 6.1.7 Other:
(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 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 Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 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 Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 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 6.1.3 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 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

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§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries 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.

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

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:
(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, 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.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining 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 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

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

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

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

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 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.

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

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, 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.

§ 7.5.2 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 the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

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

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

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

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

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

§ 7.6.3 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.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, 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, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

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

§ 7.6.9 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.

§ 7.6.10 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, with the Owner's prior approval.

§ 7.6.11 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.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

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§ 7.7.2 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 Article 10 of AIA Document A201–2017.

§ 7.7.3 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 the negligence of, or failure to fulfill a specific responsibility by, 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.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 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 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 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 in writing, 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 Article 9. If the Owner fails to authorize the transaction in writing, 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 Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 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 7.2, or as may be provided in Article 14;

.2 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, unless the Owner has provided prior approval;

.3 Expenses of the Construction Manager's principal office and offices other than the site office;

.4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;

.5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;

.6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, 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;

.7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;

.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and

.9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 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 the amount to be paid, less such discount, 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.

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§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 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 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, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (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 subject to the last sentence of Section 9.1 above, then the Construction Manager may require that a Change Order be issued to adjust 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 of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 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 Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, 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 Article 10.

ARTICLE 10 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, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, 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 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 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.

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

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than ( ) 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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§ 11.1.4 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 payments 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, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 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: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 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 and for which the Construction Manager has made payment or intends to make 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.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

.1 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 most recent schedule of values;

.2 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 completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 Construction Change Directives; and

.4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 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 included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;

.3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;

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.5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

5%

§ 11.1.8.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

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

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

§ 11.1.12 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 such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) 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.

§ 11.2 Final Payment

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

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.1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, 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 in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will 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 Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is 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 Article 15 of AIA Document A201–2017. 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.

§ 11.2.3 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:

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for 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 adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

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ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. 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 12.1.2 of this Agreement shall not apply.

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§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 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.)

§ 12.2 Binding Dispute Resolution
For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

[ ] Arbitration pursuant to Article 15 of AIA Document A201–2017

[X] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

If the Owner and Construction Manager do not select a method of binding dispute resolution, 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.

ARTICLE 13 TERMINATION OR SUSPENSION
§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment
§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 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 Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work 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 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 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 13.1.4:

.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 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an

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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.

§ 13.1.6 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 that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. 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 13, 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 entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 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.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

.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 6.1 or, if the Construction Manager' 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;

.3 Subtract the aggregate of previous payments made by the Owner; and

.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 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 13, 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.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document

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A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, 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 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, 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.

§ 14.2.2 The Owner may, without consent of the Construction Manager, 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 Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than ($) for each occurrence and ($) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than ($) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than ($) each accident, ($) each employee, and ($) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than ($) per claim and ($) in the aggregate.

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage	Limits
See attached sample COI	

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§ 14.3.1.7 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella polices for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, 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, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 14.5 Other provisions:

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 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.

§ 15.2 The following documents comprise the Agreement:

.1 AIA Document A133™–2019, 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 A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed

.3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds

.4 AIA Document A201™–2017, General Conditions of the Contract for Construction

.5 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

.6 Other Exhibits:
(Check all boxes that apply.)

[ ] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
(Insert the date of the E234-2019 incorporated into this Agreement.)

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[ ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

.7 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

This Agreement is entered into as of the day and year first writt[redacted]

OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
	Chris Schnurbusch, President of South East Region
(Printed name and title)	*(Printed name and title)*

[ ] As set forth in the notice contained within the payment terms sections of this Agreement, Owner hereby acknowledges that Contractor will not change payment instructions other than via change order signed by Owner and Contractor.

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PAGE 1

AGREEMENT made as of the 20th day of July in the year 2021

...

City of Bentonville
305 SW A Street
Bentonville, AR 72712
Client Representative: Wade Tomlinson

...

Crossland Construction Co., Inc.
1800 S. 52nd Street, Suite 410
Rogers, AR 72758

...

8th Street Gateway Park

...

Port
53 West Jackson Blvd.
Chicago, IL 60604

PAGE 2

100+ acre park west of the corner of 8th & I street

...

$24M

PAGE 3

TBD

...

TBD

...

TBD

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TBD

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NA

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NA

...

Wade Tomlinson

...

NA
PAGE 4

NA

...

EDG
216 W Birch Street
Rogers, AR 72756

...

Sean McKay

...

Scott Wuerdeman

...

NA

...

Follow state procurement laws
PAGE 5

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The ~~Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. 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.
PAGE 6

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§ 3.1.3.2 ~~The~~ Subject to limitations on the Construction Manager's obligations set forth herein and in the A201-2017, the Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. ~~The~~ Subject to limitations on the Construction Manager's obligations set forth herin and in the A201-2017, the Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; 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. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.
PAGE 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 in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered 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.~~
PAGE 8

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract ~~Documents.~~Documents of which Construction Manager becomes aware.

§ 3.2.9 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~~ enacted and effective, at the time the Guaranteed Maximum Price Amendment is executed. In the event a sales, consumer, use, or similar tax for the Work provided by the Construction Manager is enacted and becomes effective during the course of the Project, the parties shall execute a change order to address the increased cost.
PAGE 10

$75,000 Lump Sum
PAGE 11

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within 12 ( ) 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.

...

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid 45 ( ) 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.

...

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§ 5.3 Payment Instructions
All payments made by Wire Transfer or ACH must be made by using instructions that are provided to Owner separately prior to or at the time this Agreement is executed by Crossland Construction Company, Inc. By Owner's signature on this Agreement, Owner acknowledges that it has received the Crossland Construction Company, Inc. Wire Transfer/ACH instructions. **This information will not change for the duration of the contract unless via change order executed by both parties.**

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In the event Owner pays by check, please send check to the following address. **This information will not change for the duration of the contract unless via change order executed by both parties:**

Crossland Construction Company, Inc.
Attn: Accounts Receivable
833 S. East Avenue
P.O. Box 45
Columbus, KS 66725

...

2.5%

...

$0-$50K=10%, $50K-$100K=7%, $100K-$500K=5%, Over $500K=2.5%

...

10%

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed percent (0 %) of the standard rental rate paid at the place of the Project.
PAGE 12

NA
PAGE 16

§ 9.1.1 When a specific subcontractor or supplier (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,~~ accepted subject to the last sentence of Section 9.1 above, then the Construction Manager may require that a Change Order be issued to adjust 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 of the subcontract or other agreement actually signed with the person or entity designated by the Owner.
PAGE 17

.3 ~~That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified;~~ Construction Change Directives; and
PAGE 18

5%
PAGE 20

[X] Litigation in a court of competent jurisdiction
PAGE 21

§ 13.1.6 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 that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. 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 13, 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~~

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~~agreements~~ Subcontracts entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

...

§ 13.2.2.2 ~~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 that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1.~~ 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 13, 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.
PAGE 22

See attached sample COI
PAGE 24

_____ Chris Schnurbusch, President of South East Region

...

[ ] As set forth in the notice contained within the payment terms sections of this Agreement, Owner hereby acknowledges that Contractor will not change payment instructions other than via change order signed by Owner and Contractor.

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Chris Schnurbusch, 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 10:34:15 ET on 08/17/2021 under Order No. 8780448077 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™ – 2019, 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.

[redacted]

(Signed)

President of South East Region

(Title)

08.04.21

(Dated)

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AIA® Document A133™ – 2019

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 20th day of July in the year 2021
(In words, indicate day, month, and year.)

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

City of Bentonville
305 SW A Street
Bentonville, AR 72712
Client Representative: Wade Tomlinson

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

Crossland Construction Co., Inc.
1800 S. 52nd Street, Suite 410
Rogers, AR 72758

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

8th Street Gateway Park

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

Port
53 West Jackson Blvd.
Chicago, IL 60604

The Owner and Construction Manager agree as follows.

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

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

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.
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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

§ 1.1.2 The Project's physical characteristics:
(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

100+ acre park west of the corner of 8th & I street

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:
(Provide total and, if known, a line item breakdown.)

$24M

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§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

TBD

.2 Construction commencement date:

TBD

.3 Substantial Completion date or dates:

TBD

.4 Other milestone dates:

TBD

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

NA

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

NA

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

Wade Tomlinson

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address and other contact information.)

NA

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§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

NA

.2 Civil Engineer:

EDG
216 W Birch Street
Rogers, AR 72756

.3 Other, if any:
(List any other consultants retained by the Owner, such as a Project or Program Manager.)

§ 1.1.11 The Architect's representative:
(List name, address, and other contact information.)

Sean McKay

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

Scott Wuerdeman

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

NA

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

Follow state procurement laws

§ 1.1.15 Other Initial Information on which this Agreement is based:

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§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 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 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 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. 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. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 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.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. 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.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. 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

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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.

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

§ 3.1.3 Consultation

§ 3.1.3.1 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.

§ 3.1.3.2 Subject to limitations on the Construction Manager's obligations set forth herein and in the A201-2017, the Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. Subject to limitations on the Construction Manager's obligations set forth herin and in the A201-2017, the Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; 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. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using 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.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 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 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 in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

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

§ 3.1.6.2 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, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The

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Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

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

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered 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.

§ 3.1.13 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.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

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§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 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 3.2.2;

.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, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; 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.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or 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.

§ 3.2.6 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.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents of which Construction Manager becomes aware.

§ 3.2.9 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 and effective, at the time the Guaranteed Maximum Price Amendment is executed. In the event a sales, consumer, use, or similar tax for the Work provided by the Construction Manager is enacted and becomes effective during the course of the Project, the parties shall execute a change order to address the increased cost.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

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§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

§ 3.3.2.1 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 of the meetings to the Owner and Architect.

§ 3.3.2.2 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 a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report

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.

§ 3.3.2.4 Daily Logs

The Construction Manager shall 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.

§ 3.3.2.5 Cost Control

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 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 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.

§ 4.1.2 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. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 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 Article 7, (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.

§ 4.1.4 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.

§ 4.1.4.1 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.

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§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other 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.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include 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.

§ 4.1.5 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.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 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 A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 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.

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

$75,000 Lump Sum

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

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

Individual or Position	Rate

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§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within 12 ( ) 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.

§ 5.2 Payments

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

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid 45 ( ) 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.)

%

§ 5.3 Payment Instructions

All payments made by Wire Transfer or ACH must be made by using instructions that are provided to Owner separately prior to or at the time this Agreement is executed by Crossland Construction Company, Inc. By Owner's signature on this Agreement, Owner acknowledges that it has received the Crossland Construction Company, Inc. Wire Transfer/ACH instructions. **This information will not change for the duration of the contract unless via change order executed by both parties.**

In the event Owner pays by check, please send check to the following address. **This information will not change for the duration of the contract unless via change order executed by both parties:**

Crossland Construction Company, Inc.
Attn: Accounts Receivable
833 S. East Avenue
P.O. Box 45
Columbus, KS 66725

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 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.)

2.5%

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

$0-$50K=10%, $50K-$100K=7%, $100K-$500K=5%, Over $500K=2.5%

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

10%

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§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed percent (0 %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

NA

§ 6.1.7 Other:
(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 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 Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 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 Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 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 6.1.3 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 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

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§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries 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.

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

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:
(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, 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.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining 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 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

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

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

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

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 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.

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

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, 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.

§ 7.5.2 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 the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

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

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

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

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

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

§ 7.6.3 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.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, 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, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

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

§ 7.6.9 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.

§ 7.6.10 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, with the Owner's prior approval.

§ 7.6.11 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.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

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§ 7.7.2 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 Article 10 of AIA Document A201–2017.

§ 7.7.3 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 the negligence of, or failure to fulfill a specific responsibility by, 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.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 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 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 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 in writing, 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 Article 9. If the Owner fails to authorize the transaction in writing, 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 Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 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 7.2, or as may be provided in Article 14;

.2 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, unless the Owner has provided prior approval;

.3 Expenses of the Construction Manager's principal office and offices other than the site office;

.4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;

.5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;

.6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, 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;

.7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;

.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and

.9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 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 the amount to be paid, less such discount, 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.

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§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 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 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, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (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 subject to the last sentence of Section 9.1 above, then the Construction Manager may require that a Change Order be issued to adjust 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 of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 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 Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, 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 Article 10.

ARTICLE 10 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, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, 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 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 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.

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

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than ( ) 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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§ 11.1.4 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 payments 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, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 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: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 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 and for which the Construction Manager has made payment or intends to make 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.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

.1 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 most recent schedule of values;

.2 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 completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 Construction Change Directives; and

.4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 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 included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;

.3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;

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.5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

5%

§ 11.1.8.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

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

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

§ 11.1.12 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 such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) 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.

§ 11.2 Final Payment

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

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.1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, 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 in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will 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 Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is 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 Article 15 of AIA Document A201–2017. 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.

§ 11.2.3 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:

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for 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 adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

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ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. 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 12.1.2 of this Agreement shall not apply.

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§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 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.)

§ 12.2 Binding Dispute Resolution
For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

[ ] Arbitration pursuant to Article 15 of AIA Document A201–2017

[X] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

If the Owner and Construction Manager do not select a method of binding dispute resolution, 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.

ARTICLE 13 TERMINATION OR SUSPENSION
§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment
§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 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 Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work 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 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 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 13.1.4:

.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 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an

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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.

§ 13.1.6 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 that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. 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 13, 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 entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 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.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

.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 6.1 or, if the Construction Manager' 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;

.3 Subtract the aggregate of previous payments made by the Owner; and

.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 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 13, 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.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document

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A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, 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 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, 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.

§ 14.2.2 The Owner may, without consent of the Construction Manager, 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 Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than ($) for each occurrence and ($) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than ($) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than ($) each accident, ($) each employee, and ($) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than ($) per claim and ($) in the aggregate.

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage	Limits
See attached sample COI	

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§ 14.3.1.7 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella polices for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, 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, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 14.5 Other provisions:

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 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.

§ 15.2 The following documents comprise the Agreement:

.1 AIA Document A133™–2019, 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 A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed

.3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds

.4 AIA Document A201™–2017, General Conditions of the Contract for Construction

.5 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

.6 Other Exhibits:
(Check all boxes that apply.)

[ ] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
(Insert the date of the E234-2019 incorporated into this Agreement.)

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[ ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

.7 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

This Agreement is entered into as of the day and year first writt[redacted]

OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
	Chris Schnurbusch, President of South East Region
(Printed name and title)	*(Printed name and title)*

[ ] As set forth in the notice contained within the payment terms sections of this Agreement, Owner hereby acknowledges that Contractor will not change payment instructions other than via change order signed by Owner and Contractor.

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Additions and Deletions Report for
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AGREEMENT made as of the 20th day of July in the year 2021

...

City of Bentonville
305 SW A Street
Bentonville, AR 72712
Client Representative: Wade Tomlinson

...

Crossland Construction Co., Inc.
1800 S. 52nd Street, Suite 410
Rogers, AR 72758

...

8th Street Gateway Park

...

Port
53 West Jackson Blvd.
Chicago, IL 60604

PAGE 2

100+ acre park west of the corner of 8th & I street

...

$24M

PAGE 3

TBD

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TBD

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TBD

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TBD

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NA

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NA

...

Wade Tomlinson

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NA
PAGE 4

NA

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EDG
216 W Birch Street
Rogers, AR 72756

...

Sean McKay

...

Scott Wuerdeman

...

NA

...

Follow state procurement laws
PAGE 5

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The ~~Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. 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.
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§ 3.1.3.2 ~~The~~ Subject to limitations on the Construction Manager's obligations set forth herein and in the A201-2017, the Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. ~~The~~ Subject to limitations on the Construction Manager's obligations set forth herin and in the A201-2017, the Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; 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. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.
PAGE 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 in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered 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.~~
PAGE 8

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract ~~Documents.~~Documents of which Construction Manager becomes aware.

§ 3.2.9 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~~ enacted and effective, at the time the Guaranteed Maximum Price Amendment is executed. In the event a sales, consumer, use, or similar tax for the Work provided by the Construction Manager is enacted and becomes effective during the course of the Project, the parties shall execute a change order to address the increased cost.
PAGE 10

$75,000 Lump Sum
PAGE 11

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within 12 ( ) 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.

...

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid 45 ( ) 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.

...

%

§ 5.3 Payment Instructions
All payments made by Wire Transfer or ACH must be made by using instructions that are provided to Owner separately prior to or at the time this Agreement is executed by Crossland Construction Company, Inc. By Owner's signature on this Agreement, Owner acknowledges that it has received the Crossland Construction Company, Inc. Wire Transfer/ACH instructions. **This information will not change for the duration of the contract unless via change order executed by both parties.**

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User Notes:

In the event Owner pays by check, please send check to the following address. **This information will not change for the duration of the contract unless via change order executed by both parties:**

Crossland Construction Company, Inc.
Attn: Accounts Receivable
833 S. East Avenue
P.O. Box 45
Columbus, KS 66725

...

2.5%

...

$0-$50K=10%, $50K-$100K=7%, $100K-$500K=5%, Over $500K=2.5%

...

10%

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed percent (0 %) of the standard rental rate paid at the place of the Project.
PAGE 12

NA
PAGE 16

§ 9.1.1 When a specific subcontractor or supplier (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,~~ accepted subject to the last sentence of Section 9.1 above, then the Construction Manager may require that a Change Order be issued to adjust 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 of the subcontract or other agreement actually signed with the person or entity designated by the Owner.
PAGE 17

.3 ~~That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified;~~ Construction Change Directives; and

PAGE 18

5%
PAGE 20

[X] Litigation in a court of competent jurisdiction
PAGE 21

§ 13.1.6 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 that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. 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 13, 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~~

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User Notes:

~~agreements~~ Subcontracts entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

...

§ 13.2.2.2 ~~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 that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1.~~ 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 13, 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.
PAGE 22

See attached sample COI
PAGE 24

_____ Chris Schnurbusch, President of South East Region

...

[ ] As set forth in the notice contained within the payment terms sections of this Agreement, Owner hereby acknowledges that Contractor will not change payment instructions other than via change order signed by Owner and Contractor.

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Chris Schnurbusch, 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 10:34:15 ET on 08/17/2021 under Order No. 8780448077 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™ – 2019, 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.

[redacted]

(Signed)

President of South East Region

(Title)

08.04.21

(Dated)

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User Notes: (1984185192)

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 8/4/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
IMA, Inc. - Kansas City
9393 W. 110th Street
Suite 600
Overland Park KS 66210

License#: PC-1210733
CROSCON-03

CONTACT NAME Shannon Hilding
PHONE (A/C, No, Ext) 913-982-3650 **FAX (A/C, No)** 913-982-3495
E-MAIL ADDRESS Shannon.Hilding@imacorp.com

INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A	Zurich American Insurance Company	16535
INSURER B	American Guarantee and Liability Insurance	26247
INSURER C	XL Insurance America, Inc.	24554
INSURER D	*Endurance American Insurance Company	10641
INSURER E	RSUI Indemnity Company	22314
INSURER F		

INSURED
Crossland Construction Company, Inc.
PO Box 45
833 S. East Avenue
Columbus KS 66725

COVERAGES **CERTIFICATE NUMBER:** 1632671174 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY			GLO859600801	4/30/2021	4/30/2022	EACH OCCURRENCE	$ 5,000,000
	CLAIMS-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 2,000,000
	GEN'L AGGREGATE L MIT APPL ES PER:						MED EXP (Any one person)	$ 15,000
	POLICY X PRO-JECT X LOC						PERSONAL & ADV INJURY	$ 5,000,000
	OTHER:						GENERAL AGGREGATE	$ 10,000,000
							PRODUCTS - COMP/OP AGG	$ 10,000,000
								$
A	AUTOMOBILE LIABILITY			BAP859615301	4/30/2021	4/30/2022	COMBINED SINGLE LIMIT (Ea accident)	$ 5,000,000
	X ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	X HIRED AUTOS ONLY / X NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
B	X UMBRELLA LIAB X OCCUR			AUC425515000	4/30/2021	4/30/2022	EACH OCCURRENCE	$ 10,000,000
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	$ 10,000,000
	DED X RETENTION $ 0							$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N			WC859615401	4/30/2021	4/30/2022	X PER STATUTE / OTH-ER	
	ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? N (Mandatory in NH)	N / A					E.L. EACH ACC DENT	$ 2,000,000
	If yes, describe under DESCR PTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 2,000,000
							E.L. DISEASE - POLICY LIMIT	$ 2,000,000
C	2nd Layer Excess Liability			US00109260LI21A	4/30/2021	4/30/2022	Ea Occur $10,000,000	Agg $10,000,000
D	3rd Layer Excess Liability			EXC30000318404	4/30/2021	4/30/2022	Ea Occur $10,000,000	Agg $10,000,000
E	4th Layer Excess Liability			NHA093832	4/30/2021	4/30/2022	Ea Occur $10,000,000	Agg $10,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Professional and Pollution Liability: Effective 4/30/2021 - 4/30/2022, Insurer: Indian Harbor Insurance Company, NAIC #36940,
Professional Liability $5,000,000 Each Claim, $5,000,000 Aggregate; Pollution Liability $5,000,000 Each Claim, $10,000,000 Aggregate.

Re: 8th Street Gateway Park.
Owner is included as Primary Non-Contributory Additional Insured with Ongoing and Completed Operations on the General Liability Policy and Primary Non-Contributory Additional Insured on the Automobile Liability and Umbrella Liability Policies, if required by written contract or agreement, subject to the policy terms and conditions.

CERTIFICATE HOLDER

City of Bentonville
305 SW A Street
Bentonville AR 72712

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

[redacted]

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RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CLERK TO ENTER INTO AN AGREEMENT WITH CROSSLAND CONSTRUCTION COMPANY FOR PRE-CONSRUCTION PROFESSIONAL SERVICES RELATED TO THE 8TH STREET GATEWAY PARK PROJECT.

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

Section 1: That the Mayor and Clerk be and are hereby authorized to enter into an Agreement with Crossland Construction Company, in an amount not to exceed $75,000, to provide preconstruction services for the 8th Street Gateway Park Project, as set forth in the agreement attached hereto as Exhibit "A".

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

PASSED and APPROVED this _____ day of _____, 2021.

APPROVED:

_____
MAYOR

ATTEST:

_____
CITY CLERK