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, September 14, 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 September 14, 2021:**
https://us02web.zoom.us/webinar/register/WN_uc5qm5zMT9C178GwZybRCA

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 24, 2021

AGENDA

1. Welcoming Week Proclamation presentation. **(Pages 8-9)**

2. Constitution Week Proclamation presentation. **(Pages 10-11)**

3. Electric Cost of Service Study presented by UFS Inc. Presented to Utility Board at the August 24, 2021 meeting. **(Page 12)**

4. Submission of the annual audit to City Council. No action is required. According to page 2 (Independent Audit Report section) of the Audit Report, BKD, LLC has issued this report with the following statement: In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, each major fund and the aggregate remaining fund information of the City of Bentonville, Arkansas, as of December 31, 2020, and the respective changes in financial position and, where applicable, cash flows thereof for the year then ended in accordance with accounting principles generally accepted in the United States of America.
(Pages 13-178)

5. Planning:

5a. **Ordinance accepting a lot split of Lot 1 of Romi Subdivision to the City of Bentonville, Arkansas (Project Number: LS21-0040).**
(Pages 184-186)

The Planning Commission voted 7-0, recommending approval.

A lot split of unplatted section land creating new Lot 1 (+/- 0.78 acres) of Romi Subdivision. The plat dedicates right-of-way along SE 14th Street to meet the requirements of the Master Street Plan and various utility and access easements.

5b. **Ordinance accepting a lot split of Lot 11 of Dean Maxwell First Addition to the City of Bentonville, Arkansas (Project Number: LS21-0042).**
(Pages 187-189)

The Planning Commission voted 7-0, recommending approval.

A lot split of Lot 5 of Dean Maxwell First Addition creating new Lot 11 (+/- 0.215 acres) of Dean Maxwell First Addition. The plat dedicates right-of-way along NW Fifth Street to meet the requirements of the Master Street Plan and a 15-foot utility easement.

5c. **Ordinance accepting a property line adjustment of Lots 1 & 2 of 102 West Apartments Addition to the City of Bentonville, Arkansas (Project Number: PLA21-0026).**
(Pages 190-195)

The Planning Commission voted 7-0, recommending approval.

A property line adjustment of existing Lot 2 of Macs Addition and the western portion of Lot A of Joe Clement Addition, creating new Lot 1 (+/- 6.30 acres) and Lot 2 (+/- 10.20 acres) of 102 West Apartments Addition. The plat dedicates right-of-way for SW Bright Road as indicated on the Master Street Plan as well as various utility & drainage easements to serve the lots. The plat also dedicates various public access easements to allow cross access to the east and west.

5d(1). **Resolution adopting revision to the Future Land Use Map changing real estate from Residential Estate to Medium Density Two Family and Townhome Residential, (Project Number: RZ21-0044).**
(Pages 196-204)

The Planning Commission voted 6-1, recommending approval.

NOTE: The applicant requested they amend their original request from High Density Residential to Medium Density Residential during the Planning Commission meeting.

The Future Land Use Plan currently depicts this property as Residential Estate. The applicant is requesting a change in the Future Land Use Plan to High Density Residential. High Density Residential areas typically include apartments, condominium buildings, senior housing, and special types of group living.

This rezoning request is not consistent with the Future Land Use Plan, however, it is consistent with surrounding zoning districts as there are existing R-3 lots directly to the south.

5d(2). **Ordinance changing real estate in the City of Bentonville, Arkansas, from its present zoning classification of A-1, Agricultural to R-2, Medium Density Two Family and Townhome Residential. (Project Number: RZ21-0044).**

(Pages 196-207)

The Planning Commission voted 6-1, recommending approval.

NOTE: The applicant requested they amend their original request from R-3, Medium High Multifamily Residential to R-2, Medium Density Two Family and Townhome Residential during the Planning Commission meeting.

The Future Land Use Plan currently depicts this property as Residential Estate. The applicant is requesting a change in the Future Land Use Plan to High Density Residential. High Density Residential areas typically include apartments, condominium buildings, senior housing, and special types of group living.

This rezoning request is not consistent with the Future Land Use Plan, however, it is consistent with surrounding zoning districts as there are existing R-3 lots directly to the south.

5e(1). **Resolution adopting revision to the Future Land Use Map changing real estate from High Density Residential to Low Density Residential and Neighborhood Commercial, (Project Number: RZ21-0046).**

(Pages 208-223)

The Planning Commission voted 7-0, recommending approval.

The Future Land Use Plan currently depicts this property as Agricultural. The applicant is requesting a change in the Future Land Use Plan to Low Density Residential and General Commercial. Low Density Residential areas include detached single-family residential properties with a typical density of 3-8 units per acre.

The rezoning request to R-1 is consistent and compatible with existing land uses. The rezoning request to C-2 is not compatible with the surrounding neighborhood uses, but staff would support a request to C-1 as that would provide a smoother transition from the single-family homes. Staff recommends approval of the Future Land Use Amendments and the rezoning to R-1, but not the rezoning to C-2.

5e(2). **Ordinance changing real estate in the City of Bentonville, Arkansas, from its present zoning classification of A-1, Agricultural to R-1, Low Density Single Family Residential, C-1, Neighborhood Commercial. (Project Number: RZ21-0046).**

(Pages 208-225)

The Planning Commission voted 7-0, recommending approval.

NOTE: The applicant requested they amend their original request from C-2, General Commercial to C-1, Neighborhood Commercial during the Planning Commission meeting.

The Future Land Use Plan currently depicts this property as Agricultural. The applicant is requesting a change in the Future Land Use Plan to Low Density Residential and General Commercial. Low Density Residential areas include detached single-family residential properties with a typical density of 3-8 units per acre.

The rezoning request to R-1 is consistent and compatible with existing land uses. The rezoning request to C-2 is not compatible with the surrounding neighborhood uses, but staff would support a request to C-1 as that would provide a smoother transition from the single-family homes. Staff recommends approval of the Future Land Use Amendments and the rezoning to R-1, but not the rezoning to C-2.

5f. **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: RZ21-0049).**

(Pages 226-232)

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.

5g. **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: RZ21-0050).**

(Pages 233-242)

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.

5h. **Ordinance changing real estate in the City of Bentonville, Arkansas, from its present zoning classification of PUD, Planned Unit Development to R-3, Medium-High Density Multifamily Residential. (Project Number: RZ21-0052).**

(Pages 243-249)

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 R-3 zoning districts in the surrounding area.

6. Staff requests approval of an administrative assistant to provide support to both the Community Development and Administration Departments. **(Pages 250-252)**

7. Utility Board:

7a. Resolution to amend existing Ampirical agreement for Substation "I" engineering to include bidding services and construction observation/oversight for $322,209.00. Approved by Utility Board 5-0. **(Pages 253-261)**

7b. Budget adjustment using $322,209.00 from reserves to pay for amendment with Ampirical. Approved by Utility Board 5-0. **(Pages 262-263)**

7c. Resolution recommended by Staff authorizing the Mayor and City Clerk to enter into a professional services agreement with Raftelis Financial Consultants, Inc. (Raftelis) in an amount not to exceed $59,120.00 to perform a wastewater rate analysis and financial plan for the Water Utility. The City's 2021 budget includes $60,000.00 for the wastewater rate analysis. This firm was selected following the City's standard RFQ solicitation and selection process for the procurement of professional services in accordance with state law. This item was approved 5-0 by the Utility Board.

(Pages 264-286)

8. Staff recommends City Council approval of Change Order No. 1 and Final Reconciliation of the Guaranteed Maximum Price Contract with C.R. Crawford Construction, LLC for construction services associated with the new Public Works Maintenance Facility recognizing a decrease of $10,374.00 reducing the contract total from $2,797,473.00 to $2,787,099.00. **(Pages 287-293)**

9. Public hearing and ordinance vacating a Utility/Drainage Easement requested for 4007 NE Cadbury Ave of Kensington Subdivision (VAC21-0020). **(Pages 294-297)**

10. Resolution setting a public hearing for September 28, 2021 for Alley Right of Way Vacations requested for 407 SE G Street of Young's Addition (VAC21-0021).

(Pages 298-302)

11. Resolution setting a public hearing for September 28, 2021 for a Utility/Drainage Easement Vacation requested for 2606 NW 6th Street of Cross Creek PH II (VAC21-0022). **(Pages 303-305)**

12. Resolution setting a public hearing for September 28, 2021 for a Utility Easement Vacation requested for 4503 SW Marble Cove of Cornerstone Ridge Phase 4 (VAC21-0023). **(Pages 306-308)**

13. Resolution authorizing the Mayor and City Clerk enter into an agreement with Crafton Tull & Associates for the master plan and engineering of the law enforcement training facility. The cost of this agreement including all reimbursable expenses as described in the fees and schedule, not to exceed $71,000.00. Additionally, the cost includes all services for this project all the way through construction and closeout. This firm was selected following the City's standard SOQ selection process for procurement of professional services in accordance with state law. (Attachment) **(Pages 309-321)**

14. Request approval for a budget adjustment to increase the newspaper publications budget for both the City Clerk and the Purchasing Department. **(Pages 322-323)**

15. Request approval of a budget adjustment for the 2021 property tax for the Administrative Services Building. Future years will be tax exempt but the 1st year of occupancy is taxable. **(Pages 324-326)**

16. Request for approval of a resolution to declare various items as surplus, to be sold via public online auction. See attached list for more detail on the items to be declared as surplus and sold. **(Pages 327-330)**

17. Resolution authorizing the mayor and the city clerk to enter into an agreement with the Bentonville Library Foundation to purchase the historic Train Depot and associated structures/properties in an amount not to exceed $10.00. Located at 416 South Main Street, Benton County tax parcel ## 01-04895-000, the property is comprised of the adjacent Caboose Park structure/park, the main building and adjoined north parking area. **(Pages 331-344)**

18. Resolution authorizing the Mayor and the City Clerk to enter into a Memorandum of Understanding (MOU) with the Bentonville Library Foundation and Bentonville History Museum to work together to promote and sustain the well-being and preservation of the Train Depot. **(Pages 345-401)**

19. Resolution authorizing the Mayor and the City Clerk to enter into an agreement with Meyer, Scherer & Rockcastle, Ltd for the renovation and expansion of Bentonville Public Library with site development. The fee for phase 1 of BPL's project is $874,965.00, with a maximum allowance of $18,000.00 for reimbursable expenses. This firm was selected following the City's standard RFQ solicitation and selection process for procurement of professional services in accordance with state law. **(Pages 402-453)**

20. Resolution authorizing the Mayor and the City Clerk to enter into an agreement with Flintco, LLC in the amount of $36,100 to provide preconstruction services for the Bentonville Public Library expansion. This firm was selected in accordance with §14-58-1001 for projects exceeding $2 million dollars. **(Pages 454-536)**

21. Approval of a budget adjustment in the amount of $6,000.00 reallocating funds in Bentonville Public Library's part-time salaries to full-time salaries.
(Pages 537-539)

22a. Resolution authorizing a Real Estate Transaction with Coughlin Nonexempt Marital Trust and Coughlin Generational Trust, in the amount of $200,000.00 for the purchase of 1.31 acres at the future intersection of SW 28th and SW Bright Road, as well as a 9,300 square foot trail easement along SW Featherston Road.
(Pages 540-549)

22b. Budget Adjustment recognizing expenses for Real Estate Transaction with Coughlin Nonexempt Marital Trust and Coughlin Generational Trust, in the amount of $145,946.00 for the purchase of 1.31 acres at the future intersection of SW 28th and SW Bright Road, as well as a 11,625 square foot trail easement along SW Featherston Road. **(Pages 550-551)**

Agenda Item Form

Date of City Council Meeting	**9/14/2021**
Department	**Administration**
Submitted by	**Mayor Stephanie Orman**
Phone	**479-271-3194**

Item Type: (*Check Applicable Item Type)*

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

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

Welcoming Week Proclamation presentation.

Estimated Cost	**$0.00**
Is this Item Budgeted?	☐ Yes ☐ No

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

PROCLAMATION

WHEREAS: Our community's success depends on ensuring all residents of Bentonville feel welcome and that new Arkansans are a vital part of our community—bringing fresh perspectives, starting new businesses, and contributing to the vibrant diversity that we all value; and

WHEREAS: During September 10th-19th, 2021, we honor the spirit of unity that is bringing neighbors together across Arkansas. During National Welcoming Week, we invite residents of Arkansas to join in this movement of communities nationwide by renewing our commitment to our core American values and by taking action in the spirit of welcoming; and

WHEREAS: By working together, we can achieve greater prosperity and make our community the kind of place where diverse people from around the world feel valued and want to put down roots; and

WHEREAS: Our Bentonville Together efforts: to improve the understanding of local diverse representation, backgrounds and cultures; identify ways inclusion and equitable approaches supports Bentonville's community vision; and provide guidance for meaningful actions with the goal of ensuring the City of Bentonville is welcoming and inclusive of all aligns with the objectives of National Welcoming Week; and

WHEREAS: Regardless of where we are born or what we look like, we are part of a larger community, united in our efforts to build a stronger Northwest Arkansas; and

WHEREAS: By recognizing the contributions we collaboratively make in creating a vibrant culture and a growing economy, we make our community more prosperous and more inclusive to all who call it home; and

WHEREAS: Let us build communities where every resident has the opportunity to contribute at his or her best. Let us come together and reaffirm Arkansas still stands as a beacon of freedom and opportunity.

NOW, THEREFORE, I, Stephanie Orman, Mayor of the City of Bentonville, do hereby proclaim September 10-19, 2021 as **Welcoming Week** in Bentonville, Arkansas, and call upon the people of Arkansas to join together to build stronger communities across the state.

Given this fourteenth day of September 2021, in Bentonville, in the Great State of Arkansas, in the United States of America.

[redacted]

Stephanie Orman, Mayor
City of Bentonville

Agenda Item Form

Date of City Council Meeting	**9/14/2021**
Department	**Administration**
Submitted by	**Mayor Stephanie Orman**
Phone	**479-271-3194**

Item Type: (*Check Applicable Item Type)*

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

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

Constitution Week Proclamation presentation.

Estimated Cost	**$0.00**
Is this Item Budgeted?	☐ Yes ☐ No

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

PROCLAMATION

WHEREAS: September 17, 2021 marks the two hundred and thirty-fourth anniversary of the drafting of the Constitution of the United States of America by the Constitutional Convention; and

WHEREAS: It is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary; and to the patriotic celebrations which will commemorate the occasion; and

WHEREAS: The United States Constitution stands as a testament to the tenacity of Americans throughout history to maintain their liberties and freedoms and to ensure those unalienable rights to every American; and

WHEREAS: This annual celebration of the Constitution was started by the Daughters of the American Revolution in 1955, and Public Law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17-23 as Constitution Week; and

WHEREAS: The aims of the celebration are to: emphasize citizen's responsibilities for protecting and defending the Constitution, inform people that the Constitution is the basis for American's great heritage and the foundation for our way of life, and encourage the study of the historical events which lead to the framing of the Constitution in September 1787; and

WHEREAS: Constitution Week is a great time to learn more about this important document and celebrate the freedoms it gave us.

NOW, THEREFORE, I, Stephanie Orman, Mayor of the City of Bentonville, do hereby proclaim September 17-23, 2021 as **Constitution Week** in Bentonville, Arkansas, and ask our citizens to reaffirm the ideals of the Framers of the constitution had in 1787 by vigilantly protecting the freedoms guaranteed to us through this guardian of our liberties, remembering that lost rights may never be regained.

Given this fourteenth day of September 2021, in Bentonville, in the Great State of Arkansas, in the United States of America.

[redacted]

Stephanie Orman, Mayor
City of Bentonville

Agenda Item Form

Date of City Council Meeting	**9/14/2021**
Department	**Electric**
Submitted by	**Travis Matlock, PE**
Phone	**479-271-5941**

Item Type: (*Check Applicable Item Type)*

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

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

Electric Cost of Service Study presented by UFS Inc. Presented to Utility Board at the August 24, 2021 meeting.

Estimated Cost	
Is this Item Budgeted?	☐ Yes ☐ No

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

Agenda Item Form

Date of City Council Meeting	**9/14/2021**
Department	**Accounting**
Submitted by	**Jessica Thurman**
Phone	**(479) 418-8649**

Item Type: (*Check Applicable Item Type)*

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

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

Submission of the annual audit to City Council. No action is required. According to page 2 (Independent Audit Report section) of the Audit Report, BKD, LLC has issued this report with the following statement: In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, each major fund and the aggregate remaining fund information of the City of Bentonville, Arkansas, as of December 31, 2020, and the respective changes in financial position and, where applicable, cash flows thereof for the year then ended in accordance with accounting principles generally accepted in the United States of America.

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

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

BKD
CPAs & Advisors

809 S. 52nd Street, Suite A | P.O. Box 1893 | Rogers, AR 72757-1893
479.845.0270 | Fax 479.845.0840 | bkd.com

The Honorable Mayor, Members of the City Council,
and Management
City of Bentonville, Arkansas
Bentonville, Arkansas

As part of our audits of the financial statements and compliance of the City of Bentonville, Arkansas (the City) as of and for the year ended December 31, 2020, we wish to communicate the following to you.

AUDIT SCOPE AND RESULTS

Auditor's Responsibility Under Auditing Standards Generally Accepted in the United States of America and the Standards Applicable to Financial Audits Contained in *Government Auditing Standards* Issued by the Comptroller General of the United States and U.S. Office of Management and Budget (OMB) Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance)

An audit performed in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States and U.S. Office of Management and Budget (OMB) Uniform Guidance is designed to obtain reasonable, rather than absolute, assurance about the financial statements and about whether noncompliance with the types of compliance requirements described in the OMB Compliance Supplement that could have a direct and material effect on a major federal program occurred. In performing auditing procedures, we establish scopes of audit tests in relation to the opinion unit being audited. Our engagement does not include a detailed audit of every transaction. Our engagement letter more specifically describes our responsibilities.

These standards require communication of significant matters related to the financial statement and compliance audits that are relevant to the responsibilities of those charged with governance in overseeing the financial reporting process. Such matters are communicated in the remainder of this letter or have previously been communicated during other phases of the audit. The standards do not require the auditor to design procedures for the purpose of identifying other matters to be communicated with those charged with governance.

Audits of the financial statements and compliance do not relieve management or those charged with governance of their responsibilities. Our engagement letter more specifically describes your responsibilities.

PRAXITY
Empowering Business Globally

Qualitative Aspects of Significant Accounting Policies and Practices

Significant Accounting Policies

The City's significant accounting policies are described in *Note 1* of the audited financial statements.

Alternative Accounting Treatments

We had discussions with management regarding alternative accounting treatments within accounting principles generally accepted in the United States of America for policies and practices for material items, including recognition, measurement and disclosure considerations related to the accounting for specific transactions as well as general accounting policies, as follows:

No matters are reportable.

Management Judgments and Accounting Estimates

Accounting estimates are an integral part of financial statement preparation by management, based on its judgments. The following areas involve significant areas of such estimates for which we are prepared to discuss management's estimation process and our procedures for testing the reasonableness of those estimates:

- Allowance for uncollectible accounts
- Estimated lives of capital assets
- Pension assets/liabilities
- Other postemployment benefits liability.

Financial Statement Disclosures

The following areas involve particularly sensitive financial statement disclosures for which we are prepared to discuss the issues involved and related judgments made in formulating those disclosures:

- Pension disclosures
- Other postemployment benefits disclosures

Audit Adjustments

During the course of any audit, an auditor may propose adjustments to financial statement amounts. Management evaluates our proposals and records those adjustments which, in its judgment, are required to prevent the financial statements from being materially misstated. A misstatement is a difference between the amount, classification, presentation or disclosure of a reported financial statement item and that which is required for the item to be presented fairly in accordance with the applicable financial reporting framework.

Proposed Audit Adjustments Recorded

- Capital assets and contributed capital

Auditor's Judgments About the Quality of the Entity's Accounting Principles

During the course of the audit, we made the following observations regarding the City's application of accounting principles:

No matters are reportable.

Other Material Communications

Listed below are other material communications between management and us related to the audit:

- Management representation letter (attached)
- We orally communicated to management other deficiencies in internal control identified during our audit that are not considered material weaknesses or significant deficiencies

FUTURE ACCOUNTING PRONOUNCEMENTS

New Applicable GASB Standards

- GASB Statement No. 87, *Leases*, will recognize lease assets and liabilities on their balance sheet for all leases with terms of more than 12 months. Lessees and lessors would be required to provide additional qualitative and quantitative disclosures to help financial statement users assess the amount, timing, and uncertainty of cash flows arising from leases.

- GASB Statement No. 89, *Accounting for Interest Cost Incurred before the End of a Construction Period*. The objectives of this Statement are to enhance the relevance and comparability of information about capital assets and the cost of borrowing for a reporting period and to simplify accounting for interest cost incurred before the end of a construction period.

- GASB Statement No. 91, *Conduit Debt Obligations.* The primary objectives of this Statement are to provide a single method of reporting conduit debt obligations by issuers and eliminate diversity in practice associated with commitments extended by issuers, arrangements associated with conduit debt obligations and related note disclosures.

- GASB Statement No. 94, *Public-Private and Public-Public Partnerships and Availability Payment Arrangements*: The primary objective of this statement is to improve financial reporting by addressing issues related to public-private and public-public partnership agreements (PPPs). The statement also provides guidance for accounting and financial reporting for availability payment arrangements (APAs).

This communication is intended solely for the information and use of management, and the City Council and is not intended to be and should not be used by anyone other than these specified parties.

BKD, LLP

Rogers, Arkansas
June 15, 2021

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Representation of:
City of Bentonville, Arkansas
1000 SW 14th Street
Bentonville, AR 72712

Provided to:
BKD, LLP
Certified Public Accountants
809 S 52nd Street, Suite A
P.O. Box 1893
Rogers, AR 72757-1893

The undersigned ("We") are providing this letter in connection with BKD's audit of our financial statements as of and for the year ended December 31, 2020 and your audit of our compliance with requirements applicable to our major federal awards program as of and for the year ended December 31, 2020.

Our representations are current and effective as of the date of BKD's report: June 15, 2021.

Our engagement with BKD is based on our contract for services dated: April 2, 2021.

Our Responsibility and Consideration of Material Matters

We confirm that we are responsible for the fair presentation of the financial statements subject to BKD's report in conformity with accounting principles generally accepted in the United States of America.

We are also responsible for adopting sound accounting policies; establishing and maintaining effective internal control over financial reporting, operations, and compliance; and preventing and detecting fraud.

Certain representations in this letter are described as being limited to matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement.

Confirmation of Matters Specific to the Subject Matter of BKD's Report

We confirm, to the best of our knowledge and belief, the following:

1. We have fulfilled our responsibilities, as set out in the terms of our contract, for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America.

2. We acknowledge our responsibility for the design, implementation, and maintenance of:

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a. Internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

b. Internal control to prevent and detect fraud.

3. We have provided you with:

a. Access to all information of which we are aware that is relevant to the preparation and fair presentation of the financial statements, such as records, documentation, and other matters.

b. Additional information that you have requested from us for the purpose of the audit.

c. Unrestricted access to persons within the entity from whom you determined it necessary to obtain audit evidence.

d. All minutes of meetings of the governing body held through the date of this letter or summaries of actions of recent meetings for which minutes have not yet been prepared. All unsigned copies of minutes provided to you are copies of our original minutes approved by the governing body, if applicable, and maintained as part of our records.

e. All significant contracts and grants.

4. All transactions have been recorded in the accounting records and are reflected in the financial statements.

5. We have informed you of all current risks of a material amount that are not adequately prevented or detected by our procedures with respect to:

a. Misappropriation of assets.

b. Misrepresented or misstated assets, deferred outflows of resources, liabilities, deferred inflows of resources or net position/fund balance

6. We have no knowledge of any known or suspected fraudulent financial reporting or misappropriation of assets involving:

a. Management or employees who have significant roles in internal control, or

b. Others, where activities of others could have a material effect on the financial statements.

7. We have no knowledge of any allegations of fraud or suspected fraud affecting the City received in communications from employees, customers, regulators, suppliers, or others.

8. We have assessed the risk that the financial statements may be materially misstated as a result of fraud and disclosed to you any such risk identified.

9. We have disclosed to you the identity of the entity's related parties and all the related party relationships and transactions of which we are aware. Related party relationships and transactions have been appropriately accounted for and disclosed in accordance with accounting principles generally accepted in the United States of America.

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We understand that the term related party refers to an affiliate, management and members of their immediate families, component units, and any other party with which the entity may deal if the entity can significantly influence, or be influenced by, the management or operating policies of the other. The term affiliate refers to a party that directly or indirectly controls, or is controlled by, or is under common control with, the entity.

10. Except as reflected in the financial statements, there are no:

    a. Plans or intentions that may materially affect carrying values or classifications of assets and liabilities.

    b. Material transactions omitted or improperly recorded in the financial records.

    c. Material gain/loss contingencies requiring accrual or disclosure, including those arising from environmental remediation obligations.

    d. Events occurring subsequent to the statement of net position/balance sheet date through the date of this letter requiring adjustment or disclosure in the financial statements.

    e. Agreements to purchase assets previously sold.

    f. Restrictions on cash balances or compensating balance agreements.

    g. Guarantees, whether written or oral, under which the City is contingently liable.

11. We have disclosed to you all known instances of noncompliance or suspected noncompliance with laws and regulations whose effects should be considered when preparing financial statements.

12. We have no reason to believe the City owes any penalties or payments under the Employer Shared Responsibility Provisions of the *Patient Protection and Affordable Care Act* nor have we received any correspondence from the IRS or other agencies indicating such payments may be due.

13. We have disclosed to you all known actual or possible litigation and claims whose effects should be considered when preparing the financial statements. The effects of all known actual or possible litigation and claims have been accounted for and disclosed in accordance with accounting principles generally accepted in the United States of America.

14. Adequate provisions and allowances have been accrued for any material losses from:

    a. Uncollectible receivables.

    b. Reducing obsolete or excess inventories to estimated net realizable value.

    c. Sales commitments, including those unable to be fulfilled.

    d. Purchase commitments in excess of normal requirements or above prevailing market prices.

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15. Except as disclosed in the financial statements, the entity has:

    a. Satisfactory title to all recorded assets, and they are not subject to any liens, pledges, or other encumbrances.

    b. Complied with all aspects of contractual and grant agreements, for which noncompliance would materially affect the financial statements.

16. The financial statements disclose all significant estimates and material concentrations known to us. Significant estimates are estimates at the statement of net position/balance sheet date that could change materially within the next year. Concentrations refer to volumes of business, revenues, available sources of supply, or markets for which events could occur that would significantly disrupt normal finances within the next year. Significant assumptions used by us in making accounting estimates, including those measured at fair value, are reasonable.

17. The fair values of financial and nonfinancial assets and liabilities, if any, recognized in the financial statements or disclosed in the notes thereto are reasonable estimates based on the methods and assumptions used. The methods and significant assumptions used result in measurements of fair value appropriate for financial statement recognition and disclosure purposes and have been applied consistently from period to period, taking into account any changes in circumstances. The significant assumptions appropriately reflect market participant assumptions.

18. We have not been designated as a potentially responsible party (PRP or equivalent status) by the Environmental Protection Agency (EPA) or other cognizant regulatory agency with authority to enforce environmental laws and regulations.

19. With respect to any nonattest services you have provided us during the year, including assistance with drafting the data collection form, and formatting, printing and binding reports:

    a. We have designated a qualified management-level individual to be responsible and accountable for overseeing the nonattest services.

    b. We have established and monitored the performance of the nonattest services to ensure they meet our objectives.

    c. We have made any and all decisions involving management functions with respect to the nonattest services and accept full responsibility for such decisions.

    d. We have evaluated the adequacy of the services performed and any findings that resulted.

20. We have notified you of any instances of noncompliance with applicable disclosure requirements of the SEC Rule 15c2-12 and applicable state laws.

21. With regard to deposit and investment activities:

    a. All deposit and investment transactions have been made in accordance with legal and contractual requirements.

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b. Disclosures of deposit and investment balances and risks in the financial statements are consistent with our understanding of the applicable laws regarding enforceability of any pledges of collateral.

c. We understand that your audit does not represent an opinion regarding the enforceability of any collateral pledges.

22. As an entity subject to *Government Auditing Standards*:

a. We acknowledge that we are responsible for compliance with applicable laws, regulations, and provisions of contracts and grant agreements.

b. We have identified and disclosed to you all laws, regulations, and provisions of contracts and grant agreements that have a direct and material effect on the determination of amounts in our financial statements or other financial data significant to the audit objectives.

c. We have identified and disclosed to you any violations or possible violations of laws, regulations, and provisions of contracts and grant agreements whose effects should be considered for recognition and/or disclosure in the financial statements or for your reporting on noncompliance.

d. We have taken or will take timely and appropriate steps to remedy any fraud, abuse, illegal acts, or violations of provisions of contracts or grant agreements that you or other auditors report.

e. We have a process to track the status of audit findings and recommendations.

f. We have identified to you any previous financial audits, attestation engagements, performance audits, or other studies related to the objectives of your audit and the corrective actions taken to address any significant findings and recommendations made in such audits, attestation engagements, or other studies.

g. We have provided our views on any findings, conclusions, and recommendations, as well as our planned corrective actions with respect thereto, to you for inclusion in the findings and recommendations referred to in your report on internal control over financial reporting and on compliance and other matters based on your audit of the financial statements performed in accordance with *Government Auditing Standards.*

23. With regard to federal awards programs:

a. We have identified in the schedule of expenditures of federal awards all assistance provided (either directly or passed through other entities) by federal agencies in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, interest subsidies, commodities, insurance, direct appropriations, or in any other form.

b. We have identified the types of compliance requirements described in the *U.S. Office of Management and Budget* (OMB) *Compliance Supplement* regarding activities allowed or unallowed; allowable costs/cost principles; cash management; eligibility; equipment and real property management; matching, level of effort, earmarking; period of performance of federal funds; procurement and suspension and debarment; program

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income; reporting; subrecipient monitoring; and special tests and provisions that are applicable to each of our federal awards programs. We have identified to you our interpretation of any applicable compliance requirements subject to varying interpretations.

c. We are responsible for complying, and have complied, with the requirements of Uniform Guidance.

d. We are responsible to understand and comply with the requirements of federal statutes, regulations, and the terms and conditions of federal awards related to each of our federal awards programs and have disclosed to you any and all instances of noncompliance with those requirements occurring during the period of your audit or subsequent thereto to the date of this letter of which we are aware. Except for any instances of noncompliance we have disclosed to you, we believe the entity has complied with all applicable compliance requirements.

e. We are responsible for establishing and maintaining effective internal control over compliance to provide reasonable assurance we have administered each of our federal awards programs in compliance with federal statutes, regulations, and the terms and conditions of the federal awards.

f. We have made available to you all federal awards (including amendments, if any) and any other correspondence or documentation relevant to each of our federal awards programs and to our compliance with applicable requirements of those programs.

g. The information presented in federal awards program financial reports and claims for advances and reimbursements is supported by the books and records from which our financial statements have been prepared.

h. The costs charged to federal awards are in accordance with applicable cost principles.

i. The reports provided to you related to federal awards programs are true copies of reports submitted or electronically transmitted to the federal awarding agency, the applicable payment system or pass-through entity in the case of a subrecipient.

j. Amounts claimed or used for matching were determined in accordance with Title 2 U.S. *Code of Federal Regulations* (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) regarding cost principles.

k. We have disclosed to you any communications from federal awarding agencies and pass-through entities concerning possible noncompliance with the applicable compliance requirements for each of our federal awards programs, including any communications received from the end of the period of your audit through the date of this letter.

l. We have identified to you any previous compliance audits, attestation engagements, and internal or external monitoring related to the objectives of your compliance audit, including findings received and corrective actions taken to address any significant findings and recommendations made in such audits, attestation engagements, or other monitoring.

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m. The reporting package does not contain any protected personally identifiable information.

24. The supplementary information required by the Governmental Accounting Standards Board, consisting of management's discussion and analysis, budgetary comparisons, pension, and other postemployment benefit information, has been prepared and is measured and presented in conformity with the applicable GASB pronouncements, and we acknowledge our responsibility for the information. The information contained therein is based on all facts, decisions, and conditions currently known to us and is measured using the same methods and assumptions as were used in the preparation of the financial statements. We believe the significant assumptions underlying the measurement and/or presentation of the information are reasonable and appropriate. There has been no change from the preceding period in the methods of measurement and presentation.

25. With regard to supplementary information:

    a. We acknowledge our responsibility for the presentation of the supplementary information in accordance with the applicable criteria.

    b. We believe the supplementary information is fairly presented, both in form and content, in accordance with the applicable criteria.

    c. The methods of measurement and presentation of the supplementary information are unchanged from those used in the prior period.

    d. We believe the significant assumptions or interpretations underlying the measurement and/or presentation of the supplementary information are reasonable and appropriate.

    e. If the supplementary information is not presented with the audited financial statements, we acknowledge we will make the audited financial statements readily available to intended users of the supplementary information no later than the date such information and the related auditor's report are issued.

26. We acknowledge the current economic volatility presents difficult circumstances and challenges for our industry. Governmental entities are potentially facing declines in the fair values of investments and other assets, declines in the volume of business, constraints on liquidity, difficulty obtaining financing,. We understand the values of the assets and liabilities recorded in the financial statements could change rapidly, resulting in material future adjustments to asset values, allowances for accounts receivable, net realizable value of inventory, etc., that could negatively impact the entity's ability to meet debt covenants or maintain sufficient liquidity.
    We acknowledge that you have no responsibility for future changes caused by the current economic environment and the resulting impact on the City's financial statements. Further, management and governance are solely responsible for all aspects of managing the entity, including questioning the quality and valuation of investments, inventory, and other assets; reviewing allowances for uncollectible amounts; evaluating capital needs and liquidity plans; etc.

27. With respect to the Introductory and Statistical sections of the Comprehensive Annual Financial Report, due diligence has been exercised in the preparation of these sections to assure that none of the information contained therein is inconsistent with the basic financial statements.

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[redacted]
Stephanie Orman, Mayor

[redacted]
Jessica Thurman, Assistant Finance Director

[redacted]
Jake Harper, Finance Director

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Representation of:
City of Bentonville, Arkansas
1000 SW 14th Street
Bentonville, AR 72712

Provided to:
BKD, LLP
Certified Public Accountants
809 S. 52nd Street
Rogers, Arkansas 72756

The undersigned ("We") are providing this letter in connection with BKD's examination of our written assertion regarding compliance with Certain State Acts for the City of Bentonville, Arkansas for the year ended December 31, 2020.

Our representations are current and effective as of the date of BKD's report: June 15, 2021.

Our engagement with BKD is based on our contract for services dated: April 2, 2021.

Confirmation of Matters Specific to the Subject Matter of BKD's Report
We confirm, to the best of our knowledge and belief, the following:

1. We make the following assertion that the City complied with the following requirements for the year ended December 31, 2020.

    a. Arkansas Municipal Accounting Law of 1973, § 14-59-101 et seq.;

    b. Arkansas District Courts and City Courts Accounting Law, § 16-10-210 et seq.;

    c. Improvement contracts, §§ 22-9-202 – 22-9-204;

    d. Budgets, purchases, and payments of claims, etc., § 14-58-201 et seq. and 14-58-301 et seq.;

    e. Investment of public funds, § 19-1-501 et seq.; and

    f. Deposit of public funds, §§ 19-8-101 – 19-8-107.

2. All relevant matters are reflected in the measurement or evaluation of the subject matter or assertion.

3. All known matters contradicting the subject matter or assertion and any communication from regulatory agencies or others affecting the subject matter or assertion have been disclosed to you, including any communications received between the end of the period addressed in the written assertion and the date of your report.

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4. We are responsible for the subject matter and the assertion.

5. We are responsible for the selection of suitable criteria and determining that such criteria are appropriate for our purposes.

6. We have provided you with all relevant information and access.

7. We have disclosed to you all known matters that would materially affect the subject matter of the assertion.

8. We have disclosed to you all known events subsequent to the period of the subject matter being reported on that would have a material effect on the subject matter or assertion.

9. We acknowledge our responsibility for the design and implementation of programs and controls to prevent and detect fraud.

10. We have no knowledge of any known or suspected fraudulent financial reporting or misappropriation of assets involving:

    a. Management or employees who have significant roles in internal control, or

    b. Others, where activities of others could have a material effect on the subject matter.

11. We have no knowledge of any allegations of fraud or suspected fraud affecting the subject matter received in communications from employees, customers, regulators, suppliers, or others.

12. We have disclosed to you all known instances of noncompliance or suspected noncompliance with laws and regulations affecting the subject matter.

13. We have disclosed to you all deficiencies in internal control relevant to the subject matter of which we are aware.

14. With respect to any nonattest services you have provided us during the year:

    a. We have designated a qualified management-level individual to be responsible and accountable for overseeing the nonattest services.

    b. We have established and monitored the performance of the nonattest services to ensure they meet our objectives.

    c. We have made any and all decisions involving management functions with respect to the nonattest services and accept full responsibility for such decisions.

    d. We have evaluated the adequacy of the services performed and any findings that resulted.

15. We have responded fully and truthfully to all your inquiries.

16. We are responsible for establishing and maintaining effective internal control over compliance.

17. We have performed an evaluation of compliance with specific requirements.

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[redacted]

Stephanie Orman, Mayor

[redacted]

Jessica Thurman, Assistant Finance Director

[redacted]

Jake Harper, Finance Director

City of Bentonville, Arkansas

Comprehensive Annual Financial Report

For the Year Ended December 31, 2020

Prepared by:
Jake Harper
Finance Director

Jessica Thurman
Assistant Finance Director

Visit our web site at: www.bentonvillear.com

City of Bentonville, Arkansas

December 31, 2020

Contents

Introductory Section

Letter of Transmittal i

Certificate of Achievement iv

Organizational Chart v

List of Elected and Appointed Officials vi

Financial Section

Independent Auditor's Report 1

Management's Discussion and Analysis 4

Basic Financial Statements

Statement of Net Position 13

Statement of Activities 14

Balance Sheet – Governmental Funds 15

Statement of Revenues, Expenditures and Changes in Fund Balances – Governmental Funds 16

Statement of Fund Net Position – Proprietary Funds 17

Statement of Revenues, Expenses and Changes in Fund Net Position – Proprietary Funds 18

Statement of Fund Cash Flows – Proprietary Funds 19

Notes to Financial Statements 20

Contents (Continued)

Required Supplementary Information

Budgetary Comparison Schedule – General Fund 58

Budgetary Comparison Schedule – Street Fund 59

Retiree Healthcare Plan – Schedule of Changes in the City's Total OPEB Liability and Related Ratios 60

Agent Multiple-Employer Plan – Schedule of Changes in the City's Net Pension Asset and Related Ratios – FRPF 61

Agent Multiple-Employer Plan – Schedule of Contributions – FRPF 62

Cost-Sharing Plan – Schedule of the City's Proportionate Share of the Net Pension Liability – LOPFI 63

Cost-Sharing Plan – Schedule of City Contributions – LOPFI 64

Cost-Sharing Plan – Schedule of the City's Proportionate Share of the Net Pension Liability – APERS 65

Cost-Sharing Plan – Schedule of City Contributions – APERS 66

Notes to Required Supplementary Information 67

Combining and Individual Fund Financial Statements and Schedules

Combining Balance Sheet – Nonmajor Governmental Funds 69

Combining Statement of Revenues, Expenditures and Changes in Fund Balances – Nonmajor Governmental Funds 70

Schedule of Revenues, Expenditures and Changes in Fund Balances – Budget and Actual – Debt Service Fund 71

Schedule of Revenues, Expenditures and Changes in Fund Balance – Budget and Actual – Impact/Capacity Fees 72

Combining Statement of Revenues and Expenses – Enterprise Fund 73

City of Bentonville, Arkansas

December 31, 2020

Statistical Section

Financial Trends:

Net Position by Component – Table 1 75

Changes in Net Position – Table 2 76

Fund Balances – Governmental Funds – Table 3 77

Changes in Fund Balances – Governmental Funds – Table 4 78

General Governmental Tax Revenues by Source – Table 5 79

Revenue Capacity:

Assessed Value and Estimated Actual Value of Taxable Property – Table 6 80

Property Tax Rates and Tax Levies – Direct and Overlapping Governments – Table 7 81

Principal Sales Taxpayers 82

Principal Property Taxpayers – Table 8 83

Property Tax Levies and Collections – Table 9 84

Debt Capacity:

Ratio of Outstanding Debt by Type – Table 10 85

Ratios of General Bonded Debt Outstanding 86

Direct and Overlapping Governmental Activities Debt – Table 11 87

Legal Debt Margin Information 88

Pledged-Revenue Coverage – Proprietary Funds – Table 12 89

Demographic and Economic Information:

Demographic and Economic Statistics – Table 13 90

Principal Employers – Table 14 91

Operating Information:

Full-time Equivalent Employees by Function – Table 15 92

Operating Indicators by Function – Table 16 93

Capital Asset Statistics by Function – Table 17 94

Water and Wastewater Rates – Table 18 95

Schedule of Electric, Water and Wastewater Customers and Annual Billable Water Gallons – Table 19 96

Schedule of Insurance Coverage – Table 20 97

City of Bentonville, Arkansas
December 31, 2020

Contents (Continued)

Single Audit Section

Schedule of Expenditures of Federal Awards..... 98

Independent Auditor's Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*..... 100

Report on Compliance for the Major Federal Program and Report on Internal Control Over Compliance – Independent Auditor's Report..... 102

Schedule of Findings and Questioned Costs..... 104

Summary Schedule of Prior Audit Findings 107

Other Required Reports

Independent Accountants' Report on Compliance With Arkansas State Requirements..... 108

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Introductory Section

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City of Bentonville, Arkansas
Finance and Accounting Department
1000 SW 14th St – Bentonville, Arkansas 72712
Phone (479)-271-3100 – Fax (479) 271-5913

To the Citizens of the City of Bentonville, Honorable Mayor and Members of the City Council:

The Comprehensive Annual Financial Report of the City of Bentonville, Arkansas (the City) for the year ended December 31, 2020, is submitted in accordance with State statutes. These statutes require that every general-purpose local government publish at the close of each fiscal year a complete set of audited financial statements.

This report consists of management's representations concerning the finances of the City of Bentonville. Consequently, management assumes full responsibility for the completeness and reliability of all of the information presented in this report. To provide a reasonable basis for making these representations, management of the City has established a comprehensive internal control framework that is designed both to protect the government's assets from loss, theft, or misuse and to compile sufficient reliable information for the preparation of the City's financial statements in conformity with GAAP. Because the cost of internal controls should not outweigh their benefits, the City's comprehensive framework of internal controls has been designed to provide reasonable assurance, rather than absolute, that the financial statements will be free from material misstatement. As management, we assert that, to the best of our knowledge and belief, this financial report is complete and reliable in all material respects.

The City of Bentonville's financial statements have been audited by **BKD, LLP**, a firm of licensed independent certified public accountants. The independent auditor concluded, based upon the audit, that there was a reasonable basis for rendering unmodified opinions on the financial statements of the governmental activities, business-type activities, each major fund and aggregate remaining fund information that collectively comprise the City of Bentonville's basic financial statements as of and for the fiscal year ended December 31, 2020. The independent auditor's report is presented as the first component of the financial section of this report.

Management's Discussion and Analysis (MD&A) immediately follows the independent auditor's report and provides a narrative overview and analysis of the basic financial statements. It is our intention that the MD&A complements this letter of transmittal and should be read in conjunction with it.

Profile of the Government

The City of Bentonville was incorporated in 1837 and is located in the northwest corner of the State of Arkansas. The City currently occupies a land area of approximately 31.5 square miles. The City's population estimate is 54,909 as of July 1, 2019, according to the U.S. Census Bureau. According to population projections from the Northwest Arkansas Regional Planning Commission, it is estimated that Bentonville's population could grow to 113,658 by the year 2045.

The City is empowered to levy property tax on both real and personal properties located within its boundaries. It is also empowered by state statute to extend its corporate limits by annexation, which occurs periodically, when deemed appropriate by the City Council.

The City of Bentonville is operated under the Mayor-Council form of government. The Mayor is elected by the Citizens of Bentonville to a four year term. The Mayor serves as the chief executive of the city, presides over City Council meetings and has the ability to vote on City Council items in the event of a tie. The City Council is made up of two members from each ward (eight total members) within the City and are elected for four year terms. The City Council has the ability to enact laws (ordinances) for the health, safety and welfare of the city not in conflict with the United States constitution or the constitution of the State of Arkansas. The legal level of budgetary control is maintained at the fund level for all funds. However, management control is maintained at the department level.

The City of Bentonville provides a full range of services including police, fire, emergency ambulance service, library, parks, recreation, water, sewer, electric, traffic engineering, streets and infrastructure, community development (planning and zoning), economic development and general administrative services.

The financial reporting entity (the government) includes all funds of the primary government.

Factors Affecting Financial Condition

Local Economy. The City of Bentonville historically benefits from low unemployment rates. There are several major industries in the City, with Wal-Mart and Sam's Club headquarters in Bentonville. The City is also home to Northwest Arkansas Community College. These employers draw their workforce from a population of more than 530,000 within the Fayetteville-Springdale-Rogers MSA (metropolitan statistical area) of which Bentonville is a part. Other major employers also located in the Fayetteville-Springdale-Rogers MSA include Tyson's Foods, J.B. Hunt Transport, and the University of Arkansas.

Relevant Financial Policies

The City's accounting records for general government activities are maintained on a modified accrual basis, with revenues being recorded when available and measurable, and expenditures being recorded when the services or goods are received and the liabilities are incurred. Accounting records for the City's electric, water and sewer utility and other proprietary activities are maintained on an accrual basis.

The annual budget serves as the foundation for the City of Bentonville, Arkansas' financial planning and control. The annual budget for the following year is prepared each year by the Mayor and Department Heads and is submitted to City Council for review and approval before the end of the current year. Budget to actual comparisons are provided in this report for each individual governmental fund for which an appropriated annual budget has been adopted.

Long-term Financial Planning

During the annual budgeting process, the City evaluates long-term capital requirements and projected conditions in the local economy. The City is constantly monitoring the current economic conditions and will adjust the annual budget accordingly.

Awards and Acknowledgements

Awards: The Government Finance Officers Association (GFOA) awarded a Distinguished Budget Presentation Award to the City of Bentonville, Arkansas for its budget document prepared for the budget year ended December 31, 2020. The City of Bentonville has earned this award for 22 consecutive years.

The Government Finance Officers Association (GFOA) awarded a Certificate of Achievement for Excellence in Financial Reporting to the City of Bentonville for its Comprehensive Annual Financial Report for the fiscal year ended December 31, 2019. In order to be awarded a Certificate of Achievement, the City published an easily readable and efficiently organized Comprehensive Annual Financial Report. This report satisfied both GAAP and applicable legal requirements.

A Certificate of Achievement is valid for a period of one (1)-year only. We believe that our current Comprehensive Annual Financial Report continues to meet the Certificate of Achievement Program's requirements and are submitting it to GFOA to determine its eligibility for another certificate.

Acknowledgements: This report and the information contained therein would not have been possible without the help of the all the departments within the City of Bentonville that provided information presented. We would also like to express our appreciation to the Mayor and City Council for their interest and support in the responsible planning and conducting of the financial operations of the City.

Respectively submitted,



Jake Harper
Finance Director

June 15, 2021

Government Finance Officers Association

Certificate of Achievement for Excellence in Financial Reporting

Presented to

City of Bentonville
Arkansas

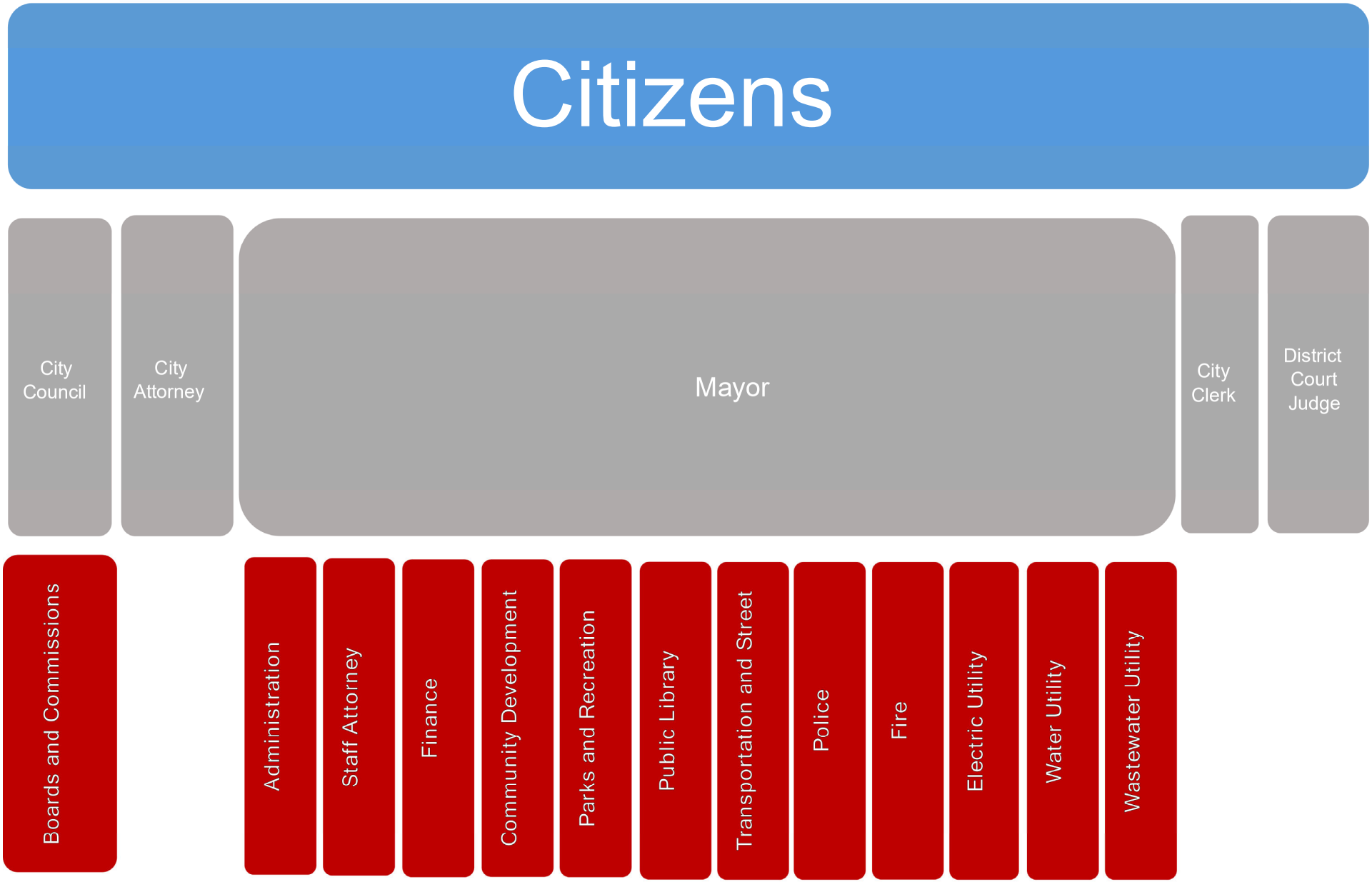
For its Comprehensive Annual
Financial Report
For the Fiscal Year Ended

December 31, 2019

[redacted]

Executive Director/CEO

City of Bentonville Organizational Chart



City of Bentonville, Arkansas
City Council and Other Elected Officials

Stephanie Orman
Mayor

Name	Ward	Position
Tim Robinson	1	1
Gayatri Agnew	1	2
Cindy Acree	2	1
Chris Sooter	2	2
Aubrey Patterson	3	1
Bill Burckart	3	2
Octavio Sanchez	4	1
Holly Hook	4	2
George Spence, City Attorney		
Kirby Romines, City Clerk		

Financial Section

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BKD
CPAs & Advisors

809 S. 52nd Street, Suite A | P.O. Box 1893 | Rogers, AR 72757-1893
479.845.0270 | Fax 479.845.0840 | bkd.com

Independent Auditor's Report

The Honorable Mayor and Members of the City Council
City of Bentonville, Arkansas
Bentonville, Arkansas

Report on the Financial Statements

We have audited the accompanying financial statements of the governmental activities, the business-type activities, each major fund and the aggregate remaining fund information of the City of Bentonville, Arkansas (the City), as of and for the year ended December 31, 2020, and the related notes to the financial statements, which collectively comprise the City's basic financial statements as listed in the table of contents.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express opinions on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

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Opinions

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, each major fund and the aggregate remaining fund information of the City of Bentonville, Arkansas, as of December 31, 2020, and the respective changes in financial position and, where applicable, cash flows thereof for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Other Matters

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis, budgetary comparisons, pension and other postemployment benefit information as listed in the table of contents be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Other Information

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the City's basic financial statements. The combining and individual fund statements an schedules and introductory section and statistical tables, including the schedule of expenditures of federal awards as required by Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, as listed in the table of contents, are presented for purposes of additional analysis and are not a required part of the basic financial statements.

The combining and individual fund statements and schedule of expenditures of federal awards are the responsibility of management and were derived from and relate directly to the underlying accounting and other records used to prepare the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the combining and individual fund statements and schedule of expenditures of federal awards are fairly stated, in all material respects, in relation to the basic financial statements as a whole.

The introductory section and the statistical tables have not been subjected to the auditing procedures applied in the audit of the basic financial statements, and accordingly, we do not express an opinion or provide any assurance on it.

Other Reporting Required by *Government Auditing Standards*

In accordance with *Government Auditing Standards*, we also have issued our report dated June 15, 2021, on our consideration of the City's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the City's internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the City's internal control over financial reporting and compliance.

BKD, LLP

Rogers, Arkansas
June 15, 2021

City of Bentonville, Arkansas
Management's Discussion and Analysis
December 31, 2020

As management of the City of Bentonville (the "City"), we offer readers of the City's financial statements this narrative overview and analysis of the financial activities for the fiscal year ended December 31, 2020. The information contained in this MD&A should be considered in conjunction with our letter of transmittal at the front of this report and the information contained in the Independent Auditor's Reports, Financial Statements and Supplementary Information.

FINANCIAL HIGHLIGHTS

- The assets and deferred outflows of resources of the City exceeded its liabilities and deferred inflows of resources at the close of the most recent fiscal year by $594,615,961.

- As of the close of the current fiscal year, the City of Bentonville's governmental funds reported combined ending fund balances of $102,089,383 of which $59,487,999 was unassigned.

- At the end of the current fiscal year, unassigned fund balance for the general fund was $59,487,999 which is 107% of total general fund expenditures.

- The City's total bond related debt decreased by $12,683,310 or 28% during 2020 primarily due to principal payments on existing debt.

- The City had general revenues of $64,416,206, grants and contribution revenue of $23,839,745, charges for services of $111,455,141 and program expenses of $161,735,033 for the year ended December 31, 2020.

- The City's capital outlays for the year, including outlays in the enterprise fund, were $27,307,663.

OVERVIEW OF THE FINANCIAL STATEMENTS

The discussion and analysis is intended to serve as an introduction to the City's basic financial statements. The City's basic financial statements comprise three components: 1) government–wide financial statements, 2) fund financial statements, and 3) notes to the financial statements.

Government-Wide Financial Statements

The government-wide financial statements are designed to provide readers with a broad overview of the City's finances, in a manner similar to a private-sector business. The *statement of net position* presents information on all of the City's assets, liabilities, and deferred inflows/outflows of resources, with the difference reported as *net position*. Over time, increases or decreases in net position may serve as a useful indicator of whether the financial position of the City is improving or deteriorating.

The *statement of activities* presents information showing how the government's net position changed during the most recent fiscal year. All changes in net position are reported as soon as the underlying event giving rise to the change occurs, *regardless of the timing of related cash flows*. Thus, revenues and expenses are reported in this statement for some items that will only result in cash flows in future fiscal periods (*e.g.*, uncollected taxes and earned but unused vacation leave).

The government-wide financial statements are divided into two categories, governmental and business-type activities. The governmental activities of the City include General Government, Administrative Services, Police, Fire, Public Works, Community Development, Library and Parks. The business-type activities of the City include Electric, Water, Wastewater, Sanitation, and related support departments which comprise the Utility Fund.

The government-wide financial statements can be found on pages 13-14 of this report.

Fund Financial Statements

A *fund* is a grouping of related accounts that is used to maintain control over resources which have been segregated for specific activities or objectives. The City, like other state and local governments, uses fund accounting to ensure and demonstrate compliance with finance-related legal requirements. All of the funds of the City can be divided into two categories: governmental funds and proprietary funds.

Governmental Funds

Governmental funds are used to account for essentially the same functions reported as governmental activities in the government-wide financial statements. However, unlike the government-wide financial statements, governmental fund financial statements focus on *near-term inflows and outflows of spendable resources*, as well as on *balances of spendable resources* available at the end of the fiscal year. Such information may be useful in assessing a government's near-term financing requirements.

Because the focus of governmental funds is narrower than that of the government-wide financial statements, it is useful to compare the information presented for *governmental funds* with similar information presented for *governmental activities* in the government-wide financial statements. By doing so, readers may better understand the long-term impact of the government's near-term financing decisions. Both the governmental fund balance sheet and the governmental fund statement of revenues, expenditures and changes in fund balances provide a reconciliation to facilitate this comparison between *governmental funds* and *governmental activities*.

The City maintains six individual governmental funds. Information is presented separately in the governmental fund balance sheet and in the governmental fund statement of revenues, expenditures and changes in fund balances for the general fund, the street fund, the capital projects fund and the debt service fund, which are considered to be major funds. Data from the other two governmental funds are combined into a single aggregated presentation. Individual fund data for each of these nonmajor governmental funds is provided in the form of combining statements in the combining and individual fund statements and schedules section of this report.

The basic governmental fund financial statements can be found on pages 15-16 of this report.

Proprietary Funds

The City maintains one type of proprietary fund. *Enterprise funds* are used to report the same functions presented as *business-type activities* in the government-wide financial statements. The City uses enterprise funds to account for its electric, water, wastewater and sanitation operations.

Proprietary funds, in general, charge customers for services provided. Like the government-wide financial statements, proprietary fund financial statements are presented using a long-term financial accounting approach and the full accrual basis of accounting. Additional information is provided in the proprietary funds' statement of cash flows.

The basic proprietary fund financial statements can be found on pages 17-19 of this report.

Notes to the Financial Statements

The notes provide additional information that is essential to a full understanding of the data provided in the government-wide and fund financial statements. The notes to the financial statements can be found on pages 20-57 of this report.

Other Information

In addition to the basic financial statements and accompanying notes, this report also presents required supplementary information concerning the City's progress in funding its obligation to provide other post employment benefits (OPEB) to its employees. Required supplementary information can be found on pages 58-68 of this report.

The combining schedules referred to earlier in connection with nonmajor governmental funds are presented immediately following the required supplementary information on pensions and OPEB. Combining and individual fund statements and schedules can be found on pages 69-73 of this report.

GOVERNMENT-WIDE ANALYSIS

As noted earlier, net position may serve over time as a useful indicator of a government's financial position. In the case of the City, assets and deferred outflows exceeded liabilities and deferred inflows of resources by $594,615,961 at the close of the most recent fiscal year.

By far the largest portion of the City's net position (82%) is its investment in capital assets (*e.g.*, land, buildings, machinery, and equipment); less any related outstanding debt used to acquire those assets. These capital assets are used to provide services to citizens; consequently, these assets are not available for future spending.

Net Position

	Governmental Activities		Business-type Activities		Total	
	2020	2019	2020	2019	2020	2019
Current and other assets	$ 124,769,213	$ 121,175,808	$ 69,668,592	$ 59,794,906	$ 194,437,805	$ 180,970,714
Capital assets	289,101,845	270,754,848	213,752,536	208,708,294	502,854,381	479,463,142
Total assets	413,871,058	391,930,656	283,421,128	268,503,200	697,292,186	660,433,856
Total deferred outflows of resources	12,867,146	15,034,020	2,948,984	2,122,890	15,816,130	17,156,910
Long-term liabilities	65,179,636	78,537,719	18,501,964	17,206,766	83,681,600	95,744,485
Other liabilities	21,580,492	17,879,195	8,379,153	8,510,375	29,959,645	26,389,570
Total liabilities	86,760,128	96,416,914	26,881,117	25,717,141	113,641,245	122,134,055
Total deferred inflows of resources	4,455,822	1,116,339	395,288	507,106	4,851,110	1,623,445
Net position:						
Net investment in capital assets	279,366,430	252,689,293	208,392,983	202,310,382	487,759,413	454,999,675
Restricted	26,232,902	21,881,884	1,898,983	2,100,656	28,131,885	23,982,540
Unrestricted	29,922,922	34,860,246	48,801,741	39,938,805	78,724,663	74,799,051
Total net position	$ 335,522,254	$ 309,431,423	$ 259,093,707	$ 244,349,843	$ 594,615,961	$ 553,781,266

An additional portion of the City's net position (4.73%) represents resources that are subject to external restrictions on how they may be used. The remaining balance of *unrestricted net position* $78,724,663 may be used to meet the City's ongoing obligations to citizens and creditors.

During the current fiscal year, total net position of the City increased by $40,834,695 primarily resulting from an increase in capital assets net of accumulated depreciation of $23,391,239 and payments on long-term debt of $12,578,456. The major capital asset events contributing to this increase are discussed in the *Capital Assets* section of this document. Restricted net position increased by $4,149,346 primarily due to an increase in funds set aside for new growth.

Changes in Net Position

	Governmental Activities		Business-Type Activities		Total	
	2020	2019	2020	2019	2020	2019
Revenues:						
Program revenues:						
Charges for services	$ 9,706,525	$ 14,615,432	$ 101,748,616	$ 101,729,728	$ 111,455,141	$ 116,345,160
Operating grants and contributions	6,119,081	660,682	827,105	-	6,946,186	660,682
Capital grants and contributions	12,434,429	5,050,131	4,459,130	2,432,863	16,893,559	7,482,994
General revenues:						
Property taxes	10,023,405	9,417,015	-	-	10,023,405	9,417,015
Sales taxes	43,279,794	39,654,947	-	-	43,279,794	39,654,947
State turnback	3,050,062	3,041,751	-	-	3,050,062	3,041,751
Impact Fees	2,858,636	-	-	-	2,858,636	-
Franchise fees	5,506,867	5,368,133	-	-	5,506,867	5,368,133
Investment income	735,402	1,178,951	394,011	289,274	1,129,413	1,468,225
Gain (loss) on sale of capital assets	20,025	3,769,638	-	24,061	20,025	3,793,699
Other	1,363,288	4,570,586	43,352	120,473	1,406,640	4,691,059
Total revenues	95,097,514	87,327,266	107,472,214	104,596,399	202,569,728	191,923,665
Expenses:						
General government	10,764,635	11,262,376	-	-	10,764,635	11,262,376
Public safety	30,483,681	27,161,452	-	-	30,483,681	27,161,452
Recreation	11,533,775	11,908,261	-	-	11,533,775	11,908,261
Street department	11,794,878	9,571,784	-	-	11,794,878	9,571,784
Library	2,014,164	1,887,076	-	-	2,014,164	1,887,076
Interest expense on long-term debt	1,464,550	1,929,130	-	-	1,464,550	1,929,130
Electric	-	-	59,723,199	60,093,455	59,723,199	60,093,455
Water	-	-	14,973,111	13,871,208	14,973,111	13,871,208
Wastewater	-	-	10,096,434	9,615,262	10,096,434	9,615,262
Sanitation	-	-	5,406,151	5,109,186	5,406,151	5,109,186
Support	-	-	3,480,455	3,521,239	3,480,455	3,521,239
Total expenses:	68,055,683	63,720,079	93,679,350	92,210,350	161,735,033	155,930,429
Increase in net position before transfers and special items	27,041,831	23,607,187	13,792,864	12,386,049	40,834,695	35,993,236
Transfers	(951,000)	-	951,000	-	-	-
Increase in net position	26,090,831	23,607,187	14,743,864	12,386,049	40,834,695	35,993,236
Net position - beginning of the year,	309,431,423	285,824,236	244,349,843	231,963,794	553,781,266	517,788,030
Net position – end of the year	$ 335,522,254	$ 309,431,423	$ 259,093,707	$ 244,349,843	$ 594,615,961	$ 553,781,266

Governmental Activities

Governmental activities increased the City's net position by $26,090,831, thereby accounting for 61% of the total growth in the net position of the City. The 2020 increase is $(0.4) million more than in 2019 primarily due to a $3.6 million increase in sales tax revenue.

Business-type Activities

Business-type activities increased the City's net position by $14,743,864, accounting for 39% of the total growth in the City's net position. The 2020 increase is $2.4 million more than 2019 due to a general increase in expenses of $1.5 million offset by a general increase in charges for services of $160,000 (both driven by the economic growth in Northwest Arkansas) combined with an increase of $2.9 million in capital and operating grants and contributions.

FINANCIAL ANALYSIS OF THE GOVERNMENT'S FUNDS

Governmental Funds

The focus of the City's *governmental funds* is to provide information on near-term inflows, outflows, and balances of spendable resources. Such information is useful in assessing the City's financing requirements. In particular, *fund balance* may serve as a useful measure of a government's net resources available for spending for program purposes at the end of the fiscal year.

General Fund

The general fund is the chief operating fund of the City. At the end of the current fiscal year, unassigned fund balance of the general fund was $59,487,999, while total fund balances reached $62,906,166. As a measure of the general fund's liquidity, it may be useful to compare both unassigned fund balances and total fund balances to total fund expenditures. Unassigned fund balances represent 107% of total general fund expenditures, while total fund balances represent 113% of that same amount.

The fund balances of the City's general fund increased $2,368,844 during the current fiscal year. Overall revenues increased by $3,419,391 and were offset by an overall increase in expenses of $837,346.

Street Fund

The City's street fund had a total fund balance of $6,111,621 of which $323 is nonspendable and the remaining balance is assigned and available to fund street capital and maintenance projects. The net increase in fund balance during the current year in the street fund was $670,832. The street fund's fund balance increase in primarily due to a $1,716,705 increase in grant revenues.

Capital Project Fund

The City's capital project fund had a total fund balance of $17,972,203 all of which is restricted and available to fund capital projects that meet the requirements of the Series 2009 Sales and Use Tax Bonds, the Series 2010 Sales and Use Tax Bonds and the Series 2017 Sales and Use Tax Bonds. The net decrease in fund balance during the current year in the capital project fund was $3,557,941, and is primarily the result of spending $3,635,857 of bond proceeds on capital improvements.

Debt Service Fund

The City's debt service fund had a total fund balance of $7,956,798, which is restricted for debt service. The net increase in fund balance during the current year in the debt service fund was $557,287. Debt service's fund balance increase is primarily due to sales tax revenues exceeding debt service expenditures.

Proprietary Funds

Enterprise Fund

Unrestricted net position of the enterprise fund at the end of the year was $48,801,741. The total growth in net position of the enterprise fund was $14,743,864. Operating revenues of the enterprise fund decreased 0.06% to $101,792,768 and the operating expenses increased 2% to $93,442,172. Other factors concerning the finances of the enterprise fund have already been discussed in the City's business-type activities.

General Fund Budgetary Highlights

Original Budget as Compared to the Final Budget

During the 2020 fiscal year, the original budget of the general fund was amended primarily to budget for more capital projects and other costs or revenues not previously in the budget. The most significant amendment was a budget rollforward from 2019 for the $3.4 million purchase of the West Plaza building to be renovated for use as the City's Administrative Services building.

Actual Results as Compared to the Final Budget

Variances between the actual revenues and expenditures and the general fund's final budget were fairly significant. The final amended budget projected a $15,727,949 decrease in general fund balance while the actual resulted in a fund balance increase of $2,368,844. The prime factors in the variances can be briefly summarized as follows:

- *Property tax* revenue was $7,269,641, while the final budgeted amount was $6,490,137. The excess revenues over the budget ($779,504) can be attributed to a general improvement in the local economy in 2020 compared to 2019 and an increase in assessed values of $72,134,900, or 6%.

- *Sales tax* revenue was $29,748,351, while the final budgeted amount was $25,702,597. The increase in revenues over the budget ($4,045,754) can be attributed to a general increase in retail sales tax from various projects in the City and the County and general increase in economic conditions.

- *Licenses and permits* revenue was $1,943,451, while the final budgeted amount was $1,247,601. The increase in revenues over the budget ($695,850) can be attributed to a general increase in permits attributed to an increase in building permits and activity.

- *Grants* revenue was $5,093,226, while the final budgeted amount was $6,785,263. The decrease in revenues over the budget of ($1,692,037) can be attributed to grants that were budgeted in 2020 but were not received for the year.

- *Capital outlay* expenditure was $11,687,550, while the final budgeted amount was $24,768,677. The decrease in expenditures over the budget ($13,081,127) can be attributed to various budgeted capital outlay projects that were not completed during 2020 due to time constraints or planned multi-year projects.

CAPITAL ASSET AND DEBT ADMINISTRATION

Capital Assets

As of December 31, 2020, the City's investment in capital assets for its governmental and business-type activities was $502,854,381 (net of accumulated depreciation). This investment in capital assets includes land, buildings, improvements, machinery and equipment, and streets.

Major capital asset events during the current fiscal year include the following:

- Capital expenditures of $6.1 million were made for a variety of street construction projects in new residential developments and widening and expansion projects for existing streets. In addition, $4.6 million of streets, drainage and sidewalks constructed by developers were contributed to the City to own and maintain.
- Capital expenditures of $5.1 million were made to purchase and remodel the City's Administrative Services building.
- Capital expenditures of $1.6 million were made to construct the City's Public Works Maintenance facility.
- Capital expenditures of $517,000 were made for a variety of park improvement projects.
- Capital expenditures for additions and improvements for the City's water system, sewer system and electric system were $6.1 million. In addition, $4.5 million in electric, water and sewer lines were contributed by developers to the City.
- Capital expenditures for furniture, fixtures and equipment city wide totaled $3.7 million due to replacement and additional equipment needs throughout the city.

Additional information regarding capital assets can be found on pages 32-34 of this report.

Long-term Debt

The City had $33,310,301 in revenue bonds payable outstanding as of December 31, 2020, which is a decrease of $12,683,310 from the previous year. The decrease was due to the regularly scheduled principal reductions on the outstanding debt. In June 2021, pursuant to the issuance of the City's 2021 Sales and Use Tax bonds, the City received a bond rating of AA- by Standard & Poor's.

Additional information regarding long-term debt can be found at pages 35-39 of this report.

ECONOMIC FACTORS AND NEXT YEAR'S BUDGETS AND RATES

- The unemployment rate for the metropolitan area of Northwest Arkansas (of which Bentonville is a part) is currently 3.50%. This compares favorably to the state's average unemployment rate of 4.9% and the national average rate of 6.7%.

- The City's population growth has averaged about 7% annually and according to the most recent census the population is 54,909. Impact and capacity fees, an additional one cent sales tax for capital improvements and slight increases in utility rates are in place to meet the financial demands caused by this population growth.

- The value of building permits issued, excluding public buildings, was approximately $454 million in 2019 and $529.2 million in 2020.

CONTACTING THE CITY'S FINANCIAL MANAGEMENT

The financial report is designed to provide a general overview of the City's finances for all those with an interest. Questions concerning any of the information provided in this report or requests for additional financial information should be addressed to the Director of Finance and Administration; 1000 SW 14th Street; Bentonville, Arkansas 72712.

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Basic Financial Statements

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City of Bentonville, Arkansas
Statement of Net Position
December 31, 2020

	Primary Government		
	Governmental Activities	Business-type Activities	Total
Assets			
Current Assets			
Cash and cash equivalents	$ 29,734,832	$ 36,119,173	$ 65,854,005
Certificates of deposit	33,440,555	15,451,208	48,891,763
Restricted cash and cash equivalents	23,286,103	1,621,805	24,907,908
Receivable			
Customer accounts, net of allowance for uncollectible accounts of $329,000	-	12,129,123	12,129,123
Property taxes, net of allowance for uncollectibles of $475,786	9,039,940	-	9,039,940
Grants and other	2,458,319	-	2,458,319
Internal balances	687,907	2,736	690,643
Inventories	-	3,984,912	3,984,912
Prepaid items	299,560	77,923	377,483
Total current assets	98,947,216	69,386,880	168,334,096
Noncurrent Assets			
Restricted assets			
Cash and cash equivalents	19,397,248	281,712	19,678,960
Sales taxes receivable	4,364,956	-	4,364,956
Total restricted assets	23,762,204	281,712	24,043,916
Net pension asset	2,059,793	-	2,059,793
Capital assets - non-depreciable	10,793,833	8,249,434	19,043,267
Capital assets - depreciable, net	278,308,012	205,503,102	483,811,114
	291,161,638	213,752,536	504,914,174
Total noncurrent assets	314,923,842	214,034,248	528,958,090
Total assets	413,871,058	283,421,128	697,292,186
Deferred Outflows of Resources			
Deferred outflows - pensions	7,741,094	2,058,543	9,799,637
Deferred outflows - OPEB	1,514,784	283,676	1,798,460
Deferred outflows - pension contributions	3,611,268	606,765	4,218,033
Total deferred outflows of resources	12,867,146	2,948,984	15,816,130

See Notes to Financial Statements

	Primary Government		
	Governmental Activities	Business-type Activities	Total
Liabilities			
Current Liabilities			
Accounts payable	$ 3,068,525	$ 6,342,329	$ 9,410,854
Accrued expenses and other	608,355	240,891	849,246
Accrued interest payable	156,512	4,534	161,046
Other postemployment benefit liability - current portion	166,735	-	166,735
Compensated absences - current portion	207,148	528,497	735,645
Due to other funds	690,643	-	690,643
Due to other governments	191,203	224,914	416,117
Bonds payable - current portion	9,470,000	975,929	10,445,929
Unearned revenues	7,021,371	62,059	7,083,430
Total current liabilities	21,580,492	8,379,153	29,959,645
Noncurrent Liabilities			
Customer deposits	-	1,429,857	1,429,857
Compensated absences	1,660,270	302,314	1,962,584
Other postemployment benefit liability	5,703,474	1,172,355	6,875,829
Net pension liability	39,335,144	11,213,814	50,548,958
Bonds payable, net	18,480,748	4,383,624	22,864,372
Total noncurrent liabilities	65,179,636	18,501,964	83,681,600
Total liabilities	86,760,128	26,881,117	113,641,245
Deferred Inflows of Resources			
Deferred inflows - OPEB	1,042,370	195,729	1,238,099
Deferred inflows - pensions	3,413,452	199,559	3,613,011
Total deferred inflows of resources	4,455,822	395,288	4,851,110
Net Position			
Net investment in capital assets	279,366,430	208,392,983	487,759,413
Restricted			
Debt service	7,800,286	277,179	8,077,465
New growth	7,142,595	-	7,142,595
Renewals and replacements	-	1,621,804	1,621,804
Capital improvements	3,032,914	-	3,032,914
Street improvements	6,111,298	-	6,111,298
Pensions	2,059,793	-	2,059,793
Other	86,016	-	86,016
Total restricted	26,232,902	1,898,983	28,131,885
Unrestricted	29,922,922	48,801,741	78,724,663
Total net position	$ 335,522,254	$ 259,093,707	$ 594,615,961

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City of Bentonville, Arkansas
Statement of Activities
For the year ended December 31, 2020

Government/Programs	Expenses	Program Revenues: Charges for Services	Program Revenues: Operating Grants and Contributions	Program Revenues: Capital Grants and Contributions	Net (Expenses) Revenues and Changes in Net Position: Primary Government: Governmental Activities	Net (Expenses) Revenues and Changes in Net Position: Primary Government: Business-type Activities	Net (Expenses) Revenues and Changes in Net Position: Primary Government: Total
Primary Government							
Governmental activities:							
General government	$ 10,764,635	$ 3,070,578	$ 1,787,526	$ -	$ (5,906,531)	$ -	$ (5,906,531)
Public safety	30,483,681	3,302,059	186,947	250	(26,994,425)	-	(26,994,425)
Recreation	11,533,775	1,789,880	1,760,348	-	(7,983,547)	-	(7,983,547)
Street department	11,794,878	1,510,106	2,259,210	4,590,584	(3,434,978)	-	(3,434,978)
Library	2,014,164	33,902	125,050	7,843,595	5,988,383	-	5,988,383
Interest expense on long-term debt	1,464,550	-	-	-	(1,464,550)	-	(1,464,550)
Total governmental activities	68,055,683	9,706,525	6,119,081	12,434,429	(39,795,648)	-	(39,795,648)
Business-Type Activities:							
Electric	59,723,199	68,092,503	527,105	1,233,589	-	10,129,998	10,129,998
Water	14,973,111	12,872,797	300,000	3,224,741	-	1,424,427	1,424,427
Wastewater	10,096,434	14,688,256	-	800	-	4,592,622	4,592,622
Sanitation	5,406,151	5,799,564	-	-	-	393,413	393,413
Support	3,480,455	295,496	-	-	-	(3,184,959)	(3,184,959)
Total business-type activities	93,679,350	101,748,616	827,105	4,459,130	-	13,355,501	13,355,501
Total primary government	$ 161,735,033	$ 111,455,141	$ 6,946,186	$ 16,893,559	(39,795,648)	13,355,501	(26,440,147)
	General Revenues:						
	Property taxes				10,023,405	-	10,023,405
	Sales taxes				43,279,794	-	43,279,794
	State turnback				3,050,062	-	3,050,062
	Impact Fees				2,858,636	-	2,858,636
	Franchise taxes				5,506,867	-	5,506,867
	Investment income				735,402	394,011	1,129,413
	Gain on sales of capital assets				20,025	-	20,025
	Transfers				(951,000)	951,000	-
	Other				1,363,288	43,352	1,406,640
	Total general revenues and transfers				65,886,479	1,388,363	67,274,842
	Change in Net Position				26,090,831	14,743,864	40,834,695
	Net Position - Beginning of Year				309,431,423	244,349,843	553,781,266
	Net Position - End of Year				$ 335,522,254	$ 259,093,707	$ 594,615,961

See Notes to Financial Statements

City of Bentonville, Arkansas
Balance Sheet - Governmental Funds
December 31, 2020

	General	Street	Capital Project	Debt Service	Nonmajor Governmental Funds	Total Governmental Funds
Assets						
Cash and cash equivalents	$ 28,656,270	$ 9,205,201	$ -	$ -	$ -	$ 37,861,471
Certificates of deposit	33,440,555	-	-	-	-	33,440,555
Accounts receivable:						
Property taxes, net of allowance for uncollectible accounts of $475,786	6,918,325	2,121,615	-	-	-	9,039,940
Grants and other	1,163,381	1,287,878	-	-	7,060	2,458,319
Due from other funds	690,643	9,350	-	-	-	699,993
Prepaid and other	299,237	323	-	-	-	299,560
Restricted assets						
Cash and cash equivalents	1,040,369	-	18,834,698	6,556,857	8,124,788	34,556,712
Sales tax receivable	2,965,015	-	-	1,399,941	-	4,364,956
Total assets	$ 75,173,795	$ 12,624,367	$ 18,834,698	$ 7,956,798	$ 8,131,848	$ 122,721,506
Liabilities						
Accounts payable	$ 1,858,443	$ 240,180	$ 862,495	$ -	$ 107,407	$ 3,068,525
Due to other funds	12,086	-	-	-	690,643	702,729
Due to other governments	-	-	-	-	191,203	191,203
Accrued expenditures and other	572,674	35,681	-	-	-	608,355
Unearned revenues	2,906,101	4,115,270	-	-	-	7,021,371
Total liabilities	5,349,304	4,391,131	862,495	-	989,253	11,592,183
Deferred Inflows of Resources						
Unavailable revenues - property taxes	6,918,325	2,121,615	-	-	-	9,039,940
Fund balances						
Nonspendable						
Prepaid expenditures	299,237	323	-	-	-	299,560
Restricted						
Debt service	-	-	-	7,956,798	-	7,956,798
General capital improvements	3,032,914	-	17,972,203	-	-	21,005,117
New growth	-	-	-	-	7,142,595	7,142,595
Street improvements	-	6,111,298	-	-	-	6,111,298
Other	86,016	-	-	-	-	86,016
Unassigned	59,487,999	-	-	-	-	59,487,999
Total fund balances	62,906,166	6,111,621	17,972,203	7,956,798	7,142,595	102,089,383
Total liabilities, deferred inflows of resources and fund balances	$ 75,173,795	$ 12,624,367	$ 18,834,698	$ 7,956,798	$ 8,131,848	$ 122,721,506

See Notes to Financial Statements

Total fund balances - governmental funds	$	102,089,383
Amounts reported for governmental activities in the statement of net position are different because:		
Capital assets used in governmental activities are not financial resources and are not reported in the funds.		289,101,845
Net pension assets are not available to pay for current-period expenditures and, therefore, are not reported in the funds.		2,059,793
Property tax revenues that do not provide current financial resources at the fund level on the modified accrual basis are reported as revenues on the full accrual basis in the government-wide statements.		9,039,940
Deferred inflows and outflows related to pensions and other postemployment benefits are not due and payable in the current period and, therefore, are not reported in the funds.		8,411,324
Liabilities that are not due and payable in the current period and are not reported in the fund statements:		
Accrued interest payable		(156,512)
Accrued compensated absences		(1,867,418)
Net pension liabilities		(39,335,144)
Other postemployment benefits liability		(5,870,209)
Bonds payable, net of premiums and discounts		(27,950,748)
Total net position - governmental activities	$	335,522,254

City of Bentonville, Arkansas

Statement of Revenues, Expenditures and Changes in Fund Balances - Governmental Funds

Year Ended December 31, 2020

	General	Street	Capital Project	Debt Service	Nonmajor Governmental Funds	Total Governmental Funds
Revenues						
Property tax	$ 7,269,641	$ 2,260,536	$ -	$ -	$ -	$ 9,530,177
Sales tax	29,748,351	-	-	13,531,443	-	43,279,794
State turnback	1,497,831	2,657,372	-	-	-	4,155,203
Impact fees	-	-	-	-	2,858,636	2,858,636
Franchise taxes	5,506,867	-	-	-	-	5,506,867
Charges for services	3,869,740	46,756	-	-	-	3,916,496
Fines and forfeitures	388,542	-	-	-	-	388,542
Licenses and permits	1,943,451	17,391	-	-	-	1,960,842
Grants	5,093,226	2,259,210	-	-	-	7,352,436
Contributions	123,293	338,775	-	-	-	462,068
Interest	333,299	54,652	77,916	25,394	48,460	539,721
Investment income	195,681	-	-	-	-	195,681
Miscellaneous	1,230,901	672,760	-	-	-	1,903,661
Total revenues	57,200,823	8,307,452	77,916	13,556,837	2,907,096	82,050,124
Expenditures						
Current:						
General government	8,682,730	-	-	-	-	8,682,730
Public safety	24,418,096	-	-	-	-	24,418,096
Recreation	9,077,193	-	-	-	-	9,077,193
Street Department	-	3,970,303	-	-	-	3,970,303
Library	1,777,953	-	-	-	-	1,777,953
Capital outlay	11,687,550	3,666,317	3,635,857	-	-	18,989,724
Debt service						
Principal	-	-	-	11,535,000	-	11,535,000
Interest	-	-	-	1,464,550	-	1,464,550
Total expenditures	55,643,522	7,636,620	3,635,857	12,999,550	-	79,915,549
Excess (Deficiency) of Revenues Over Expenditures	1,557,301	670,832	(3,557,941)	557,287	2,907,096	2,134,575
Other Financing Sources (Uses)						
Sale of capital assets	20,025	-	-	-	-	20,025
Transfers in	791,518	-	-	-	-	791,518
Transfers out	-	-	-	-	(1,742,518)	(1,742,518)
Total other financing sources (uses)	811,543	-	-	-	(1,742,518)	(930,975)
Change in Fund Balances	2,368,844	670,832	(3,557,941)	557,287	1,164,578	1,203,600
Fund Balances, Beginning of Year	60,537,322	5,440,789	21,530,144	7,399,511	5,978,017	100,885,783
Fund Balances, End of Year	$ 62,906,166	$ 6,111,621	$ 17,972,203	$ 7,956,798	$ 7,142,595	$ 102,089,383

See Notes to Financial Statements

Net change in fund balance - total governmental funds	$	1,203,600
Amounts reported for governmental activities in the statement of activities are different because:		
Governmental Funds do not report capital contributions and they report capital outlays as expenditures. However, in the statement of activities the cost of those assets is allocated over their estimated useful lives and reported as depreciation expense.		
Capital asset purchases		18,444,877
Capital contributions		12,424,187
Capital asset disposals		(97,627)
Depreciation expense		(12,424,440)
Reductions in bond principal reported as expenditures for the funds are not reported as expenses in the statement of activities.		11,535,000
Property tax revenues reported in the statement of activities are not available soon after year end and therefore are not considered current financial resources and are not recognized in the fund financial statements in the current year. This is the change in the amount of deferred property tax revenues reported in the governmental fund statements.		493,228
Deferred inflows/outflows related to the net pension liabilities are not due and payable in the current period and, therefore, are not reported in the funds. These amounts are amortized into pension expense in future periods. This is the amount by which the deferred inflows/outflows changed during the current year.		(5,506,357)
Expenses for pensions and other post employment benefit liabilities reported in the statement of activities do not require the use of current financial resources and therefore are not reported as expenditures in the governmental fund financial statements in the current year. This is the change in the amount of the net pension and other post employment benefit liabilities reported in the governmental fund statements.		(147,388)
Accrued expenses, such as compensated absences, interest, pension costs, etc., reported in the statement of activities do not require the use of current financial resources, and, therefore, are not expenditures in the funds. This is the net change in accrued expenses.		165,751
Change in net position of governmental activities	$	26,090,831

City of Bentonville, Arkansas
Statement of Net Position -
Proprietary Funds
December 31, 2020

	Business-type Activity - Enterprise Fund
Assets	
Current Assets:	
Cash and cash equivalents	$ 36,119,173
Certificates of deposit	15,451,208
Accounts receivable (customer accounts), net of allowance for uncollectible accounts of $329,000	12,129,123
Due from other funds	2,736
Restricted cash and cash equivalents	1,621,805
Inventories	3,984,912
Total current assets	69,308,957
Noncurrent Assets	
Restricted Cash and cash equivalents	281,712
Capital assets, net of accumulated depreciation of $105,744,169	213,752,536
Other assets	77,923
Total noncurrent assets	214,112,171
Total assets	283,421,128
Deferred Outflows of Resources	
Deferred outflows - pensions	2,058,543
Deferred outflows - pension contributions	606,765
Deferred outflows - OPEB	283,676
Total deferred outflows of resources	2,948,984

See Notes to Financial Statements

	Business-type Activity - Enterprise Fund
Liabilities	
Current Liabilities:	
Accounts payable	$ 6,342,329
Accrued expenses and other	240,891
Accrued interest payable	4,534
Compensated absences	528,497
Due to other governments	224,914
Bonds payable - current portion	975,929
Unearned revenue	62,059
Total current liabilities	8,379,153
Noncurrent Liabilities	
Customer deposits	1,429,857
Compensated absences	302,314
Other post employment benefits liability	1,172,355
Net pension liability	11,213,814
Bonds payable, net of unamortized premium and discount	4,383,624
Total noncurrent liabilities	18,501,964
Total liabilities	26,881,117
Deferred Inflows of Resources	
Deferred inflows - OPEB	195,729
Deferred inflows - pensions	199,559
Total deferred inflows of resources	395,288
Net Position	
Net investment in capital assets	208,392,983
Restricted	
Debt service	277,179
Renewals and replacements	1,621,804
Unrestricted	48,801,741
Total net position	$ 259,093,707

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City of Bentonville, Arkansas
Statement of Revenues, Expenses and Changes in Fund Net Position - Proprietary Funds
Year Ended December 31, 2020

	Business-type Activity - Enterprise Fund
Operating Revenues	
Charges for services	$ 101,745,586
Other, net	47,182
Total operating revenues	101,792,768
Operating Expenses	
Salaries and fringe benefits	12,569,427
Contract purchases	63,018,609
Maintenance	1,799,811
Depreciation and amortization	7,732,027
Materials and supplies	1,093,666
Other services and charges	7,228,632
Total operating expenses	93,442,172
Operating Income	8,350,596
Nonoperating Income (Expenses)	
Interest income	251,460
Investment Income	142,551
Bond interest and fiscal agent charges	(237,178)
Grants	827,105
Net non-operating revenues (expenses)	983,938
Income Before Capital Contributions and Transfers	9,334,534
Capital Contributions and Transfers	
Capital Contributions	4,458,330
Transfers in	951,000
Change in Net Position	14,743,864
Net Position - Beginning of Year	244,349,843
Net Position, End of Year	$ 259,093,707

See Notes to Financial Statements

City of Bentonville, Arkansas
Statement of Cash Flows – Proprietary Funds
Year Ended December 31, 2020

	Business-type Activity - Enterprise Fund
Operating Activities	
Receipts from customers	$ 99,465,980
Payments to suppliers	(65,662,416)
Payments to employees	(11,571,000)
Other payments	(7,045,751)
Net cash provided by operating activities	15,186,813
Noncapital Financing Activities	
Transfer from other funds	951,000
Net cash provided by noncapital financing activities	951,000
Capital and Related Financing Activities	
Purchase and construction of capital assets	(8,317,939)
Principal paid on revenue bonds	(1,043,456)
Interest and agent fees paid of revenue bonds	(232,836)
Grants for capital purposes	827,105
Net cash used in capital and related financing activities	(8,767,126)
Investing Activities	
Maturity of certificates of deposit	18,500,000
Purchase of certificates of deposit	(13,468,313)
Maturity of investments	16,659,656
Purchase of investments	(18,500,000)
Interest income	251,460
Net cash provided by investing activities	3,442,803
Increase in Cash and Cash Equivalents	10,813,490
Cash and Cash Equivalents, Beginning of Year	27,209,200
Cash and Cash Equivalents, End of Year	$ 38,022,690

See Notes to Financial Statements

	Business-type Activity - Enterprise Fund
Cash and Cash Equivalents of Proprietary Funds, as presented on the "Statement of Net Position - Proprietary Funds," is as follows:	
Cash and cash equivalents	$ 36,119,173
Restricted cash and cash equivalents - current	1,621,805
Restricted cash and cash equivalents - noncurrent	281,712
	$ 38,022,690
Reconciliation of Operating Income to Net Cash Provided By Operating Activities	
Operating income	$ 8,350,596
Adjustment to reconcile operating income to net cash provided by operating activities:	
Depreciation and amortization expense	7,732,027
Changes in assets and liabilities	
Receivables, net	(2,279,606)
Other assets	(10,071)
Inventories	128,689
Deferred outflows related to pensions	(677,893)
Deferred outflows related to OPEB	(148,201)
Accounts payable	120,981
Accrued expenses	144,732
Due to other governments	(20,509)
Other liabilities	167,179
Deferred revenue	(900)
OPEB liability	87,676
Net Pension liability	1,703,931
Deferred inflows related to OPEB	141,065
Deferred inflows related to pension	(252,883)
Net cash provided by operating activities	$ 15,186,813
Noncash Investing, Capital and Financing Activities	
Capital assets acquired through contributions	$ 4,458,330

Note 1: Nature of Operations and Summary of Significant Accounting Policies

The City of Bentonville, Arkansas (the "City"), is a municipal corporation operating under the authority of Arkansas state statute. The City operates under an elected mayor-council form of government. Eight elected council members and the Mayor set policy of the City. The accounting and reporting policies of the City conform to accounting principles generally accepted in the United States of America for state and local governments as defined by the Governmental Accounting Standards Board (GASB). The following is a summary of the significant accounting and reporting policies of the City:

Reporting Entity

The accompanying government-wide financial statements present the financial statements of the City of Bentonville, Arkansas.

The City's primary government consists of those funds or organizations that make up the legal entity for which it is financially responsible.

Jointly Governed Venture

The City is a participant with nine Northwest Arkansas cities in a jointly governed venture to operate Northwest Arkansas Conservation Authority (NACA), an organization whose purpose is to develop and implement cost-effective regional solutions to the challenges of providing environmentally sound wastewater and biosolids infrastructure and watershed management. NACA is governed by a Board of Directors consisting of 13 members appointed by the member cities. In order for NACA to secure financing of its wastewater treatment facility, the City entered into a service agreement with NACA in January 2006 committing the City to procuring NACA's services for 15 years or until the revenue bonds issued by NACA are retired. As of December 31, 2020, NACA has revenue bonds outstanding of $53,852,537 with a final maturity date in October 2055. Service charges to the City are determined by rates based upon the actual costs incurred by NACA, including a proportional share of its overhead expenses attributable to the facility and debt service. During 2020, the City was NACA's primary customer and paid service charges to NACA in the amount of $5,796,316, of which $531,291 is payable at year end. As of December 31, 2020, NACA reported a decrease in Net Position of $2,475,975. Complete financial statements for NACA can be obtained from NACA's administrative office at 11579 Snavely Road, Bentonville, AR 72712.

Related Organization

The City's Mayor and Council are also responsible for appointing members of the board of the Advertising and Promotions Commission, but the accountability for this organization does not extend beyond making the appointments. The financial operations of this related organization has not been included in the City's basic financial statements.

Government-wide and Fund Financial Statements

The basic financial statements include both government-wide (based on the City as a whole) and fund financial statements as follows:

Government-wide Financial Statements

The government-wide financial statements report information on all of the activities of the City. As a general rule, the effect of interfund activity has been eliminated from the government-wide financial statements. Interfund services provided and used are not eliminated in the process of consolidation. This elimination has taken place in the process of incorporating fund data into the government-wide financial statements, and not in the process of consolidation. These statements distinguish between the governmental and business-type activities of the City. Governmental activities generally are financed through taxes, intergovernmental revenues and other nonexchange transactions. Business-type activities are financed in whole or in part by fees charged to external parties. The statement of activities demonstrates the degree to which the direct expenses of a given function or identifiable activity are offset by program revenues. Direct expenses are those that are clearly associated with a specific function or identifiable activity. Expenses that cannot be specifically identified to a particular function are charged to funds based on time spent for that function and are included in the functional categories. Program revenues include (a) charges to customers or applicants who purchase, use, or directly benefit from goods, services or privileges provided by a given function or identifiable activity and (b) grants and contributions that are restricted to meeting the operational or capital requirements of a particular program or identifiable activity.

Fund Financial Statements

The fund financial statements provide information about the City's funds. Separate statements for each governmental and proprietary fund are presented. The emphasis of fund financial statements is on major governmental and major enterprise funds, each displayed in a separate column. All other governmental and enterprise funds are aggregated and reported as nonmajor funds.

The City reports the *general fund, street fund, capital project fund and debt service fund* as its major governmental funds. The general fund is the City's primary operating fund. It accounts for all financial resources of the City, except those required to be accounted for in another fund. Revenues are derived primarily from property and other local taxes, state and federal distributions, licenses, permits, charges for services and interest income. The street fund accounts for gasoline and road taxes received from the state and county levies. Revenues are expended for maintenance and repair of streets and sidewalks. The capital project fund accounts for the resources accumulated from the Series 2007, 2009, 2010 and 2017 sales and use tax bonds of the City that are restricted for use in financing the costs of various capital improvement projects. The debt service fund accounts for financial resources that are restricted for principal and interest-related costs as well as the financial resources being accumulated for future debt service.

The City reports one major *enterprise fund*. It accounts for the City's combined electric, water, sewer and sanitation system, whose operations are financed primarily through user charges.

Measurement Focus and Basis of Accounting

Government-wide and Proprietary Funds

The government-wide and proprietary fund financial statements are reported using the economic resources measurement focus and accrual basis of accounting. Revenues are recorded when earned and expenses are recorded at the time liabilities are incurred, regardless of the timing of related cash flows.

In proprietary funds, operating revenues and expenses are distinguished from nonoperating items. Operating revenues and expenses generally result from providing services in connection with the principal ongoing operations of the fund. All revenues and expenses not meeting this definition are reported as nonoperating items.

Nonexchange transactions, in which the City receives (or gives) value without directly giving (or receiving) equal value in exchange, include property taxes; city and county sales tax; grants, entitlements and similar items; and donations. Recognition standards are based on the characteristics and classes of nonexchange transactions. Revenues from property taxes are recognized in the period in which the taxes are levied. City and county sales taxes, franchise taxes, licenses and permits and fines and forfeitures are recognized as revenues, net of estimated refunds and uncollectible amounts, in the accounting period when an enforceable legal claim to the assets arises and the use of resources is required or is first permitted. Grants, entitlements, and donations are recognized as revenues, net of estimated uncollectible amounts, as soon as all eligibility requirements imposed by the provider have been met. Amounts received before all eligibility requirements have been met are reported as unearned revenues. Grants and similar aid to other organizations are recognized as expenses as soon as recipients have met all eligibility requirements. Amounts paid before all eligibility requirements have been met are reported as prepaid items.

Governmental Fund Financial Statements

Governmental funds are reported using the current financial resources measurement focus and the modified accrual basis of accounting. With this measurement focus, only current assets and deferred outflows of resources and liabilities and deferred inflows of resources are generally included on the balance sheet. The statement of revenues, expenditures and changes in fund balances presents increases (revenues and other financing sources) and decreases (expenditures and other financing uses) in spendable resources. General capital asset acquisitions are reported as expenditures and proceeds of general long-term debt are reported as other financing sources. Under the modified accrual basis of accounting, revenues are recognized when both measurable and available. The City considers revenues reported in the governmental funds to be available if they are collectible within 60 days after year-end. Principal revenue sources considered susceptible to accrual include taxes, federal funds, local funds and investment earnings. Other revenues are considered to be measurable and available only when cash is received by the City. Expenditures are recorded when the related fund liability is incurred, except for principal and interest on general long-term debt, claims and judgments, compensated absences and obligations for worker's compensation and other post-employment benefits which are recognized as expenditures when payment is due. Pension expenditures are recognized when amounts are due to a plan.

Cash and Cash Equivalents

The City considers all liquid investments with original maturities of three months or less to be cash equivalents. At December 31, 2020, cash equivalents consisted primarily of money market accounts with brokers.

Investments and Investment Income

Generally, investments are stated at fair value or amortized cost and are held by the City in various forms as allowed by the laws of the State of Arkansas. The City records all investment income to funds with which the related investment asset is associated. Investment income includes interest income, dividend income, other investment income, realized and unrealized gains and losses on investments carried at fair value, investments carried at other than fair value, and other investment income. Investment income is included in unrestricted net position and is reflected as nonoperating revenue in the statement of revenues, expenses and changes in net position in Proprietary Funds.

Property Taxes

Property taxes are levied each October 1 on the assessed value listed as of January 1 for all real and personal property located in the City. The property tax is considered due the first Monday in January (the lien date) after the levy; however, the tax is not considered delinquent until October 16 of that year. As a result, the majority of the tax is not collected within the time frame necessary to finance the liabilities of the current period. Property taxes are measurable when levied even though not available. Accordingly, property taxes receivable of $9,039,940 and related deferred inflows of resources have been recorded at December 31, 2020, in the governmental funds. Benton County is the collecting agent and remits collections to the City, net of a collection fee, on a monthly basis.

The appraised value of taxable property upon which the property tax is levied is determined by the county assessor. The assessor estimates full market value of the property and applies a statutory rate of 20 percent to arrive at assessed value.

Unbilled Revenue

The City bills customers for electric, water and sewer services after usage based upon meter readings made during the month. The City records a receivable for unbilled revenue at December 31 for estimated usage for which bills have not been sent.

Inventories

Inventories are valued at cost using the first in/first out (FIFO) method and consist of expendable supplies. The costs of governmental fund type inventories are recorded as expenditures when consumed.

Prepaid Items

Prepaid items in governmental funds are accounted for under the consumption method.

Capital Assets

Capital assets, which include property, plant, equipment and infrastructure assets, are reported in the government-wide financial statements and the fund financial statements for proprietary funds. Purchased or constructed capital assets are reported at cost or estimated historical cost. Donated capital assets are recorded at their estimated acquisition value at the date of donation.

Capital assets are defined as assets with an initial value or cost greater than or equal to $5,000 and an estimated useful life of greater than one year. Exceptions are for infrastructure assets which are defined as having a constructed cost greater than $50,000.

Capital assets are depreciated using the straight-line method over their estimated useful lives as follows:

	Years
Water distribution facilities	50
Sewer and solid waste collection and treatment facilities	15–50
Electric distribution facilities	15–40
Building and improvements	40
Furniture and equipment	7–15
Vehicles	5

Depreciation expense is charged directly to the department/function based on the department that utilizes the related asset.

Deferred Outflows/Inflows of Resources

In addition to assets, the statement of net position will sometimes report a separate section for deferred outflows of resources. This separate financial statement element, deferred outflows of resources, represents a consumption of net position that applies to a future period(s) and so will not be recognized as an outflow of resources (expense/ expenditure) until then. The City has three items that qualify for reporting in this category. Two of the items are related to pensions, with one being the amount of contributions made to the pension plans after the measurement date, and the other the difference in investment experience between actual earnings and projected earnings on pension plan investments. Deferred outflows related to contributions made after the measurement date will be used in the next year to reduce net pension liability or increase net pension asset. The remaining amounts will be amortized to pension expense over future periods as shown within *Note 7*. The third item relates to other postemployment benefits (OPEB) and is comprised of the difference between the expected and actual experience and the change in assumptions. These amounts will be amortized to OPEB expense over future periods as shown in *Note 8*.

In addition to liabilities, the statement of net position and balance sheet - governmental funds will sometimes report a separate section for deferred inflows of resources. This separate financial statement element, deferred inflows of resources, represents an acquisition of net position that applies to a future period(s) and so will not be recognized as an inflow of resources (revenue) until that time. The government has three items that qualify as deferred inflows of resources as of December 31, 2020. The items reported in the statements are unavailable revenues in the governmental funds balance sheet and deferred inflows - pensions and deferred inflows - OPEB in the government-wide statement of net position and proprietary funds statement of net position. Unavailable revenue arises under the modified accrual basis of accounting and qualifies for reporting in this category. Accordingly, this item is only reported in the governmental funds balance sheet. Governmental funds report unavailable revenue from property taxes and grant receivables. These amounts are deferred and recognized as an inflow of resources in the period that the amounts become available. The second item, deferred inflows - pensions, consists of the difference between the expected and actual experience related to the pension plans as well as the difference in the assumption changes. Deferred inflows - pensions are amortized to pension expense over future periods as shown within *Note 7*. The third item, deferred inflows - OPEB consists of the different in the assumption changes. Deferred inflows - OPEB are amortized to OPEB expense over future periods as shown in *Note 8*.

Long-term Obligations

In the government-wide financial statements, long-term debt and other long-term obligations are reported as liabilities in the columns for governmental activities and business-type activities. These amounts are also reported as liabilities in the fund financial statements for proprietary funds. Debt premiums, discounts and deferred gains on refundings are generally deferred and amortized using the effective interest rate method. Long-term debt is reported net of the bond issue premiums or discounts. In the government wide statements, debt issuance costs are reported as expenditures in the period incurred.

In the fund financial statements, governmental fund types recognize debt premiums, as well as debt issuance costs, during the current period. The face amount of the debt issued and premiums received are reported as other financing sources. Issuance costs, whether or not withheld from the actual proceeds received are reported as debt service expenditures.

Compensated Absences

The City grants vacation to all full-time employees based on continuous service. The cost of vacation (and sick pay for certain employee classifications) is accrued when earned in the government-wide and proprietary fund financial statements and reported as accrued expenses. No liability is recorded in the fund financial statements of governmental funds unless they have matured, as payment of this liability will not be made with expendable available financial resources unless an employee has terminated employment as of the end of the fiscal year. For governmental activities, compensated absences are generally liquidated by the general fund.

Pensions

For purposes of measuring the net pension liability (asset), deferred outflows of resources and deferred inflows of resources related to pensions, and pension expense, information about the fiduciary net position of the Firemen's Relief and Pension Fund, the Local Police and Fire Retirement System and the Arkansas Public Employee's Retirement System (together, the Plans) and additions to/deductions from the Plans' fiduciary net position have been determined on the same basis as they are reported by the Plans. For this purpose, benefit payments (including refunds of employee contributions) are recognized when due and payable in accordance with the benefit terms. Investments are reported at fair value.

Fund Balance - Governmental Funds

The fund balances for the City's governmental funds are displayed in three components:

Nonspendable - Nonspendable fund balances are not in a spendable form or are required to be maintained intact.

Restricted - Restricted fund balances may be spent only for the specific purposes stipulated by external resource providers, constitutionally or through enabling legislation. Restrictions may be changed or lifted only with the consent of resource providers.

Unassigned - Unassigned fund balance is the residual classification for the general fund and includes all amounts not contained in the other classifications.

The City considers restricted amounts to have been spent when an expenditure is incurred for purposes for which both restricted and unrestricted fund balance is available.

Net Position

Net position of the City is classified in three components. Net investment in capital assets, consists of capital assets net of accumulated depreciation and reduced by the outstanding balances of borrowings used to finance the purchase or construction of those assets. Restricted net position is noncapital assets that must be used for a particular purpose as specified by creditors, grantors, contributors or laws and regulations of other governments or are imposed by law through constitutional provisions or enabling legislation, reduced by the outstanding balances of any related borrowings. Unrestricted net position is the remaining assets less remaining liabilities that do not meet the definition of net investment in capital assets or restricted.

When both restricted and unrestricted resources are available for use, generally it is the City's policy to use restricted resources first.

Nonrecurring Fair Value Measurements

The City categorizes its fair value measurements within the fair value hierarchy established by generally accepted accounting principles. The hierarchy is based on the valuation inputs used to measure the fair value of the asset. Level 1 inputs are quoted prices in active markets for identical assets; Level 2 inputs are significant other observable inputs; Level 3 inputs are significant unobservable inputs.

The City had nonrecurring fair value measurements during 2020 for infrastructure capital assets contributed to the City from developers. The contributed assets were recorded at acquisition values totaling $9,048,913 based upon the costs to construct by the developers (Level 3 inputs).

The City had nonrecurring fair value measurements during 2020 for the purchase of the Bentonville Public Library building and two lots near the library below fair value. The assets were recorded at fair value based upon valuation of recent sales of comparable property in the area (Level 2 inputs). The library building was valued at $7.3 million and the lots of land near the library were valued at $217,797 and $315,806.

Budgetary Information

Annual budget are adopted on a basis consistent with generally accepted accounting principles for the general and street fund. All annual appropriations lapse at year end and are re-established in the succeeding year.

Adoption of Accounting Principles

GASB Statement No. 88 - *Certain Disclosures Related to Debt, including Direct Borrowings and Direct Placements* (GASB 88): The primary objective of this Statement is to improve the information that is disclosed in notes to government financial statements related to debt, including direct borrowings and direct placements. It also clarifies which liabilities governments should include when disclosing information related to debt. This Statement defines debt for purposes of disclosure in notes to financial statements as a liability that arises from a contractual obligation to pay cash (or other assets that may be used in lieu of cash) in one or more payments to settle an amount that is fixed at the date the contractual obligation is established.

This Statement requires that additional essential information related to debt be disclosed in notes to financial statements, including unused lines of credit; assets pledged as collateral for the debt; and terms specified in debt agreements related to significant events of default with finance-related consequences, significant termination events with finance-related consequences, and significant subjective acceleration clauses.

For notes to financial statements related to debt, this Statement also requires that existing and additional information be provided for direct borrowings and direct placements of debt separately from other debt.

New Governmental Accounting Standards Board (GASB) Pronouncements

The GASB has issued the following statements which the City has not yet adopted and which require adoption subsequent to December 31, 2020:

GASB Statement No. 87 - *Leases* (GASB 87): The objective of this Statement is to better meet the information needs of financial statement users by improving accounting and financial reporting for leases by governments. This Statement increases the usefulness of governments' financial statements by requiring recognition of certain lease assets and liabilities for leases that previously were classified as operating leases and recognized as inflows of resources or outflows of resources based on the payment provisions of the contract. It establishes a single model for lease accounting based on the foundational principle that leases are financings of the right to use an underlying asset. Under this Statement, a lessee is required to recognize a lease liability and an intangible right-to-use lease asset, and a lessor is required to recognize a lease receivable and a deferred inflow of resources, thereby enhancing the relevance and consistency of information about governments' leasing activities. This statement is effective for fiscal years beginning after June 15, 2021. The City has not yet determined the potential impact, if any, that this statement could have on its financial statements.

GASB Statement No. 89, *Accounting for Interest Cost Incurred before the End of a Construction Period*: The primary objectives of this statement are (1) to enhance the relevance and comparability of information about capital assets and the cost of borrowing for a reporting period and (2) to simplify accounting for interest cost incurred before the end of a construction period. This statement establishes accounting requirements for interest cost incurred before the end of a construction period. It also reiterates that in financial statements prepared using the current financial resources measurement focus, interest cost incurred before the end of a construction

period should be recognized as an expenditure on a basis consistent with governmental fund accounting principles. The requirements of this statement are effective for reporting periods beginning after December 15, 2020, with earlier applicating encouraged. The City has not yet determined the potential impact, if any, that this statement could have on its financial statements.

GASB Statement No. 91, *Conduit Debt Obligations*: The primary objectives of this statement are to provide a single method of reporting conduit debt obligations by issuers and eliminate diversity in practice associated with (1) commitments extended by issuers, (2) arrangements associated with conduit debt obligations, (3) related note disclosures. This statement achieves those objectives by clarifying the existing definition of a conduit debt obligation: establishing that a conduit debt obligation is not a liability to the issuer; establishing standards for accounting and financial reporting of additional commitments and voluntary commitments extended by issuers and arrangements associated with conduit debt obligations; and improving required note disclosures. The requirements of this statement are effective for reporting periods beginning after December 15, 2021, with earlier application encouraged. The City has not yet determined the potential impact, if any, that this statement could have on its financial statements.

GASB Statement No. 94, *Public-Private and Public-Public Partnerships and Availability Payment Arrangements*: The primary objective of this statement is to improve financial reporting by addressing issues related to public-private and public-public partnership agreements (PPPs). The statement also provides guidance for accounting and financial reporting for availability payment arrangements (APAs). The requirements of this statement are effective for fiscal years beginning after June 15, 2022. The City has not yet determined the potential impact, if any, that this statement could have on its financial statements.

The effect of these statements on the City has not been determined, but could have a significant impact on the City's overall net position.

Note 2: Deposits and Investments

Deposits

Custodial credit risk is the risk that in the event of a bank failure, a government's deposits may not be returned to it. The City's deposit policy for custodial credit risk requires compliance with the provisions of state law.

State law requires that deposits in financial institutions be collateralized with federal depository insurance and other acceptable collateral in specific amounts. No legal opinion has been obtained regarding the enforceability of any of the collateral arrangements.

At December 31, 2020, the City had bank balances of $137,847,388 that were all insured (FDIC) or collateralized with securities held by the City or the City's agent in the City's name. The carrying value of these deposits as of December 31, 2020, was $133,651,188.

Investments

Arkansas statutes authorize the City to invest in direct obligations of the U. S. government; obligations on which the principal and interest are fully guaranteed, or are fully secured, insured, or covered by commitments or agreements to purchase by the U. S. government; obligations of agencies and instrumentalities created by act of the United States Congress and authorized thereby to issue securities or evidence of indebtedness, regardless of guarantee of repayment by the U.S. government; obligations of political subdivisions of the United States; certain obligations issued by the State Board of Education; short-term warrants of political subdivisions of the State of Arkansas and municipalities; the sale of federal funds with a maturity of not more than one business day; demand, savings or time deposits fully insured by a federal deposit insurance agency; repurchase agreements that are fully insured by obligations of the U. S. government, any U. S. state or any political subdivision thereof; securities of, or other interest in, any open-end type investment company or investment trust registered under the Investment Company Act of 1940, and which is considered a money market fund, provided that the portfolio is limited principally to U. S. government obligations and the investment company or trust takes delivery of collateral either directly or through an authorized custodian; and bank certificates of deposit. Arkansas statutes also authorize the City to invest no more than 20 percent of its capital base in corporate debt obligations; revenue bond issues of any U. S. state, municipality, or political subdivision; industrial development bonds for corporate obligors issued through any U. S. state or political subdivision; securities or interest in an open-end or closed-end management type investment company or trust registered under the Investment Company Act of 1940 with certain limitations; securities or interests issued, assumed, or guaranteed by certain international banks; and uninsured demand, savings, or time deposits or accounts of any depository institution chartered by the United States, any U. S. state, or the District of Columbia.

Investments at December 31, 2020, consisted of the following:

		Maturities in Years			
Type	Fair Value	Less than 1	1-5	6-10	More than 10
Money Market Mutual Funds	$ 25,673,267	$ 25,673,267	$ -	$ -	$ -

Interest Rate Risk – The City's investment policy does not specifically address interest rate risk.

Credit Risk - Credit risk is the risk that the issuer or other counterparty to an investment will not fulfill its obligations. The City's investment policy does not specifically address credit risk.

Investment Type	Rating Agency	Rating
Money Market Mutual Funds	S&P/Moody's	AAA/Aaa

Custodial Credit Risk - Custodial credit risk is the risk that, in the event of the failure of the counterparty, the City will not be able to recover the value of its investment or collateral securities that are in the possession of an outside party. While the City's investment policy does not directly address custodial credit risk, all investments held by the City or by an agent of the City in the City's name are insured or collateralized or limited to Treasury Fund Money Markets.

Concentration of Credit Risk - The City places no limit on the amount that may be invested in any one issuer.

Summary of Carrying Values

The carrying values of deposits and investments shown above are included in the financial statements as follows:

Carrying value		
Deposits	$	133,651,188
Cash on hand		8,181
Investments		25,673,267
	$	159,332,636
Included in the following statement of net position captions		
Cash and cash equivalents	$	65,854,005
Certificates of deposit		48,891,763
Restricted cash and cash equivalents - current		24,907,908
Restricted cash and cash equivalents - noncurrent		19,678,960
	$	159,332,636

Note 3: Capital Assets

A summary of changes in capital assets for the year ended December 31, 2020, is presented below:

Governmental Activities	Balance, December 31, 2019	Additions and Transfers, Net	Retirements and Transfers, Net	Balance, December 31, 2020
Capital assets, non-depreciable				
Land	$ 9,405,000	$ 1,388,833	$ -	$ 10,793,833
Total capital assets, non-depreciable	9,405,000	1,388,833	-	10,793,833
Capital assets, depreciable				
Other improvements	95,499,033	2,887,358	-	98,386,391
Streets	183,258,802	9,275,760	-	192,534,562
Buildings	60,131,306	14,530,975	-	74,662,281
Furniture, fixtures & equipment	39,129,628	2,786,137	307,188	41,608,577
Total capital assets, depreciable	378,018,769	29,480,230	307,188	407,191,811
Less accumulated depreciation				
Other improvements	31,670,938	3,217,220	-	34,888,158
Streets	49,519,766	4,632,085	-	54,151,851
Buildings	10,921,049	1,685,942	-	12,606,991
Furniture, fixtures & equipment	24,557,168	2,889,193	209,562	27,236,799
Total accumulated depreciation	116,668,921	12,424,440	209,562	128,883,799
Total governmental activities, net	$ 270,754,848	$ 18,444,623	$ 97,626	$ 289,101,845

Business-type Activities	Balance December 31, 2019	Additions and Transfers, Net	Retirements and Transfers, Net	Balance December 31, 2020
Capital Assets, non-depreciable				
Land	$ 8,227,473	$ 21,961	$ -	$ 8,249,434
Total capital assets, non-depreciable	8,227,473	21,961	-	8,249,434
Capital Assets, depreciable				
Other improvements	2,417,735	655,591	-	3,073,326
Water distribution facilities	72,088,274	2,649,003	-	74,737,277
Sewer and solid waste collection and treatment facilities	82,557,888	3,059,624	-	85,617,512
Electric distribution facilities	92,436,699	4,867,822	-	97,304,521
Buildings	22,608,071	651,395	-	23,259,466
Furniture and equipment	22,938,368	727,792	-	23,666,160
Vehicles	3,451,327	142,777	-	3,594,104
Total capital assets, depreciable	298,498,362	12,754,004	-	311,252,366
Less accumulated depreciation				
Other improvements	463,329	88,147	-	551,476
Water distribution facilities	25,225,930	1,490,945	-	26,716,875
Sewer and solid waste collection and treatment facilities	30,217,703	1,748,887	-	31,966,590
Electric distribution facilities	26,087,630	2,191,783	-	28,279,413
Buildings	2,162,925	577,838	-	2,740,763
Furniture and equipment	11,257,444	1,361,098	-	12,618,542
Vehicles	2,602,580	273,025	-	2,875,605
Total accumulated depreciation	98,017,541	7,731,723	-	105,749,264
Total business-type activities, net	$ 208,708,294	$ 5,044,242	$ -	$ 213,752,536

Depreciation expense was charged to functions/programs of the primary government as follows:

Governmental activities	
General government	$ 1,493,549
Public safety	1,976,194
Recreation	1,815,812
Street department	6,861,354
Library	277,531
Total depreciation expense	12,424,440
Business-type	
Electric	3,123,065
Water	1,830,230
Waste water	868,951
Sanitation	1,283,455
Support	626,022
Total depreciation expense	7,731,723
Total depreciation expense, primary government	$ 20,156,163

Construction Projects

At December 31, 2020, the City had the following commitments with respect to unfinished capital projects.

Governmental Fund Construction Projects

	Project Authorization	Expended Through December 31, 2020	Remaining Commitment
West Side Taxiway	$ 2,250,611	$ 2,111,760	$ 138,851
Circular Apron Phase 2	379,005	281,233	97,772
East Taxiway B	1,977,375	175,939	1,801,436
Street Redesign	1,564,000	745,750	818,250
McCollum Sidepath	355,631	72,350	283,281
Walton/3rd Street Signal Light	753,248	338,456	414,792
Total	$ 7,279,870	$ 3,725,488	$ 3,554,382

Note 4: Long-term Liabilities

Changes in long-term liabilities for the year ended December 31, 2020, were as follows:

Governmental Activities	Balance December 31, 2019	Increases	Decreases	Balance December 31, 2020	Amounts Due in One Year
Bonds payable					
Revenue bonds	$ 38,735,000	$ -	$ 11,535,000	$ 27,200,000	$ 9,470,000
Add unamortized premium	1,375,297	-	174,332	1,200,965	-
Less unamortized bond issue discount	514,598	-	64,381	450,217	-
Bonds payable, net	39,595,699	-	11,644,951	27,950,748	9,470,000
Compensated absences	1,649,329	285,337	67,248	1,867,418	207,148
Net pension liability	38,816,790	518,354	-	39,335,144	-
Other postemployment benefits	5,388,071	482,138	-	5,870,209	166,735
Total governmental activities long-term liabilities	$ 85,449,889	$ 1,285,829	$ 11,712,199	$ 75,023,519	$ 9,843,883

Business-type Activities	Balance December 31, 2019	Increases	Decreases	Balance December 31, 2020	Amounts Due in One Year
Bonds payable					
Revenue bonds - direct placement	$ 6,403,009	$ -	$ 1,043,456	$ 5,359,553	$ 975,929
Less unamortized bond issue discount	5,097	-	5,097	-	-
Bonds payable, net	6,397,912	-	1,038,359	5,359,553	975,929
Compensated absences	748,302	82,509	-	830,811	528,497
Net pension liability	9,509,883	1,703,931	-	11,213,814	-
Other postemployment benefits	1,084,679	87,676	-	1,172,355	-
Customer deposits	1,262,678	167,179	-	1,429,857	-
Total business-type activities long-term liabilities	$ 19,003,454	$ 2,041,295	$ 1,038,359	$ 20,006,390	$ 1,504,426

Bonds outstanding at December 31, 2020, were as follows:

	Interest Rates	Date Callable	Final Maturity Date	Principal at December 31, 2020
General long-term obligations				
Sales and Use Tax bonds, Series 2009	4.0-5.0%	2017	2027	$ 7,265,000
Sales and Use Tax bonds, Series 2010	2.0-4.0%	2017	2027	6,830,000
Sales and Use Tax bonds, Series 2017	2.0-5.0%	2022	2027	13,105,000
				$ 27,200,000

	Interest Rates	Date Callable	Final Maturity Date	Principal at December 31, 2020
Enterprise Funds				
Revenue bonds, Series 2006A	2.5%	2016	2028	$ 3,515,224
Revenue bonds, Series 2006B	5.2-5.9%	2013	2025	923,331
Revenue bonds, Series 2000	2.75%	N/A	2023	870,678
Revenue bonds, Series 1998	2.75%	2009	2021	50,320
				$ 5,359,553

Sales and Use Tax Bonds, Series 2017 **–** On April 25, 2017, the City issued $24,655,000 Sales and Use Tax bonds for the purpose of financing the costs of various capital improvements, providing for a debt service reserve and paying costs incidental thereto and to the issuance of the bonds. The bonds bear interest rates ranging from 2.0% - 5.0%. During 2020, the City retired $4,010,000 in principal of the outstanding bonds.

Sales and Use Tax Bonds, Series 2010 **–** On November 1, 2010, the City issued $21,505,000 Sales and Use Tax bonds for the purpose of financing the costs of various capital improvements, providing for a debt service reserve and paying costs incidental thereto and to the issuance of the bonds. The bonds bear interest rates ranging from 2.0% - 4.0%. During 2020, the City retired $2,040,000 in principal of the outstanding bonds.

Sales and Use Tax Bonds, Series 2009 **–** On October 27, 2009, the City issued $30,000,000 Sales and Use Tax bonds for the purpose of financing the costs of various capital improvements, providing for a debt service reserve and paying costs incidental thereto and to the issuance of the bonds. The bonds bear interest rates ranging from 4.0% - 5.0%. During 2020, the City retired $2,805,000 in principal of the outstanding bonds.

Sales and Use Tax Bonds, Series 2007 – On October 9, 2007, the City issued $36,335,000 Sales and Use Tax bonds for the purpose of financing the costs of various capital improvements, providing for a debt service reserve and paying costs incidental thereto and to the issuance of the bonds. The bonds bear interest rates ranging from 4.0% - 5.0%. During 2020, the City retired $2,680,000 in principal of the outstanding bonds.

Combined Electric, Water and Sewer Revenue Bonds, Series 2006A – On January 10, 2006, the City issued $9,708,500 Combined Electric, Water and Sewer bonds for the purpose of financing a portion of the costs of the construction of improvements to the water facilities of the City's combined Electric, Water, and Sewer system (the System). The bonds are not a general obligation of the City, but are secured by a pledge of and are payable from revenues of the System. The City entered into an agreement with the Arkansas Development Finance Authority ("ADFA") whereby ADFA agreed to purchase up to the par amount of the bonds. The bonds were issued in increments that corresponded to the construction activity. The bonds are subordinate to the Series 2005, Series 1999, Series 1998 and Series 1992. The bonds bear interest at 2.25% and the City is required to pay the bond servicer (ADFA) a servicing fee of 1% per annum on the outstanding principal of the bonds. During 2020, the City retired $388,229 in principal of the outstanding bonds.

Combined Electric, Water and Sewer Revenue Bonds, Series 2006B – On April 1, 2006, the City issued $2,600,000 in Combined Electric, Water and Sewer Revenue bonds for the purpose of constructing extensions, betterments and improvements to the water facilities of the System, fund a debt service reserve, and pay costs of issuing the Bonds. The bonds are not a general obligation of the City, but are secured by a pledge of and are payable from revenues of the System. The bonds are subordinate to the Series 2006A, Series 2005, Series 1999, Series 1998 and Series 1992. The bonds bear an interest rate ranging from 5.2% to 5.9%. During 2020, the City retired $156,711 in principal of the outstanding bonds.

Combined Electric, Water and Sewer Revenue Bonds, Series 2000 – On June 13, 2000, the City issued $5,500,000 in Combined Electric, Water and Sewer Revenue bonds for the purpose of planning, design, construction and/or rehabilitation of the wastewater treatment facilities. The bonds are not a general obligation of the City, but are secured by a pledge of and are payable from revenues of the System. The City entered into an agreement with ADFA whereby ADFA agreed to purchase up to the par amount of the bonds. The bonds were issued in increments that corresponded to the construction activity. The bonds are subordinate to the Series 1999, Series 1998 and Series 1992 bonds. The bonds bear interest at 2.75% and the City is required to pay the bond servicer (ADFA) a servicing fee of 1% per annum on the outstanding principal of the bonds. During 2020, the City retired $350,803 in principal of the outstanding bonds.

Combined Electric, Water and Sewer Revenue Bonds, Series 1998 – On October 27, 1998, the City issued $2,150,000 in Combined Electric, Water and Sewer Revenue bonds for the purpose of planning, design and construction of wastewater treatment facilities. The bonds are not a general obligation of the City, but are secured by a pledge of and are payable from revenues of the System. The City entered into an agreement with ADFA whereby ADFA agreed to purchase up to the par amount of the bonds. The bonds were issued in increments that corresponded to the construction activity. The bonds are subordinate to the Series 1999 and Series 1992 bonds. The bonds bear interest at 2.75% and the City is required to pay the bond servicer (ADFA) a servicing fee of 1% per annum on the outstanding principal of the bonds. During 2020, the City retired $147,713 in principal of the outstanding bonds.

Annual Debt Service Requirements

The following schedule shows the annual debt service requirements to pay principal and interest on revenue bonds outstanding at December 31, 2020.

	Governmental Activities Bonds - Publicly Traded		Business Type Activities Bonds - Direct Placement		
Fiscal Year	Principal	Interest	Principal	Interest	Fees
2021	$ 9,470,000	$ 939,071	$ 975,929	$ 156,916	$ 43,607
2022	5,350,000	636,789	962,371	129,694	36,488
2023	5,560,000	421,434	743,689	97,133	27,615
2024	4,260,000	219,659	634,285	73,915	22,362
2025	2,560,000	79,877	658,678	52,446	17,933
2026-2030	-	-	1,384,601	57,948	25,753
	$ 27,200,000	$ 2,296,830	$ 5,359,553	$ 568,052	$ 173,758

For governmental activities, net pension liabilities and other post-employment liabilities have historically been the responsibility of the General Fund.

The following is a summary of pledged revenues of the City for the year ended December 31, 2020:

Debt	Revenue Pledged	Total Pledged Revenue	Portion of Pledged Revenue Stream	Percentage Portion of Pledged Revenue Stream	Remaining Principal, Interest and Fees	Period Revenue Will Not Be Available for Other Purposes
Governmental Activities:						
Sales and Use Tax Bonds, Series 2017	Sales and Use Tax	$ 43,279,794	$ 1,558,073	3.6%	$ 14,156,006	Until 2027
Sales and Use Tax Bonds, Series 2010	Sales and Use Tax	43,279,794	2,466,948	5.7%	7,455,874	Until 2027
Sales and Use Tax Bonds, Series 2009	Sales and Use Tax	43,279,794	3,635,503	8.4%	7,884,950	Until 2027
Business-Type Activities:						
Combined Electric, Water and Sewer Revenue Bonds, Series 2006A	Revenues of the Enterprise Fund	101,748,616	610,492	0.6%	4,029,780	Until 2028
Combined Electric, Water and Sewer Revenue Bonds, Series 2006B	Revenues of the Enterprise Fund	101,748,616	203,497	0.2%	1,094,368	Until 2025
Combined Electric, Water and Sewer Revenue Bonds, Series 2000	Revenues of the Enterprise Fund	101,748,616	406,994	0.4%	927,150	Until 2023
Combined Electric, Water and Sewer Revenue Bonds, Series 1998	Revenues of the Enterprise Fund	101,748,616	203,497	0.2%	51,735	Until 2021

Revenue Bonds from Direct Placements

The City's outstanding revenue bonds from direct placements of $5,359,553 contain a provision that in an event of default, the bondholder may apply in proper action to a court for the appointment of a receiver to administer the City on behalf of the bondholder with the power to charge and collect rates sufficient to provide for the payments of the expenses of operation and to pay the bond interest and principal. The direct placements are associated with Revolving Loan Funds administered through the Arkansas Development Finance Authority.

Note 5: Interfund Receivables and Payables

Interfund receivables and payables as of December 31, 2020, are as follows:

	Interfund Receivables	Interfund Payables
General fund	$ 690,643	$ 12,086
Street fund	9,350	-
Enterprise fund	2,736	-
	$ 702,729	$ 12,086

The outstanding balances between funds result mainly from the time lag between the dates (1) interfund goods and services are provided or reimbursable expenditures occur, (2) transactions are recorded in the accounting system and (3) payments between funds are made.

Note 6: Interfund Transfers

Amount of interfund transfers between funds are summarized as follows:

	Transfers in:		
	General Fund	Enterprise Fund	Total
Transfers out:			
Non-major governmental funds	$ 91,518	$ 951,000	$ 1,742,518
Total	$ 791,518	$ 951,000	$ 1,742,518

Transfers are used to move revenues from the fund where collected to the appropriate fund. These transfers represent movement of funds from impact fees held in non-major governmental funds to the respective funds for which the impact fees were imposed.

Note 7: Pension Plans

The City of Bentonville, Arkansas participates in three defined benefit pension plans; which are comprised of one agent multiple employer defined benefit pension plan and two cost-sharing multiple-employer defined benefit pension plans, each of which are described and illustrated in detail below. Aggregate amounts for the three pension plans are as follows:

	FRPF	LOPFI	APERS	Total
Net pension asset	$ 2,059,793	$ -	$ -	$ 2,059,793
Net pension liability	-	22,068,039	28,480,919	50,548,958
Deferred outflows of resources	-	4,906,107	4,893,530	9,799,637
Deferred outflows of resources - contributions	-	2,676,967	1,541,066	4,218,033
Deferred inflows of resources	352,317	2,753,852	506,842	3,613,011
Pension expense	38,847	5,836,239	5,879,745	11,754,831

Pension items listed above for the Arkansas Public Employees Retirement System (APERS) Plan have been allocated between governmental activities and business-type activities (as well as proprietary funds) on the basis of total salaries.

The City also participates in the Bentonville Volunteer Fire Plan, an agent multiple-employer defined benefit plan. Pension items and disclosures have not been included herein because of the insignificance of their dollar amounts.

Firemen's Relief and Pension Fund ("FRPF") (the Old Plan)

Plan Description. The Firemen's Relief and Pension Fund ("FRPF") is an agent multiple-employer defined benefit pension plan for employees of the Fire Department who were hired prior to January 1, 1983. The Old Plans were established in accordance with Arkansas statutes and were closed, by state law, to new employees effective January 1, 1983. On June 25, 2013, the City entered into an agreement with the Arkansas local police and fire (LOPFI) retirement system whereby LOPFI assumed responsibility for administration and a portion of the obligation of the Old Plans pursuant to Act 364 of 1981, as amended, and Act 655 of 1983 of the General Assembly of the State of Arkansas. Per the Agreement between the City and LOPFI, the City will contribute an actuarially determined rate sufficient to support the current plan benefit levels and fund the Old Plan's net pension obligation over a 30 year open amortization period. The Old Plan's benefit structure remains unchanged under the administration of LOPFI. The Old Plan issues separate stand-alone financial statements and can be obtained from the Arkansas Local Police and Fire Retirement System, 620 West 3rd Street, Little Rock, Arkansas, 72201.

Benefits. The FRPF provides retirement benefits for firemen who have completed 20 years of service regardless of age. The benefit is equal to 50% of the member's final salary, but not less than $11,040. If service exceeds 20 years, the annual benefit is increased by $240 for each year over 20, not to exceed $1,200 per year and if service exceeds 25 years, the member will receive an additional 1.25% for each year over 25 years, however, the total benefit cannot exceed 100% of the member's final salary. Disability benefits are available to policemen who become permanently disabled, unless the disability is the direct result of gainful employment performed outside of the police department. This benefit is the same as noted above, but for non-duty disability cannot be less than $11,040 per year and for duty-related disability cannot be less than 65% of the member's final salary. The PRPF also provides benefits for surviving spouses and dependent children in which widow's receive the same amount the member is receiving or would be eligible to receive and children receive $1,500 per year until age 18 (23, if still in school). No participants' benefits vest until normal retirement age. At normal retirement, participants may elect to continue working and enter the Deferred Retirement Option Plan for up to 5 years. All firemen hired after January 1, 1983, participate in the Arkansas Local Police and Fire Retirement System created by Act 364 of 1981 and described later in this footnote. Therefore, the Firemen's Fund is effectively closed to new members.

At the December 31, 2019 valuation and measurement date, the following employees were covered by the benefit terms:

Retirees and beneficiaries	10
DROP members	-
Active members	-
Total	10

*Contributions***.** As the plan is closed to new members and there are no active members included in the plan, there are no contributions made by members to the plan. The contribution rate for the City is actuarially determined on an annual basis. However, due to the well-funded status of the plan, there has been no contribution requirement for the City in recent years. The Plan does, however, normally receive a state insurance turn back on an annual basis. However, no state insurance turn back was received during the year ended December 31, 2020.

Net Pension Asset. The City's net pension asset of $2,059,793 as of December 31, 2020, was measured as of December 31, 2019, and the total pension liability used to calculate the net pension asset was determined by an actuarial calculation as of December 31, 2019.

Actuarial Assumptions

Valuation Date	December 31, 2019
Cost Method	Individual entry-age normal
Asset valuation method	5-Year smoothed market
Amortization method	Closed amortization period
Amortization period	13 years beginning January 1, 2017
Assumptions:	
Inflation rate	2.50%
Investment rate of return	7.50%

Mortality rates for retirees, beneficiaries, and DROP members were based on the gender-distinct RP2000 Combined Mortality Table, projected to 2020 and set forward two years for males. For disabled members, the mortality rates are the rates applicable to non-disabled lives set forward 10 years.

Actuarial assumptions used in the December 31, 2019, valuation were based on the results of actuarial experience studies. The experience study in FRPF was for the period January 1, 2012 through December 31, 2016, first used in the December 31, 2017 valuation. Assumptions are reviewed annually. No additional changes were made for the 2019 valuation.

Long-term Expected Return on Plan Assets

The long-term expected rate of return on pension plan investments is 7.0%. The pension plan's policy in regard to the allocation of invested assets is established and may be amended by the LOPFI Board of Trustees. Plan assets are managed on a total return basis with an emphasis on both capital appreciation as well as the production of income, in order to satisfy the short-term and long-term funding needs of the plan.

The long-term expected rate of return on pension plan investment was determined using a building block method in which best estimate ranges of expend future real rates of return (expected returns, net of pension plan investment expense and inflation are developed for each major asset class). These ranges are combined to produce the long-term expected rate of return by weighting the expected future real rates of return by the target asset allocation percentage and by adding expected inflation. The target allocation and best estimates of arithmetic real rates of return for each major asset class are summarized in the following table:

Long-term Expected Real Rate of Return

Asset Class	Target Allocation	Long-Term Expected Real Rate of Return
Domestic Fixed Income	30%	1.30%
Domestic Equity	42%	5.40%
Foreign Equity	18%	7.80%
Alternative Investments	10%	6.70%
Total	100%	

Discount Rate

The discount rate used to measure the total pension liability was 7.0%. The projection of cash flows used to determine the discount rate assumed that employer contributions will be made at the rates specified in statute. Based on that assumption, the pension plan's fiduciary net position was projected to be available to make all projected future benefit payments of retired and DROP members. Therefore, the long-term expected rate of return on pension plan investments was applied to all periods of projected benefit payments to determine the total pension liability.

Changes in the Net Pension Asset

	Total Pension Liability (a)	Plan Fiduciary Net Position (b)	Net Pension Asset (a) - (b)
Balances at January 1, 2020	$ 6,047,219	$ 7,253,908	$ (1,206,689)
Changes for the year:			
Interest	408,662	-	408,662
Differences between expected and actual experience	58,343	-	58,343
Contributions - employer	-	17,254	(17,254)
Contributions - employee	-	-	-
Net investment income	-	1,314,415	(1,314,415)
Benefit payments, including refunds of employee contributions	(418,394)	(418,394)	-
Change in assumptions	-	-	-
Administrative expense	-	(11,560)	11,560
Net changes	48,611	901,715	(853,104)
Balances at December 31, 2020	$ 6,095,830	$ 8,155,623	$ (2,059,793)

The City has designated property tax millage to this plan that is paid directly to LOPFI and then allocated to the plan.

Sensitivity of the Net Pension Asset to Changes in the Discount Rate

The following table presents the net pension asset for the City using the current rate as compared to what the net pension asset would be if it were calculated using a discount rate that is 1-percentage point lower or 1-percentage higher than the current rate:

	Sensitivity of the Net Pension Asset to the Single Discount Rate Assumption		
	1% Decrease 6.00%	Current Single Rate Assumption 7.00%	1% Increase 8.00%
City's Net Pension Asset	$ (1,367,564)	$ (2,059,793)	$ (2,639,779)

Pension Plan Fiduciary Net Position

Detailed information about the pension plan's fiduciary net position is available in the separately issued Old-Plan financial report.

Pension Liabilities, Pension Expense, and Deferred Outflows of Resources and Deferred Inflows of Resources Related to Pensions

For the year ended December 31, 2020, the City recognized pension expense of $38,847 related to this plan.

At December 31, 2020, the City reported deferred outflows of resources related to pensions from the following sources:

	Deferred Outflows of Resources
Net difference between projected and actual earnings on pension plan investments	$ (352,317)

Amounts reported as deferred outflows of resources and deferred inflows of resources related to the Plan will be recognized in pension expense as follows:

Year Ending December 31	
2021	$ (73,856)
2022	(101,244)
2023	(12,999)
2024	(164,218)
Total	$ (352,317)

Local Police and Fire Retirement System ("LOPFI")

Plan Description. The Arkansas Local Police and Fire Retirement System ("LOPFI") is a statewide cost-sharing multiple-employer defined benefit pension plan administered by the LOPFI Board of Trustees. LOPFI provides retirement, disability and survivor benefits to police and fire employees of political subdivisions of the State of Arkansas. LOPFI was created by Act 364 of the 1981 General Assembly. Employees hired after January 1, 1983, whose political subdivision had a retirement system in effect at July 1, 1981, are eligible to participate in the plan. On January 1, 2008, only firemen of the City participated in the plan. Effective July 1, 2008, policemen of the City began participating in the plan. LOPFI issues a publicly available report, which may be obtained by writing to LOPFI, P. O. Drawer 34164, Little Rock, Arkansas, 72203, or by calling 501.682.1745.

Benefits provided. LOPFI provides for a retirement benefit paid to the Member on a monthly basis. The monthly benefit is based on a formula provided by law for the Member's lifetime. The Member has several options in calculating the benefit, which is normally the result of these factors: age at retirement, retirement multiplier, amount of credit services (years and months), and final average pay (FAP). Each option available to the member provides for a different calculation based on these factors.

Contributions. Contributions to LOPFI are made by both the Member and employers. Member contribution rates are established by the LOPFI Board of Trustees. The employer contributions are actuarially determined on an annual basis. The current employee contribution rate is 2.5 percent of covered payroll for policemen and 8.5 percent of covered payroll for firemen. The City contributed 23.50% of covered employee's salaries to the plan for policemen and firemen for the year ended December 31, 2020. Contributions made to the plan by employees and the City for the year ended December 31, 2020 amounted to $674,060 and $2,676,967, respectively.

Pension Liabilities, Pension Expense, and Deferred Outflows of Resources and Deferred Inflows of Resources Related to Pensions

At December 31, 2020, the City reported a liability of $22,068,039 for its proportionate share of the net pension liability. The net pension liability was measured as of December 31, 2019, and the total pension liability used to calculate the net pension liability was determined by an actuarial valuation as of that date. The City's proportion of the net pension liability was based on the ratio of the City's actual contributions to the Plan during the measurement period to the total employer contributions to the Plan of the group for the measurement period. At December 31, 2019, the City's proportion was 2.856 percent, which was an increase of .01218 percent from the prior year.

For the year ended December 31, 2020, the City recognized pension expense of $5,836,239 related to this plan. At December 31, 2020, the City reported deferred outflows of resources and deferred inflows of resources related to pensions from the following sources:

	Deferred Outflows of Resources	Deferred Inflows of Resources
Differences between expected and actual experience	$ 2,171,360	$ -
Net difference between projected and actual earnings on pension plan investments	-	2,665,178
Changes in assumptions	1,905,662	-
Changes in proportion	829,085	88,674
Contributions subsequent to the measurement date	2,676,967	-
Total	$ 7,583,074	$ 2,753,852

The amount reported as deferred outflows of resources related to pensions resulting from contributions subsequent to the measurement date of $2,676,967 will be recognized as a reduction of the net pension liability for the year ended December 31, 2021. Other amounts reported as deferred outflows of resources and deferred inflows of resources related to the Plan will be recognized in pension expense as follows:

Year Ending December 31		
2021	$	1,972,883
2022		792,901
2023		487,640
2024		(1,101,169)
Total	$	2,152,255

Actuarial Assumptions

The total pension liability in the December 31, 2019 actuarial valuation was determined using the following actuarial assumptions, applied to all periods included in the measurement:

Actuarial cost method	Entry age normal
Price inflation	2.5 percent
Wage inflation	3.25 percent
Salary increases	3.75 to 18.25 percent, including inflation
Investment rate of return	7.5 percent, net of pension plan investment expense, including inflation

Mortality rates were based on the RP-2000 Combined Mortality Table for Males and Females, as appropriate, with adjustments for mortality improvements based on scale AA.

The actuarial assumptions used in the December 31, 2019 valuation were based on the results of an actuarial experience study for the period January 1, 2012 to December 31, 2016. As a result of the 2017 actuarial experience study, the expectation of life after disability was adjusted in the December 31, 2019 actuarial evaluation to more closely reflect actual experience.

Long-term Expected Return on Plan Assets

The long-term expected rate of return on pension plan investments was determined using a building block method in which best-estimate ranges of expected future real rates of return. The rates were built on a target allocation for all pension funds; the target for an individual fund will vary within the guidelines of Arkansas law and regulation. The long-term expected rates of return are shown in the table below:

Long-term Expected Real Rate of Return

Asset Class	Target Allocation	Long-Term Expected Real Rate of Return
Domestic Fixed Income	30.00%	1.30%
Domestic Equity	42.00%	5.40%
Foreign Equity	18.00%	7.80%
Alternative Investments	10.00%	6.70%
Total	100.00%	

Discount Rate

In the December 31, 2019 actuarial valuation, a single discount rate of 7% was used to measure the total pension liability. This single discount rate was based on the expected rate of return on pension plan investments of 7%. The projection of cash flows, based on the assumptions made, found that the pension plan's net position was available to make all projected future benefit payments of current plan members. Therefore, the long-term expected rate of return on pension plan investments was applied to all periods of projected benefit payments to determine the total pension liability.

Sensitivity of the City's Proportionate Share of the Net Pension Liability to Changes in the Discount Rate

The following table presents the City's proportionate share of the net pension liability calculated using the discount rate of 7 percent, as well as what the City's proportionate share of the net pension liability would be if it were calculated using a discount rate that is 1-percentage-point lower (6 percent) or 1-percentage-point higher (8 percent) than the current rate:

	Sensitivity of the Net Pension Liability to the Single Discount Rate Assumption		
	1% Decrease 6.00%	Current Single Rate Assumption 7.00%	1% Increase 8.00%
City's proportionate share of the net pension liability	$ 35,162,845	$ 22,068,039	$ 11,508,144

Pension Plan Fiduciary Net Position

Detailed information about the pension plan's fiduciary net position is available in the separately issued LOPFI financial report.

Arkansas Public Employees Retirement System ("APERS")

Plan Description. For certain other employees, the City contributes to the Arkansas Public Employees Retirement System ("APERS"), a cost-sharing multiple-employer defined benefit plan administered by the APERS Board of Trustees. APERS provides retirement, death and disability benefits and annual cost-of-living adjustments to plan members. APERS issues a publicly available financial report that includes financial statements and required supplementary information. That report may be obtained by writing to APERS, One Union National Plaza, Little Rock, AR 72201 or by calling 501.682.7800.

Act 2084 of the 2005 Arkansas General Assembly provides for a new contributory program for APERS members hired on or after July 1, 2005, and those non-contributory members who elect to become contributory. Members participating in the contributory program will contribute 5% of their annual compensation, pre-tax (taxes are deferred). All active APERS members employed before July 1, 2005, had six months to elect coverage under the contributory program. The deadline to elect to be contributory was December 31, 2005. The contributory program does not provide for a temporary annuity for participants. However, the contributory program does provide for a higher multiplier (2.0%) that is utilized to calculate the member's retirement benefit.

Benefits provided. Benefits under APERS are calculated depending on the member's hire date, with retirees separated into two separate categories; the non-contributory plan applies to all persons hired prior to July 1, 2005 while the new contributory plan applies to all employees hired on or after July 1, 2005. Under both plans, a member may retire with full benefits at either the age of 65 with five years of service, or at any age with 28 years of service. The member may retire with reduced benefits at either the age of 55 with five years of service or at any age with 25 years of service. The reduction is equal to one-half of one percent for each month retirement precedes normal retirement age or one-percent for each month below 28 years of actual service, whichever is less. Under the non-contributory plan, the benefit calculation is equal to a factor of 1.72% of the member's final average salary multiplied by the years and months of credited service. Under the new contributory plan, the benefit calculation is equal to a factor of 2.00% of the members final average salary multiplied by the years of credited service. Under each plan, an additional .5% of the member's final average salary is awarded for each year of credited service exceeding 28 years. The minimum monthly benefit is $150, excluding any age and beneficiary option reductions.

Under both the non-contributory and contributory plan, the member's final average salary is the highest 36 calendar months of covered compensation. In addition, a cost-of-living adjustment of 3% annually is included in the current benefits.

Contributions. Contributions to APERS are made by both the Member (under the contributory plan) and employers. Member contribution rates are established by the APERS Board of Trustees. The employer contributions are actuarially determined on an annual basis. The current employee contribution rate is 5 percent of covered payroll for each employee under the new contributory plan. The City contributed 15.32% of covered employee's salaries to the plan for the period January 1, 2020 to December 31, 2020. Contributions made to the plan by employees and the City for the year ended December 31, 2020 amounted to $735,509 and $3,111,695, respectively.

Pension Liabilities, Pension Expense, and Deferred Outflows of Resources and Deferred Inflows of Resources Related to Pensions

At December 31, 2020, the City reported a liability of $28,480,919 for its proportionate share of the net pension liability. The net pension liability was measured as of June 30, 2020, and the total pension liability used to calculate the net pension liability was determined by an actuarial valuation as of that date. The City's proportion of the net pension liability was based on based on the ratio of the City's actual contributions to the Plan during the measurement period to the total employer contributions to the Plan of the group for the measurement period. At June 30, 2020, the City's proportion was .99458979%, which is an increase of .01414676% from the prior year.

For the year ended December 31, 2020, the City recognized pension expense of $5,879,745. At December 31, 2020, the City reported deferred outflows of resources and deferred inflows of resources related to pensions from the following sources:

	Deferred Outflows of Resources	Deferred Inflows of Resources
Differences between expected and actual experience	$ 378,092	$ 18,860
Change of assumptions	356,842	487,982
Changes in proportion	1,144,952	-
Net difference between projected and actual earnings on pension plan investments	3,013,644	-
Contributions subsequent to the measurement date	1,541,066	-
Total	$ 6,434,596	$ 506,842

The amount reported as deferred outflows of resources related to pensions resulting from contributions subsequent to the measurement date of $1,541,066 will be recognized as a reduction of the net pension liability for the year ended December 31, 2021. Other amounts reported as deferred outflows of resources and deferred inflows of resources related to the Plan will be recognized in pension expense as follows:

Year Ending December 31	
2021	$ 783,978
2022	1,263,938
2023	1,445,913
2024	892,859
Total	$ 4,386,688

Actuarial Assumptions

The total pension liability in the June 30, 2020 actuarial valuation was determined using the following actuarial assumptions, applied to all periods included in the measurement:

Inflation	3.25 percent
Salary increases	3.25 percent to 9.85 percent
Investment rate of return	7.15 percent, net of pension plan investment expense, including inflation

Mortality rates were based on the RP-2000 Combined Healthy Mortality Table for Males and Females, as appropriate, with adjustments for mortality improvements based on scale BB.

The actuarial assumptions used in the June 30, 2020 valuation were based on the results of an actuarial experience study for the period July 1, 2012 through June 30, 2017. As a result of the 2017 actuarial experience study, the expectation of life after disability was adjusted in the June 30, 2020 actuarial evaluation to more closely reflect actual experience.

Long-term Expected Return on Plan Assets

The long-term expected rate of return on pension plan investments was determined using a building block method in which best-estimate ranges of expected future real rates of return for each major asset class. These ranges are combined to produce the long-term expected rate of return by weighting the expected future real rates of return by the current asset allocation percentage and by adding expected price inflation. The long-term expected rates of return are shown in the table below:

Long-term Expected Real Rate of Return

Asset Class	Target Allocation	Long-Term Expected Real Rate of Return
Broad Domestic Equity	37.00%	6.22%
International Equity	24.00%	6.69%
Real Assets	16.00%	4.81%
Absolute Return	5.00%	3.05%
Domestic Fixed	18.00%	0.57%
Total	100.00%	

Discount Rate

In the June 30, 2020 actuarial valuation, a single discount rate of 7.15% was used to measure the total pension liability. This single discount rate was based on the expected rate of return on pension plan investments of 7.15%. The projection of cash flows, based on the assumptions made, found that the pension plan's net position was available to make all projected future benefit payments of current plan members. Therefore, the long-term expected rate of return on pension plan investments was applied to all periods of projected benefit payments to determine the total pension liability.

Sensitivity of the City's Proportionate Share of the Net Pension Liability to Changes in the Discount Rate

The following table presents the City's proportionate share of the net pension liability calculated using the discount rate of 7.15 percent, as well as what the City's proportionate share of the net pension liability would be if it were calculated using a discount rate that is 1-percentage-point lower (6.15 percent) or 1-percentage-point higher (8.15 percent) than the current rate:

	Sensitivity of the Net Pension Liability to the Single Discount Rate Assumption		
	1% Decrease 6.15%	Current Single Rate Assumption 7.15%	1% Increase 8.15%
City's proportionate share of the net pension liability	$ 43,378,547	$ 28,480,919	$ 16,187,003

Note 8: Other Postemployment Benefits (OPEB)

Plan Description: The City sponsors and administers an informal single-employer defined benefit healthcare plan. Retirees who are vested in their retirement plan and are eligible to receive a retirement benefit (and actually apply for and receive the retirement benefit) are eligible to purchase continued health benefits coverage for the retiree and the retiree's dependents until Medicare eligibility. The City Council has the authority to establish and amend the requirements of this plan. The City does not issue stand-alone financial statements of the healthcare plan but all required information is presented in this report. No assets are accumulated in a trust that meets the criteria of paragraph 4 of GASB No. 75.

Funding Policy: The contribution requirements of plan members are established by City ordinance and may be amended as needed. Retiree coverage is the same as the coverage provided to active City employees. Retirees pay premiums ranging from $440.24 to $1,500.84 per month depending on the coverage elected. The City's policy maintains that retirees must pay 100% of the cost of premiums. The cost of retiree healthcare benefits is financed on a pay-as-you-go basis and is recorded as an expense in the applicable fund as liabilities are incurred. There were 19 retirees covered under this plan at December 31, 2020. Dependent coverage was provided for three of the retirees. Total benefits paid by the City for retirees during the fiscal year were $204,440.

Employees covered by benefit terms - at December 31, 2020, the following employees were covered by benefit terms:

Inactive plan members or beneficiaries currently receiving benefit payments	19
Inactive plan members entitled to but not receiving benefit payments	0
Activie members	478
Total	497

Total OPEB Liability - The City's total OPEB liability of $7,042,564 was measured as of December 31, 2020, and was determined by an actuarial valuation as of that date.

Actuarial Methods and Assumptions: The Total OPEB liability in the December 31, 2020 actuarial valuation was determined using the following actuarial assumptions and other inputs, applied to all periods included in the measurement, unless otherwise specified:

Discount rate	2.12 percent based on the 20 year municipal bond yield from the Bond Buyer's index. Prior discount rate was 3.26 percent
Salary increases	3.25 percent
Inflation rate	2.50 percent
Healthcare Cost Trend rates	7 percent for 2021 decreasing annually, to ultimate rate of 4.5 percent for 2026
Cost Method	Allocation of Actuarial Present Value of Future Benefits for Services prior and after the Measurement Date was determined using Entry Age Normal Level % of Salary were: Services cost for each individual participant, payable from date of employment to date of retirement, is sufficent to pay for the participant's benefits at retirement; and Annual Service Cost is a constant percentage of the participant's salary that is assumed to increase according to the payroll growth.
Mortality	General Retirees: SOA Pub-2010 General Headcount Weighted Mortality Table fully generational using Scale MP-2020 Police Retirees: SOA Pub-2010 Public Safety Headcount Weighted Mortality Table fully generational using Scale MP-2020 Surviving Spouses: SOA Pub-2010 Contingent Survivor Headcount Weighted Mortality fully generational using Scale MP-2020

Changes in Total OPEB Liability

Service cost	$	440,363
Interest		222,061
Changes in assumptions		1,175,106
Differences between expected and actual experience		(1,063,276)
Benefit payments		(204,440)
Net change in total OPEB liability		569,814
Total OPEB Liability - beginning of year		6,472,750
Total OPEB Liability - end of year	$	7,042,564

Sensitivity of the Total OPEB Liability to the Discount Rate - The following represents the total OPEB liability of the City, as well as what the City's total OPEB liability would be if it was calculated using a discount rate that is 1-percentage-point lower (1.12 percent) or 1-percentage-point higher (3.12 percent) than the current discount rate:

	Sensitivity of the Total OPEB Liability to Changes in the Discount Rate		
	1% Decrease 1.12%	Discount Rate 2.12%	1% Increase 3.12%
Other Postemployment Benefits Liability	$ 7,851,674	$ 7,042,564	$ 6,323,027

Sensitivity of the Total OPEB Liability to the Healthcare Cost Trend Rates - The following represents the total OPEB liability of the City, as well as what the City's total OPEB liability would be if it was calculated using a healthcare cost trend rate that is 1-percentage-point lower or 1-percentage-point higher than the current healthcare cost trend rate:

	Sensitivity of the Total OPEB Liability to Changes in the Healthcare Cost Trend Rate		
	1% Decrease	Healthcare Cost Trend Rates	1% Increase
Other Postemployment Benefits Liability	$ 6,102,033	$ 7,042,564	$ 8,171,806

OPEB Expense and Deferred Outflows/Inflows of Resources Related to OPEB - For the year ended December 31, 2020, the City recognized OPEB expense of $727,873. At December 31, 2020, the City reported deferred outflows of resources and deferred inflows of resources related to OPEB from the following sources:

	Deferred Outflows of Resources	Deferred Inflows of Resources
Differences between expected and actual experience	$ 308,127	$ (956,948)
Changes in assumptions	1,490,333	(281,151)
Total	$ 1,798,460	$ (1,238,099)

The balances as of December 31, 2020 of the deferred outflows/(inflows) of resources will be recognized in OPEB expense in the future fiscal years as follows:

Fiscal Year Ended December 31,	Annual OPEB Cost
2021	$ 65,448
2022	65,448
2023	65,448
2024	65,448
2025	65,448
Thereafter	233,121
Total	$ 560,361

Note 9: Risk Management

The City has various insurance policies to cover its potential liability risk areas (*e.g.*, automobile, personal property, contents and outside structures and worker's compensation). Coverage is provided both commercially and through the Arkansas Municipal League (AML), which is an association of local governments. AML provides the City with automobile and legal defense coverage. Fixed premiums are set annually by AML based on such factors as claims experience, employee class multipliers and population. For risks covered by AML, the City pays no deductible; however, the City pays a $2,000 fee to AML for each legal matter it handles. There have been no significant reductions in coverage from 2019 to 2020; nor have settlement amounts exceeded insurance coverage for the current year or the three prior years.

Note 10: Contingencies

The City, its agencies and its employees are defendants in various legal proceedings, many of which normally occur in governmental operations. Such litigation includes, but is not limited to, claims assessed against the City for property damage and personal injury, other alleged torts and alleged violations of state and federal laws. Based on the current status of all of these legal proceedings, it is the opinion of the City Attorney and management that the ultimate outcome will not have a material adverse impact on the City's financial position.

The Northwest Arkansas Conservation Authority (NACA) completed construction of the Little Osage Gravity Sewer line from the NACA regional wastewater treatment facility to the City of Bentonville in 2010. The City incurs all costs associated with operations and maintenance of the line and associated debt payments.

In January 2019, NACA was notified by a third party engineering firm of significant damage to the Little Osage Gravity Sewer line that serves the City. Significant repairs will need to be made to the existing lines or total replacement will need to be made in order for NACA to continue to serve the City. It is not certain the cost to repair the lines or who the responsible parties will be for the expense. However, the costs could be significant to the City and its ratepayers. NACA will pass any cost incurred by them for which no other source of funding can be obtained on to the City through the billing process.

Note 11: Subsequent Events

In February of 2021, a winter storm occurred that resulted in a significant increase in the monthly cost for purchase of power. The February bill from our power providers amounted to $16 million. The City is currently in the process of disputing this bill. However, if the charges are deemed legitimate, this will be a significant unanticipated cost to the City and to its customers.

The City is currently in the process of issuance of Sales and Use Tax Bonds, Series 2021 which will be dated in July 2021. The principal amount of the bonds will be approximately $100 million and will be used to finance the costs of capital improvements, provide a debt service reserve and pay expenses of authorizing and issuing the Series 2021 Bonds.

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Required Supplementary Information

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City of Bentonville, Arkansas
Budgetary Comparison Schedule - General Fund
Year Ended December 31, 2020

	Original Budget	Final Budget	Actual	Variance with Final Budget Positive (Negative)
Revenues				
Property tax	$ 6,490,137	$ 6,490,137	$ 7,269,641	$ 779,504
Sales tax	25,702,597	25,702,597	29,748,351	4,045,754
State turnback	1,444,376	1,444,376	1,497,831	53,455
Franchise taxes	5,324,953	5,324,953	5,506,867	181,914
Charges for services	6,255,538	6,255,538	3,869,740	(2,385,798)
Fines and forfeitures	498,372	498,372	388,542	(109,830)
Licenses and permits	1,247,601	1,247,601	1,943,451	695,850
Grants	254,548	6,785,263	5,093,226	(1,692,037)
Contributions	14,500	135,125	123,293	(11,832)
Interest	186,122	186,122	333,299	147,177
Investment income	-	-	195,681	195,681
Miscellaneous	2,438,025	2,740,684	1,230,901	(1,509,783)
Total revenues	49,856,769	56,810,768	57,200,823	390,055
Expenditures				
Current				
General government	8,852,355	9,420,251	8,682,730	737,521
Public safety	24,706,194	25,752,665	24,418,096	1,334,569
Recreation	10,061,643	12,138,092	9,077,193	3,060,899
Library	1,824,638	1,937,538	1,777,953	159,585
Capital outlay	4,121,753	24,768,677	11,687,550	13,081,127
Total expenditures	49,566,583	74,017,223	55,643,522	18,373,701
Excess (Deficiency) of Revenues Over Expenditures	290,186	(17,206,455)	1,557,301	18,763,756
Other Financing Sources				
Sale of capital assets	-	-	20,025	20,025
Transfers in	250,000	350,875	791,518	440,643
Transfers out	-	1,127,631	-	(1,127,631)
Total other financing sources	250,000	1,478,506	811,543	(666,963)
Net Change in Fund Balances	540,186	(15,727,949)	2,368,844	18,096,793
Fund Balances, Beginning of Year	60,537,322	60,537,322	60,537,322	-
Fund Balances, End of Year	$ 61,077,508	$ 44,809,373	$ 62,906,166	$ 18,096,793

City of Bentonville, Arkansas
Budgetary Comparison Schedule - Street Fund
Year Ended December 31, 2020

	Original Budget	Final Budget	Actual	Variance with Final Budget Positive (Negative)
Revenues				
Property tax	$ 2,018,497	$ 2,018,497	$ 2,260,536	$ 242,039
State turnback	2,483,208	2,483,208	2,657,372	174,164
Charges for services	27,000	27,000	46,756	19,756
Licenses and permits	-	-	17,391	17,391
Grants	-	4,668,836	2,259,210	(2,409,626)
Contributions	-	338,750	338,775	25
Interest	6,460	6,460	54,652	48,192
Miscellaneous	-	12,215	672,760	660,545
Total revenues	4,535,165	9,554,966	8,307,452	(1,247,514)
Expenditures				
Current:				
Street Department	2,831,820	3,601,790	3,970,303	(368,513)
Capital outlay	1,482,802	7,727,085	3,666,317	4,060,768
Total expenditures	4,314,622	11,328,875	7,636,620	3,692,255
Excess (Deficiency) of Revenues Over Expenditures	220,543	(1,773,909)	670,832	2,444,741
Other Financing Sources				
Transfers in	-	1,127,631	-	(1,127,631)
Transfers out	(72,122)	(72,122)	-	72,122
Total other financing sources	(72,122)	1,055,509	-	(1,055,509)
Net Change in Fund Balances	148,421	(718,400)	670,832	1,389,232
Fund Balances, Beginning of Year	5,440,789	5,440,789	5,440,789	-
Fund Balances, End of Year	$ 5,589,210	$ 4,722,389	$ 6,111,621	$ 1,389,232

City of Bentonville, Arkansas

Retiree Healthcare Plan

Schedule of the City's Changes in Total OPEB Liability and Related Ratios

Total OPEB Liability	2020	2019	2018
Service cost	$ 440,363	$ 350,443	$ 340,441
Interest	222,061	227,467	185,817
Differences between expected and actual experience	(1,063,276)	257,644	145,729
Changes of assumptions or other inputs	1,175,106	540,922	(401,643)
Benefit payments	(204,440)	(173,719)	(122,045)
Net change in total OPEB liability	569,814	1,202,757	148,299
Total OPEB liability - beginning	6,472,750	5,269,993	5,121,694
Total OPEB liability - ending	$ 7,042,564	$ 6,472,750	$ 5,269,993
Covered-employee payroll	$ 28,116,711	$ 27,868,664	$ 24,500,575
Total OPEB liability as a percentage of covered-employee payroll	25.0%	23.2%	21.5%

Notes to Schedule:

No assets accumulated in a trust that meets the criteria of paragraph 4 of GASB No. 75.

This schedule is presented to illustrate the requirement to show information for 10 years. However, until a full 10-year trend is compiled under the provisions of GASB 75, the City will only present available information.

Change in Assumptions:

	2020	2019	2018
Discount Rate	2.12	3.26%	4.11%
Health Care Cost Trend Rates	7% for 2021 decreasing annually to 4.5% for 2026	7.5% for 2020 decreasing annually to 4.5% for 2026	8% for 2019 decreasing annually to 4.5% for 2026
Mortality	General Retirees: SOA Pub-2010 General Headcount Weighted Mortality Table fully generational using Scale MP-2020 Police Retirees: SOA Pub-2010 Public Safety Headcount Weighted Mortality Table fully generational using Scale MP-2020 Surviving Spouses: SOA Pub-2010 Contingent Survivor Headcount Weighted Mortality fully generational using Scale MP-2020	RPH-2019 Total Dataset Mortality Table fully generational using Scale MP-2019	RHP-2018 Total Dataset Mortality Table fully generational using Scale MP-2018

City of Bentonville, Arkansas

Agent Multiple-Employer Plan

Schedule of Changes in the City's Net Pension Asset and Related Ratios - FRPF

Fiscal Year Ended December 31,	2020	2019	2018	2017	2016	2015
Total Pension Liability						
Interest	$ 408,662	$ 405,456	$ 429,845	$ 437,660	$ 466,923	$ 398,688
Difference between actual and expected experience	58,343	51,252	(192,297)	219,904	(60,276)	804,333
Assumption changes	-	-	417,704	-	132,682	-
Benefit payments	(418,394)	(403,429)	(415,392)	(1,101,418)	(355,876)	(344,268)
Net Change in Total Pension Liability	48,611	53,279	239,860	(443,854)	183,453	858,753
Total Pension Liability - Beginning	6,047,219	5,993,940	5,754,080	6,197,934	6,014,481	5,155,728
Total Pension Liability - Ending (a)	$ 6,095,830	$ 6,047,219	$ 5,993,940	$ 5,754,080	$ 6,197,934	$ 6,014,481
Plan Fiduciary Net Position						
Contributions - employer	$ 17,254	$ 13,795	$ (62,065)	$ 21,017	$ 16,427	$ 15,135
Contributions - employee	-	-	-	37,908	-	-
Net investment income	1,314,415	(218,852)	993,670	441,257	14,939	581,099
Local plan administrative mergers		10	-	-	-	-
Benefit payments	(418,394)	(403,429)	(415,392)	(1,101,418)	(355,876)	(344,268)
Administrative Expense	(11,560)	(14,510)	(12,739)	(14,488)	(18,669)	(13,808)
Net Change in Plan Fiduciary Net Position	901,715	(622,986)	503,474	(615,724)	(343,179)	238,158
Plan Fiduciary Net Position - Beginning	7,253,908	7,876,894	7,373,420	7,989,144	8,332,323	8,094,165
Plan Fiduciary Net Position - Ending (b)	$ 8,155,623	$ 7,253,908	$ 7,876,894	$ 7,373,420	$ 7,989,144	$ 8,332,323
City's Net Pension Asset (a) - (b)	$ (2,059,793)	$ (1,206,689)	$ (1,882,954)	$ (1,619,340)	$ (1,791,210)	$ (2,317,842)
Plan Fiduciary Net Position as a Percentage of Total Pension Liability	133.79%	119.95%	131.41%	128.14%	128.90%	138.54%
Covered Employee Payroll	$ -	$ -	$ -	$ -	$ -	$ -
City's Net Pension Asset as a Percentage of Covered Employee Payroll	N/A	N/A	N/A	N/A	N/A	N/A

Note: Information in this schedule has been determined as of the measurement date (December 31 of the year prior to the most recent fiscal year-end) of the City's net pension liability.

Note: This schedule is presented to illustrate the requirement to show information for 10 years. However, until a full 10-year trend is compiled under the provisions of GASB 68, the City will only present available information.

Change in Assumptions:
(1) In 2018, the investment rate of return changed from 7.75% in 2017 to 7.00% in 2018
(2) In 2016, the inflation rate decreased from 3.00% in 2015 to 2.75% in 2016; the investment rate of return decreased from 8.00% in 2015 to 7.75% in 2016; and the projected salary increases decreased from 4.00% in 2015 to 3.75% in 2016

City of Bentonville, Arkansas

Agent Multiple-Employer Plan

Schedule of Contributions - FRPF

FY Ended December 31,	Actuarially Determined Contribution (ADC)	Actual Contribution	Contribution Deficiency (Excess)	Covered Payroll	Actual Contribution as a % of Covered Payroll
2015	$ -	$ 16,427	$ (16,427)	$ -	N/A
2016	-	21,017	(21,017)	-	N/A
2017	-	(62,065)	62,065	-	N/A
2018	-	13,795	(13,795)	-	N/A
2019	-	17,254	(17,254)	-	N/A
2020	-	-	-	-	N/A

Key Assumptions for ADC:

Cost Method	Entry Age Normal
Amortization Method	Level Percentage of Payroll, Closed
Remaining Amortization	11 Years beginning January 1, 2019
Asset Valuation	5 Year Smoothed Market, 20% Soft Corridor
Inflation	2.5%
Salary Increases	N/A
Investment Rate of Return	7.50%
Retirement Age	Experience-based table of rates that are specific to the type of eligibility benefits. Last updated for the 2017 pursuant to an experience study of the period 2012-2016.
Mortality	RP2000 Combined Mortality Table, projected to 2017 and set forward two years for men. For disabled lives, the mortality rates are applicable to non-disabled lives set forward 10 years.

Note: Information in this schedule has been determined as of the City's most recent fiscal year-end.

Note: This schedule is presented to illustrate the requirement to show information for 10 years. However, until a full 10-year trend is compiled under the provisions of GASB 68, the City will only present available information.

City of Bentonville, Arkansas

Cost-Sharing Plan

Schedule of the City's Proportionate Share of the Net Pension Liability - LOPFI

City Fiscal year ended December 31,	2020	2019	2018	2017	2016	2015
City's proportion of the net pension liability	2.85581%	2.73423%	2.71200%	2.64262%	2.54026%	2.472571%
City's proportion share of the net pension liability	$ 22,068,039	$ 24,673,203	$ 19,271,356	$ 15,076,984	$ 13,330,612	$ 9,023,336
City's covered-employee payroll	$ 10,212,486	$ 9,330,536	$ 8,798,931	$ 8,004,466	$ 7,951,238	$ 6,953,609
City's proportionate share of the net pension liability as a percentage of its covered-employee payroll	216.09%	264.44%	219.02%	188.36%	167.65%	129.76%
Plan fiduciary net position as a percentage of the total pension liability	73.03%	66.09%	71.48%	72.87%	72.90%	79.14%

Note: Information in this schedule has been determined as of the measurement date (December 31 of the year prior to the most recent fiscal year-end) of the City's net pension liability.

Note: This schedule is presented to illustrate the requirement to show information for 10 years. However, until a full 10-year trend is compiled under the provisions of GASB 68, the City will only present available information.

City of Bentonville, Arkansas

Cost-Sharing Plan

Schedule of City Contributions - LOPFI

City Fiscal year ended December 31,	2020	2019	2018	2017	2016	2015
Contractually required contribution	$ 2,676,967	$ 2,399,934	$ 2,135,877	$ 1,940,202 (1)	$ 1,684,557 (1)	$ 1,639,457
Contributions in relation to the contractually required contribution	(2,676,967)	(2,399,934)	(2,135,877)	(1,940,202)	(1,684,557)	(1,639,457)
Contribution deficiency (excess)	$ -	$ -	$ -	$ -	$ -	$ -
City's covered-employee payroll	$ 11,348,676	$ 10,212,486	$ 9,330,536	$ 8,798,931	$ 8,004,748	$ 7,951,239
Contributions as a percentage of covered-employee payroll	23.59%	23.50%	22.89%	22.05%	21.04%	20.62%

Note: Information in this schedule has been determined as of the City's most recent fiscal year-end.

Note: This schedule is presented to illustrate the requirement to show information for 10 years. However, until a full 10-year trend is compiled under the provisions of GASB 68, the City will only present available information.

City of Bentonville, Arkansas

Cost-Sharing Plan

Schedule of the City's Proportionate Share of the Net Pension Liability - APERS

City Fiscal year ended December 31,	2020	2019	2018	2017	2016	2015
City's proportion of the net pension liability	0.99458979%	0.98044303%	0.92204720%	0.89669761%	0.82968373%	0.80078759%
City's proportion share of the net pension liability	$ 28,480,919	$ 23,653,470	$ 20,339,762	$ 23,171,926	$ 19,840,626	$ 14,748,372
City's covered-employee payroll	$ 19,310,426	$ 18,020,449	$ 17,225,762	$ 16,818,306	$ 14,261,744	$ 14,277,688
City's proportionate share of the net pension liability as a percentage of its covered-employee payroll	147.49%	131.26%	118.08%	137.78%	139.12%	103.30%
Plan fiduciary net position as a percentage of the total pension liability	75.38%	78.55%	79.59%	75.65%	75.50%	80.39%

Note: Information in this schedule has been determined as of the measurement date (June 30 of the year prior to the most recent fiscal year-end) of the City's net pension liability.

Note: This schedule is presented to illustrate the requirement to show information for 10 years. However, until a full 10-year trend is compiled under the provisions of GASB 68, the City will only present available information.

City of Bentonville, Arkansas

Cost-Sharing Plan

Schedule of City Contributions - APERS

City Fiscal year ended December 31,	2020	2019	2018	2017	2016	2015
Contractually required contribution	$ 3,111,695	$ 2,875,787	$ 2,636,432	$ 2,444,877	$ 2,260,596	$ 2,224,163
Contributions in relation to the actuarially required contribution	(3,111,695)	(2,875,787)	(2,636,432)	(2,444,877)	(2,260,596)	(2,224,163)
Contribution deficiency (excess)	$ -	$ -	$ -	$ -	$ -	$ -
City's covered-employee payroll	$ 19,828,470	$ 18,771,454	$ 17,534,429	$ 16,714,991	$ 15,590,294	$ 15,208,940
Contributions as a percentage of covered-employee payroll	15.69%	15.32%	15.04%	14.63%	14.50%	14.62%

Note: Information in this schedule has been determined as of the City's most recent fiscal year-end.

Note: This schedule is presented to illustrate the requirement to show information for 10 years. However, until a full 10-year trend is compiled under the provisions of GASB 68, the City will only present available information.

City of Bentonville, Arkansas
Notes to Required Supplementary Information
December 31, 2020

Budget and Budgetary Accounting

The City Council (the "Council") adheres to the following procedures in establishing the budgets reflected in the accompanying general purpose financial statements:

1. Prior to December 1, the Mayor and Finance Director submit to the City Council a proposed operating budget for the fiscal year commencing the following January 1. The operating budget includes proposed expenditures and the means of financing them.

2. Public hearings are conducted at City Hall to obtain taxpayer comments.

3. Prior to February 1, the budget is legally enacted through approval by the Council.

4. Budget for the general and street funds are adopted on a basis consistent, in all material respects, with accounting principles generally accepted in the United States of America ("GAAP").

Budgeted revenues and expenditures represented the formal operating budget adopted by the City Council, as amended by the Council during the year. Budgetary control is maintained at the department level. Budgeted amounts, other than ongoing capital projects not spent by year end, lapse. Expenditures greater than budgeted amounts must be approved by the Council by voting to amend the budget.

Pensions

FRPF

Methods and Assumptions Used to Determine Contribution Rates:	
Actuarial Cost Method	Individual Entry-Age Normal
Amortization Method	Closed Amortization Period based on projected future payroll
Remaining Amortization Period	11 years beginning January 1, 2019
Asset Valuation Method	5-Year smoothed market, 20% corridor (for funding purposes)
Price Inflation	2.50%
Salary Increases	3.25%, which is the portion of the individuals pay increase assumptions attributable to wage inflation
Investment Rate of Return	7.50%
Retirement Age	Experience-based table of rates that are specific to the type of edibility condition. Last updated for the 2017 valuation pursuant to an experience study of the period 2012-2016.
Mortality	RP-2014 Healthy Annuitant, Disabled Retiree and Employee mortality tables for males and females. The tables applied credibility adjustment of 135% for males and 125% for females wre adjusted for fully generational mortality improvements using Scale MP-2016
Other Information:	
Notes	There were no benefit changes during the year.

LOPFI

Economic Assumptions	
Investment Rate of Return	7.50%
Price Inflation	2.50%
Pay Increase Assumptions	Ranges from 3.75 to 18.25%
Wage inflation	3.25%
Total Number of Active Members	Assumed to continue at the present number.

APERS

Investment Rate of Return	7.15%
Pay Increase Assumptions	Ranges from 3.25% to 9.85% depending on service years, including 3.25% for wage inflation.
Total Active Member Payroll	Assumed to increase 3.25% per year, which is the portion of the individual pay increase assumptions attributable to wage inflation.
Total Number of Active Members	Assumed to continue at the present number.

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Combining and Individual Fund Financial Statements and Schedules

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City of Bentonville, Arkansas
Combining Balance Sheet - Nonmajor Governmental Funds
December 31, 2020

	Impact & Capacity	Court	Total Nonmajor Governmental Funds
Assets			
Accounts receivable:			
Grants and other	$ -	$ 7,060	$ 7,060
Restricted assets			
Cash and cash equivalents	7,833,238	291,550	8,124,788
Total assets	$ 7,833,238	$ 298,610	$ 8,131,848
Liabilities and Fund Balances			
Liabilities:			
Accounts payable	$ -	$ 107,407	$ 107,407
Due to other funds	690,643	-	690,643
Due to other governments	-	191,203	191,203
Total liabilities	690,643	298,610	989,253
Fund balances			
Restricted			
New growth	7,142,595	-	7,142,595
Total fund balances	7,142,595	-	7,142,595
Total liabilities and fund balances	$ 7,833,238	$ 298,610	$ 8,131,848

City of Bentonville, Arkansas

Combining Statement of Revenues, Expenditures and Changes in Fund Balances - Nonmajor Governmental Funds

Year Ended December 31, 2020

	Impact/Capacity Fees	Total Nonmajor Governmental Funds
Revenues		
Impact fees	$ 2,858,636	$ 2,858,636
Rev Interest	48,460	48,460
Total revenues	2,907,096	2,907,096
Other Financing Sources (Uses)		
Transfers out	(1,742,518)	(1,742,518)
Net Other Financing Sources (Uses)	(1,742,518)	(1,742,518)
Net Change in Fund Balances	1,164,578	1,164,578
Fund Balances at Beginning of Year	5,978,017	5,978,017
Fund Balances at End of Year	$ 7,142,595	$ 7,142,595

City of Bentonville, Arkansas

Schedule of Revenues, Expenditures and Changes in Fund Balances - Budget and Actual - Debt Service Fund

Year Ended December 31, 2020

	Original Budget	Final Budget	Actual	Variance with Final Budget - Positive (Negative)
Revenues				
Sales tax	$ 11,060,692	$ 11,060,692	$ 13,531,443	$ 2,470,751
Interest	-	-	25,394	25,394
Total revenues	11,060,692	11,060,692	13,556,837	2,496,145
Expenditures				
Principal	11,060,693	11,060,693	11,535,000	(474,307)
Interest	-	-	1,464,550	(1,464,550)
Total expenditures	11,060,693	11,060,693	12,999,550	(1,938,857)
Deficiency of Revenues Over Expenditures	(1)	(1)	557,287	557,288
Net Change in Fund Balances	(1)	(1)	557,287	557,288
Fund Balances at Beginning of Year	7,399,511	7,399,511	7,399,511	-
Fund Balances at End of Year	$ 7,399,510	$ 7,399,510	$ 7,956,798	$ 557,288

City of Bentonville, Arkansas

Schedule of Revenues, Expenditures and Changes in Fund Balance - Budget and Actual - Impact/Capacity Fees

Year Ended December 31, 2020

	Original Budget	Final Budget	Actual	Variance with Final Budget - Positive (Negative)
Revenues				
Impact fees	$ 1,785,000	$ 1,785,000	$ 2,858,636	$ 1,073,636
Rev Interest	-	-	48,460	48,460
Total revenues	1,785,000	1,785,000	2,907,096	1,122,096
Expenditures				
Public safety	800,000	800,000	-	800,000
Recreation	900,000	900,000	-	900,000
Library	85,000	85,000	-	85,000
Total expenditures	1,785,000	1,785,000	-	1,785,000
Other Financing Sources (Uses)				
Transfers out	-	(27,500)	(1,742,518)	(1,715,018)
Net other financing sources (uses)	-	(27,500)	(1,742,518)	(1,715,018)
Net Change in Fund Balances	-	(27,500)	1,164,578	1,192,078
Fund Balances at Beginning of Year	5,978,017	5,978,017	5,978,017	-
Fund Balances at End of Year	$ 5,978,017	$ 5,950,517	$ 7,142,595	$ 1,192,078

City of Bentonville, Arkansas

Combining Statement of Revenues and Expenses - Enterprise Fund

Year Ended December 31, 2020

	Electric	Water	Wastewater	Sanitation	Support Services and Other	Total
Operating Revenues						
Charges for services	$ 68,092,503	$ 12,579,026	$ 14,982,022	$ 5,799,564	$ 292,471	$ 101,745,586
Other, net	9,046	11,784	2,016	-	24,336	47,182
Total operating revenues	68,101,549	12,590,810	14,984,038	5,799,564	316,807	101,792,768
Operating Expenses						
Salaries and fringe benefits	5,475,157	2,326,234	3,103,567	109,598	1,554,871	12,569,427
Contract purchases	45,763,660	6,183,908	5,796,316	5,274,725	-	63,018,609
Maintenance	859,873	394,522	512,398	-	33,018	1,799,811
Depreciation and amortization	3,123,065	1,860,568	2,152,406	-	595,988	7,732,027
Materials and supplies	296,917	176,780	398,253	-	221,716	1,093,666
Other services and charges	4,204,527	883,513	1,043,902	21,828	1,074,862	7,228,632
Total operating expenses	59,723,199	11,825,525	13,006,842	5,406,151	3,480,455	93,442,172
Operating Income (Loss)	8,378,350	765,285	1,977,196	393,413	(3,163,648)	8,350,596
Nonoperating Income (Expenses)						
Interest income	168,307	46,422	24,801	11,930	-	251,460
Investment Income	96,935	25,658	12,830	7,128	-	142,551
Bond interest and fiscal agent charges	-	(189,162)	(48,016)	-	-	(237,178)
Grants	527,105	-	300,000	-	-	827,105
Net non-operating revenues (expenses)	792,347	(117,082)	289,615	19,058	-	983,938
Income (Loss) Before Contributions and Transfers	9,170,697	648,203	2,266,811	412,471	(3,163,648)	9,334,534
Capital Contributions	1,233,589	1,965,273	1,259,468	-	-	4,458,330
Transfers in	-	-	951,000	-	-	951,000
Change in Net Position	$ 10,404,286	$ 2,613,476	$ 4,477,279	$ 412,471	$ (3,163,648)	$ 14,743,864

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Statistical Section

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City of Bentonville, Arkansas
Statistical Section

This section of the City of Bentonville, Arkansas comprehensive annual financial report presents detailed information as a context for understanding what the information in the financial statements, note disclosures and required supplementary information reflects about the City's overall financial health.

Contents

Financial Trends (Tables 1–5)

These schedules contain trend information to assist the reader in understanding how the City's financial performance and well-being have changed over time.....75

Revenue Capacity (Tables 6–9)

These schedules contain information to help the reader assess the City's most significant revenue resources, local sales taxes and property taxes.....80

Debt Capacity (Tables 10–12)

These schedules present information to help the reader assess the affordability of the City's current levels of outstanding debt and the City's ability to issue additional debt in the future.....85

Demographic and Economic Information (Tables 13–14)

These schedules offer demographic and economic indicators to assist the reader in understanding the environment within which the City's financial activities take place.....90

Operating Information (Tables 15–20)

These schedules contain service and infrastructure data to help the reader understand how the information in the City's financial report relates to services the City provides and the activities it performs.....92

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City of Bentonville, Arkansas

Net Position by Component

Last Ten Years

(Accrual Basis of Accounting)

Table 1

	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011
Governmental activities										
Net investments in capital assets	$ 279,366,430	$ 252,689,293	$ 232,185,202	$ 214,744,281	$ 195,975,422	$ 177,894,726	$ 162,543,988	$ 145,403,467	$ 141,834,069	$ 138,347,033
Restricted	26,232,902	21,881,884	20,794,051	19,818,040	16,800,936	20,714,460	19,104,639	14,783,330	13,317,046	11,787,380
Unrestricted	29,922,922	34,860,246	32,844,983	34,279,668	27,397,280	24,192,710	37,569,695	41,833,773	34,369,973	30,004,365
Total governmental activities net position	$ 335,522,254	$ 309,431,423	$ 285,824,236	$ 268,841,989	$ 240,173,638	$ 222,801,896	$ 219,218,322	$ 202,020,570	$ 189,521,088	$ 180,138,778
Business-type activities										
Net investments in capital assets	$ 208,392,983	$ 202,310,382	$ 196,638,875	$ 190,003,709	$ 177,477,573	$ 161,108,420	$ 155,815,515	$ 145,769,235	$ 140,507,220	$ 131,135,584
Restricted	1,898,983	2,100,656	2,903,653	2,869,343	2,778,744	6,416,985	8,973,505	8,954,000	6,990,745	9,088,735
Unrestricted	48,801,741	39,938,805	32,421,266	26,076,418	28,427,793	31,495,140	26,384,643	26,098,489	23,680,469	22,737,459
Total business-type activities net position	$ 259,093,707	$ 244,349,843	$ 231,963,794	$ 218,949,470	$ 208,684,110	$ 199,020,545	$ 191,173,663	$ 180,821,724	$ 171,178,434	$ 162,961,778
Primary government										
Net investments in capital assets	$ 487,759,413	$ 454,999,675	$ 428,824,077	$ 404,747,990	$ 373,452,995	$ 339,003,146	$ 318,359,503	$ 291,172,702	$ 282,341,289	$ 269,482,617
Restricted	28,131,885	23,982,540	23,697,704	22,687,383	19,579,680	27,131,445	28,078,144	23,737,330	20,307,791	20,876,115
Unrestricted	78,724,663	74,080,201	65,266,249	60,356,086	55,825,073	55,687,850	63,954,338	67,932,262	58,050,442	52,741,824
Total Primary government net position	$ 594,615,961	$ 553,062,416	$ 517,788,030	$ 487,791,459	$ 448,857,748	$ 421,822,441	$ 410,391,985	$ 382,842,294	$ 360,699,522	$ 343,100,556

City of Bentonville, Arkansas
Changes in Net Position (Continued)
Last Ten Years
(Accrual Basis of Accounting)

Table 2

	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011
Expenses										
Governmental activities										
General government	$ 10,764,635	$ 11,262,376	$ 8,199,550	$ 8,380,920	$ 7,838,616	$ 7,159,267	$ 6,878,233	$ 6,541,906	$ 6,064,188	$ 5,772,537
Public safety	30,483,681	27,161,452	24,926,207	22,219,435	19,978,800	18,757,747	17,062,888	16,345,367	14,920,639	14,143,876
Recreation	11,533,775	11,908,261	10,579,540	10,239,510	9,126,620	7,469,788	5,744,250	5,023,191	4,526,151	3,973,104
Transportation	11,794,878	9,571,784	8,880,453	8,522,377	7,950,435	7,405,637	7,427,751	6,997,032	6,234,879	6,007,845
Library	2,014,164	1,887,076	1,765,524	1,688,914	1,505,475	1,372,391	1,305,770	1,182,469	1,073,172	1,009,643
CDBG	-	-	184	7,147	46,716	81,941	136,825	118,021	158,849	90,782
Interest on long-term debt	1,464,550	1,929,130	2,297,161	2,382,481	2,011,778	2,271,497	2,462,735	2,650,613	2,788,366	2,923,279
Total governmental activities expenses	68,055,683	63,720,079	56,648,619	53,440,784	48,458,440	44,518,268	41,018,452	38,858,599	35,766,244	33,921,066
Business-type activities										
Electric	59,723,199	60,093,455	59,685,788	60,318,959	59,066,230	54,031,667	53,015,464	45,650,369	45,627,215	45,435,606
Water	14,973,111	13,871,208	13,511,887	12,918,078	11,859,994	8,297,783	8,030,105	7,918,055	7,920,925	7,515,313
Wastewater	10,096,434	9,615,262	9,372,920	9,255,683	8,396,479	10,428,470	10,421,342	10,367,625	10,461,886	10,829,898
Sanitation	5,406,151	5,109,186	4,624,380	4,197,480	3,891,758	3,614,926	3,346,211	3,081,332	3,966,186	4,057,621
Support	3,480,455	3,521,239	3,456,000	3,745,763	3,268,751	3,172,472	3,011,606	2,920,570	2,399,556	2,323,157
Total business-type activities expenses	93,679,350	92,210,350	90,650,975	90,435,963	86,483,212	79,545,318	77,824,728	69,937,951	70,375,768	70,161,595
Total primary government	$ 161,735,033	$ 155,930,429	$ 147,299,594	$ 143,876,747	$ 134,941,652	$ 124,063,586	$ 118,843,180	$ 108,796,550	$ 106,142,012	$ 104,082,661
Program Revenues										
Governmental activities										
Charges for Services:										
General government	$ 3,070,578	$ 3,232,206	$ 2,660,236	$ 411,878	$ 311,264	$ 315,176	$ 311,698	$ 283,608	$ 252,981	$ 231,582
Public safety	3,302,059	2,762,512	2,537,032	1,778,596	1,527,968	1,260,881	1,272,011	1,120,967	1,045,858	1,034,482
Recreation	1,789,880	5,781,222	4,595,838	3,568,737	3,269,930	2,221,136	979,407	817,841	670,083	442,977
Transportation	1,510,106	2,779,600	958,771	33,259	66,379	39,940	64,336	89,365	55,318	31,563
Library	33,902	59,892	54,224	9	0					
Operating grants and contribution	6,119,081	660,682	3,369,266	5,402,348	7,545,636	4,924,083	2,499,028	1,428,695	1,281,973	1,504,879
Capital grants and contributions	12,434,429	5,050,131	5,513,785	5,909,573	4,795,540	3,436,893	5,787,147	4,585,176	1,998,723	1,563,169
Total governmental activities revenue	28,260,035	20,326,245	19,689,152	17,104,400	17,516,717	12,198,109	10,913,627	8,325,652	5,304,936	4,808,652
Business-type activities										
Charges for Services:										
Electric	68,092,503	70,130,577	68,494,676	66,007,652	62,539,169	58,752,316	56,079,341	51,351,834	51,001,844	49,374,616
Water	12,872,797	11,074,498	11,603,640	10,625,553	10,185,022	9,659,435	10,230,363	9,546,831	9,798,422	9,169,326
Wastewater	14,688,256	14,493,682	13,870,399	13,339,032	13,280,744	14,457,739	13,813,393	12,769,425	11,037,798	10,662,350
Sanitation	5,799,564	5,397,459	4,969,400	4,591,853	4,261,907	3,959,322	3,652,388	3,369,391	4,181,792	4,322,473
Support	295,496	633,512	987,220	929,561	887,122	875,159	864,817	815,528	809,887	862,667
Operating grants and contribution	827,105	-	150,122	11,978	137,426	-	14,391		-	
Capital grants and contributions	4,459,130	2,432,863	3,150,912	4,158,642	1,203,774	852,198	1,951,232	913,234	810,951	2,044,716
Total business-type activities	107,034,851	104,162,591	103,226,369	99,664,271	92,495,164	88,556,169	86,605,925	78,766,243	77,640,694	76,436,148
Total primary government	$ 135,294,886	$ 124,488,836	$ 122,915,521	$ 116,768,671	$ 110,011,881	$ 100,754,278	$ 97,519,552	$ 87,091,895	$ 82,945,630	$ 81,244,800
Net (expense) revenue										
Governmental activities	$ (39,795,648)	$ (44,438,594)	$ (36,959,467)	$ (36,336,384)	$ (30,941,723)	$ (32,320,159)	$ (30,104,825)	$ (30,532,947)	$ (30,461,308)	$ (29,112,414)
Business-type activities	13,355,501	11,952,241	12,575,394	9,228,308	6,011,952	9,010,851	8,781,197	8,828,292	7,254,066	6,274,553
Total - primary government	$ (26,440,147)	$ (32,486,353)	$ (24,384,073)	$ (27,108,076)	$ (24,929,771)	$ (23,309,308)	$ (21,323,628)	$ (21,704,655)	$ (23,207,242)	$ (22,837,861)

City of Bentonville, Arkansas
Changes in Net Position (Continued)
Last Ten Years
(Accrual Basis of Accounting)

Table 2

	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011
General revenues and other changes in net pension										
Governmental activities										
Property taxes	$ 10,023,405	$ 9,417,015	$ 8,945,939	$ 8,282,975	$ 7,757,246	$ 7,248,656	$ 7,169,970	$ 6,557,935	$ 5,511,473	5,971,309
Sales taxes	43,279,794	39,654,947	35,758,719	37,651,052	30,117,108	29,458,234	26,383,529	26,320,374	24,481,898	21,639,791
State turnback	3,050,062	3,041,751	2,941,195	2,853,363	2,756,242	2,705,936	2,758,749	2,653,139	2,719,538	2,706,725
Franchise fees	5,506,867	5,368,133	5,653,246	5,351,361	4,788,966	4,599,120	4,477,679	4,166,269	3,991,999	4,396,945
Impact fees	2,858,636	-	-	-	-	-	-	-	-	-
Investment income	735,402	1,178,951	820,608	225,496	61,952	38,664	141,245	40,857	35,717	31,345
Gain on sales of capital assets	20,025	3,769,638	39,540	(30,542)	271,855	157,987	(1,475,353)	335,616	370,237	61,820
Transfers	(951,000)	-	(121,350)	-	(2,704,809)	(2,465,052)	(263,554)	(293,431)	(472,214)	(1,373,989)
Other	1,363,288	4,570,586	2,724,433	10,671,030	5,264,905	5,993,549	8,110,308	4,867,017	3,204,970	3,119,180
Special item - transfer of net pension asset	-	-	-	-	-	-	-	1,615,347	-	-
Total governmental activities	65,886,479	67,001,021	56,762,330	65,004,735	48,313,465	47,737,094	47,302,573	46,263,123	39,843,618	36,553,126
Business-type activities										
Investment income	394,011	289,274	133,581	41,398	36,505	36,685	26,111	32,208	32,752	33,264
Gain on sales of capital assets	-	24,061	-	272,526	634,635	246,613	448,502	-	-	-
Transfers	951,000	-	121,350	-	2,704,809	2,465,052	263,554	293,431	472,214	1,373,989
Other	43,352	120,473	813,873	723,128	275,664	1,438,958	832,574	489,359	457,624	873,853
Total business-type activities	1,388,363	433,808	1,068,804	1,037,052	3,651,613	4,187,308	1,570,741	814,998	962,590	2,281,106
Total primary government	$ 67,274,842	$ 67,434,829	$ 57,831,134	$ 66,041,787	$ 51,965,078	$ 51,924,402	$ 48,873,314	$ 47,078,121	$ 40,806,208	$ 38,834,232
Total change in net position										
Governmental activities	$ 26,090,831	$ 23,607,187	$ 19,802,863	$ 28,668,351	$ 17,371,742	$ 15,416,935	$ 17,197,752	$ 15,730,176	$ 9,382,310	$ 7,440,712
Business-type activities	14,743,864	12,386,049	13,644,198	10,265,360	9,663,565	13,198,159	10,351,939	9,643,290	8,216,656	8,555,659
Total - primary government	$ 40,834,695	$ 35,993,236	$ 33,447,061	$ 38,933,711	$ 27,035,307	$ 28,615,094	$ 27,549,691	$ 25,373,466	$ 17,598,966	$ 15,996,371

142

City of Bentonville, Arkansas

Fund Balances – Governmental Funds

Last Ten Years

(Accrual Basis of Accounting)

Table 3

	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011
General fund										
Nonspendable										
Prepaid expenditures	$ 299,237	$ 259,023	$ 224,713	$ 195,064	$ 276,989	$ 79,621	$ 196,545	$ 196,544	$ 40,647	$ 59,926
Restricted										
General capital improvements	3,032,914	2,202,079	2,169,461	-	631,806	211,073	244,089	202,710	222,935	310,626
Other	86,016	85,035	457,250	-	358,250	84,490	84,450	84,450	84,259	82,634
Unassigned	59,487,999	57,991,185	51,638,842	48,453,612	38,160,366	34,229,088	32,846,738	36,961,000	28,357,600	23,226,592
Total general fund	62,906,166	60,537,322	54,490,266	48,648,676	39,427,411	34,604,272	33,371,822	37,444,704	28,705,441	23,679,778
All other governmental funds										
Nonspendable										
Prepaid expenditures	323	642	550	1,225	1,275	1,336	1,273	1,344	1,264	1,023
Restricted										
Debt service	7,956,798	7,399,511	8,285,673	8,486,688	5,475,760	5,346,817	4,846,968	4,426,120	4,567,671	4,257,656
General capital improvements	17,972,203	21,530,144	23,649,222	29,016,117	1,927,588	7,405,024	8,670,569	10,839,800	14,028,640	31,497,513
New growth	7,142,595	5,978,017	5,572,099	4,480,877	1,599,901	2,811,377	3,896,869	3,742,765	2,542,808	1,664,039
Street Improvements	6,111,298	5,440,147	3,387,671	4,836,116	7,084,321	10,369,831	10,792,880	6,794,250	6,384,472	6,055,452
Total all other governmental funds	39,183,217	40,348,461	40,895,215	46,821,023	16,088,845	25,934,385	28,208,559	25,804,279	27,524,855	43,475,683
Total governmental funds	$ 102,089,383	$ 100,885,783	$ 95,385,481	$ 95,469,699	$ 55,516,256	$ 60,538,657	$ 61,580,381	$ 63,248,983	$ 56,230,296	$ 67,155,461

City of Bentonville, Arkansas

Changes in Fund Balances – Governmental Funds

Last Ten Years

(Modified Accrual Basis of Accounting)

Table 4

	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011
Revenues										
Property Tax	$ 9,530,177	$ 8,973,078	$ 8,277,403	$ 7,852,968	$ 7,155,619	$ 7,082,789	$ 6,944,206	$ 6,272,529	$ 5,967,805	$ 6,119,288
Sales Tax	43,279,794	39,654,947	35,758,719	37,651,052	30,117,108	29,458,234	26,383,529	26,320,374	24,481,899	21,639,791
State Turnback	4,155,203	4,007,424	3,843,744	2,853,363	2,756,242	2,705,936	2,758,749	2,653,139	2,719,538	2,706,724
Impact Fees	2,858,636	4,119,459	2,391,272	3,325,568	1,861,178	2,380,435	1,667,956	1,908,400	1,551,223	1,447,558
Franchise Fees	5,506,867	5,368,133	5,653,246	5,351,361	4,788,966	4,599,120	4,477,679	4,166,269	3,991,999	4,396,945
Charges for services	3,916,496	6,459,222	6,099,014	5,691,285	5,143,334	3,837,133	2,627,452	2,311,781	2,024,240	1,740,604
Fines and forfeitures	388,542	488,999	495,928	498,991	511,851	479,057	477,741	466,573	544,725	369,467
Licenses and permits	1,960,842	1,819,605	1,752,257	1,370,136	1,322,683	1,133,957	1,152,863	896,757	868,393	599,898
Grants	7,352,436	2,662,127	4,214,651	4,412,572	7,433,636	4,858,773	2,677,432	1,680,257	1,263,663	1,470,527
Contributions	462,068	280,763	1,126,912	2,212,553	3,594,921	1,251,106	3,163,948	3,201,581	253,338	323,114
Interest	539,721	1,178,951	820,608	225,370	61,952	38,677	141,245	40,857	35,717	31,345
Investment income	195,681	-	-	-	-	-	-	-	-	-
Miscellaneous	1,903,661	1,282,201	816,284	5,441,919	1,569,948	1,979,200	4,791,275	1,557,194	794,663	638,501
Total revenues	82,050,124	76,294,909	71,250,038	76,887,138	66,317,438	59,804,417	57,264,075	51,475,711	44,497,203	41,483,762
Expenditures										
Current:										
General government	8,682,730	7,515,045	6,833,349	6,694,940	6,663,862	6,385,081	6,097,814	5,525,445	5,406,881	5,126,855
Public safety	24,418,096	21,730,128	20,392,788	18,587,838	17,146,737	16,769,992	15,561,689	14,680,152	13,427,896	12,718,692
Recreation	9,077,193	9,582,308	8,507,693	8,163,683	7,252,049	6,009,329	4,603,727	4,077,746	3,684,363	3,253,297
Street Department	3,970,303	2,520,796	2,665,820	2,553,724	2,467,752	2,376,856	2,603,155	2,323,942	1,869,135	1,937,505
Library	1,777,953	1,609,734	1,449,844	1,386,429	1,256,940	1,168,999	1,108,606	983,062	895,126	854,923
CDBG	-		184	7,147	46,716	81,941	136,825	118,021	158,849	90,782
Capital Outlay	18,989,724	18,172,104	19,995,607	14,914,239	24,889,343	17,102,620	22,341,166	8,566,666	22,666,009	13,188,720
Debt Service										
Principal	11,535,000	11,516,950	9,121,959	7,970,000	7,035,000	6,245,000	5,160,000	5,560,000	4,400,000	4,115,000
Interest	1,464,550	1,917,180	2,285,202	2,269,991	2,481,252	2,481,252	2,481,252	2,668,529	2,812,133	2,938,080
Total expenditures	79,915,549	74,564,245	71,252,446	62,547,991	69,239,651	58,621,070	60,094,234	44,503,563	55,320,392	44,223,854
Excess of revenues over (under) expenditures	2,134,575	1,730,664	(2,408)	14,339,147	(2,922,213)	1,183,347	(2,830,159)	6,972,148	(10,823,189)	(2,740,092)
Other Financing Sources (Uses)										
Sale of capital assets	20,025	3,769,638	39,540	106,065	161,330	51,659	1,425,155	335,616	370,237	61,820
Proceeds from issuance of debt (includes premium)	-	-	-	25,508,231	-	-	-	-	-	-
Transfers in	791,518	5,521,936	1,186,184	444,592	367,845	1,000,875	1,250,298	415,012	200,246	492,174
Transfers out	(1,742,518)	(5,521,936)	(1,307,534)	(444,592)	(3,072,654)	(3,465,927)	(1,513,852)	(708,443)	(672,459)	(1,866,163)
Net other financing sources (uses)	(930,975)	3,769,638	(81,810)	25,614,296	(2,543,479)	(2,413,393)	1,161,601	42,185	(101,976)	(1,312,169)
Net change in fund balances	$ 1,203,600	$ 5,500,302	$ (84,218)	$ 39,953,443	$ (5,465,692)	$ (1,230,046)	$ (1,668,558)	$ 7,014,333	$ (10,925,165)	$ (4,052,261)
Debt service as a percentage of noncapital expenditures	21%	24%	22%	21%	21%	21%	20%	23%	22%	23%

City of Bentonville, Arkansas

General Governmental Tax Revenues by Source

Last Ten Years

(Accrual Basis of Accounting)

Table 5

Fiscal Year	Property Tax	Sales Tax	Franchise Fees	Alcoholic Beverage Tax	State Turnback	Total
2011	$ 6,119,288	$ 21,639,791	$ 4,396,945	$ 169,763	$ 2,808,320	$ 35,134,107
2012	5,967,805	24,481,899	3,991,999	209,418	2,729,108	37,380,229
2013	6,557,935	26,320,374	4,166,269	268,692	2,665,348	39,978,618
2014	6,944,206	26,383,529	4,477,679	122,817	2,758,749	40,686,980
2015	7,248,656	29,458,234	4,599,120	84,264	2,705,936	44,096,210
2016	7,757,246	30,117,108	4,788,966	83,388	2,756,242	45,502,950
2017	8,282,975	37,651,052	5,351,361	44,594	2,853,363	54,183,345
2018	8,277,403	35,725,644	5,653,246	33,075	3,843,744	53,533,112
2019	9,417,015	39,622,601	5,368,133	32,346	3,041,751	57,481,846
2020	10,023,405	43,279,794	5,506,867	19,075	3,050,062	61,879,203

City of Bentonville, Arkansas

Assessed Value and Estimated Actual Value of Taxable Property

Last Ten Years

(Accrual Basis of Accounting)

Table 6

Year	Real Property		Personal Property		Total		Ratio of Total Assessed to Total Estimated Actual	Total Direct Tax Rate
	Assessed Value	Appraised Value	Assessed Value	Appraised Value	Assessed Value	Appraised Value		
2011	$ 688,192,310	$ 3,440,961,550	$ 224,480,135	$ 1,122,400,675	$ 912,672,445	$ 4,563,362,225	20%	7.21
2012	670,208,790	3,351,043,950	220,159,580	1,100,797,900	890,368,370	4,451,841,850	20%	7.21
2013	650,904,030	3,254,520,150	216,773,975	1,083,869,875	867,678,005	4,338,390,025	20%	7.21
2014	676,758,590	3,383,792,950	237,407,225	1,187,036,125	914,165,815	4,570,829,075	20%	7.21
2015	705,786,280	3,528,931,400	232,724,835	1,163,624,175	938,511,115	4,692,555,575	20%	7.21
2016	797,846,320	3,989,231,600	242,977,585	1,214,887,925	1,040,823,905	5,204,119,525	20%	7.21
2017	860,870,020	4,304,350,100	228,387,060	1,141,935,300	1,089,257,080	5,446,285,400	20%	7.21
2018	932,331,250	4,661,656,250	254,551,795	1,272,758,975	1,186,883,045	5,934,415,225	20%	7.21
2019	999,284,800	4,996,424,000	252,661,590	1,263,307,950	1,251,946,390	6,259,731,950	20%	7.21
2020	1,044,561,240	5,222,806,200	279,520,050	1,397,600,250	1,324,081,290	6,620,406,450	20%	7.21

Source: Benton County

City of Bentonville, Arkansas

Property Tax Rates and Tax Levies – Direct and Overlapping Governments

Last Ten Years

Table 7

	City of Bentonville				Overlapping Rates			
Year	Firemen's Pension & Relief Fund	General Fund	Street Fund	Total	Benton County	Bentonville Public Schools	Northwest Arkansas Community College	Total Direct & Overlapping Rates
2011	0.50	5.00	1.71	7.21	6.90	43.70	3.00	60.81
2012	0.50	5.00	1.71	7.21	6.90	43.70	3.00	60.81
2013	0.50	5.00	1.71	7.21	6.90	46.60	2.60	63.31
2014	0.50	5.00	1.71	7.21	6.90	46.60	2.60	63.31
2015	0.50	5.00	1.71	7.21	7.10	43.70	2.60	60.61
2016	0.50	4.90	1.71	7.11	7.10	46.60	2.60	63.41
2017	0.50	5.00	1.71	7.21	7.10	48.50	2.60	65.41
2018	0.50	5.00	1.71	7.21	7.10	48.50	2.60	65.41
2019	0.50	5.00	1.71	7.21	7.10	48.50	2.60	65.41
2020	0.50	5.00	1.71	7.21	7.10	48.50	2.60	65.41

Source: Benton County

City of Bentonville, Arkansas
Principal Sales Taxpayers
Last Ten Years

The City of Bentonville, Arkansas's largest own-source revenue is sales taxes. Sales taxes primarily come from two separate taxes: a 2% city tax based on point of sale, and a portion of the county's 1% tax based on point of sale. In 2020, the city sales tax generated revenue of $33,864,294. The City's portion of the county sales tax generated revenue of $9,415,500.

According to Arkansas State Statutes, the City is required to keep the identity of individual tax payers confidential. Therefore, the City of Bentonville is not able to identify the top 10 tax payers. However, Bentonville enjoys a diverse economic sales tax base.

City of Bentonville, Arkansas

Principal Property Taxpayers

Last Ten Years

Table 8

Taxpayer	2020 Rank	2020 Taxable Assessed Value	2020 Percentage of Total Assesed Value	2010 Rank	2010 Taxable Assessed Value	2010 Percentage of Total Assesed Value
WAL-MART/Sam's Club	1	$ 171,228,355	12.93%	1	$ 165,433,200	17.79%
Atltus Group	2	13,119,600	0.99%	7	5,481,690	0.59%
Tyson Foods	3	12,984,055	0.99%	7	5,481,690	0.59%
Carroll Electric Cooperative	4	10,335,045	0.78%		N/A	N/A
American Electric Power	5	8,109,350	0.61%	5	6,908,000	0.74%
Bentonville Plaza Partners LLC	6	7,997,670	0.60%	3	7,443,030	0.80%
Cox Communications	7	7,736,070	0.58%	4	7,249,620	0.78%
Sourcegas Arkansas Inc.	8	6,967,055	0.53%		N/A	N/A
Walton Crossing Apartments	9	6,702,205	0.51%		N/A	N/A
BVPOA	10	6,147,280	0.46%		N/A	N/A
QHG of Springdale Inc D/B/A Bates Medical Center		N/A	N/A	2	15,151,990	1.63%
AT&T Mobility LLC		N/A	N/A	6	6,552,800	0.70%
Ozark Aircraft Systems LLC		N/A	N/A	8	4,784,090	0.51%
Southwestern Bell Telephone Company		N/A	N/A	9	4,433,875	0.48%
SH&S Partnership		N/A	N/A	10	4,072,630	0.44%

Source: Benton County

Principal Property Taxpayers as of 12/31/2011 was not available so 12/31/2010 will be used for comparison.

City of Bentonville, Arkansas

Property Tax Levies and Collection

Last Ten Years

Table 9

Fiscal Year	Tax Roll Year	Total Tax Levy	Current Tax Collections	Percentage of Levy Collected	Prior Years' Collections	Total Collections	Percentage of Total Collections to Tax Levy
2011	2010	$ 6,580,368	$ 6,094,456	92.62%	$ 481,817	$ 6,576,273	99.94%
2012	2011	6,419,556	5,963,375	92.89%	450,137	6,413,512	99.91%
2013	2012	6,255,958	6,010,852	96.08%	237,459	6,248,311	99.88%
2014	2013	6,591,136	6,462,685	98.05%	118,762	6,581,447	99.85%
2015	2014	6,766,665	6,571,243	97.11%	187,209	6,758,452	99.88%
2016	2015	7,504,340	6,659,403	88.74%	836,669	7,496,072	99.89%
2017	2016	7,744,618	7,300,908	94.27%	430,132	7,731,040	99.82%
2018	2017	8,557,427	7,705,319	90.04%	833,652	8,538,971	99.78%
2019	2018	9,026,533	8,352,832	92.54%	640,272	8,993,104	99.63%
2020	2019	9,546,626	8,871,308	92.93%	521,524	9,392,832	98.39%

Source: Benton County

Property assessments are made; tax rates are established; and taxes are levied in one year for payment by the taxpayer and collection by local government the following year. The tax levy for this schedule includes the city's levy for its general fund, street fund and fire pension plan.

Total Tax Levy and Current Tax Collections have been restated to include street fund portions.

City of Bentonville, Arkansas

Ratios of Outstanding Debt by Type

Last Ten Years

Table 10

Fiscal Year	Governmental Activities: Sales Tax Bonds	Business-Type Activities: Revenue Bonds	Total Primary Government	Percentage of Personal Income	Per Capita
2011	$ 71,451,626	$ 26,426,982	$ 97,878,608	7.19%	$ 2,773
2012	67,026,723	23,847,880	90,874,603	5.96%	2,574
2013	61,441,820	21,175,923	82,617,743	4.76%	2,340
2014	56,256,917	18,358,534	74,615,451	4.29%	2,114
2015	49,987,014	15,579,393	65,566,407	3.54%	1,857
2016	42,927,110	13,414,930	56,342,040	3.04%	1,596
2017	60,430,601	11,168,023	71,598,624	3.64%	2,028
2018	51,210,650	8,827,689	60,038,339	2.86%	1,701
2019	39,595,699	6,397,912	45,993,611	2.00%	1,303
2020	27,950,748	5,359,553	33,310,301	1.39%	944

(1) Personal Income is disclosed in Table 13
(2) Population is disclosed in Table 13

City of Bentonville, Arkansas
Ratios of General Bonded Debt Outstanding
Last Ten Years

As of December 31, 2020, the City has no general bonded debt outstanding.

City of Bentonville, Arkansas
Direct and Overlapping Governmental Activities Debt
December 31, 2020

Table 11

Governmental Unit	Debt Outstanding	Estimated Percentage Applicable	Amount Applicable to Primary Government
Bentonville School District (1) (2)	$ 334,540,220	58%	$ 194,033,328
Northwest Arkansas Community College (3) (4)	28,291,062	33%	9,336,050
Subtotal, overlapping debt			203,369,378
City of Bentonville, Arkansas direct debt			27,950,748
Total direct and overlapping debt			$ 231,320,126

Source: Outstanding debt amount from each governmental units most recent audited financial statements.
Note: The amount applicable to the City of Bentonville was estimated using population

(1) Amount as of 6/30/2020 which was the most recent Audited Financial Statements available
(2) Bentonville School District is comprised of multiple cities with an estimated population of 95,000 of which Bentonville is 54,909 or 58%
(3) Northwest Arkansas Community College was created by a property tax of residents that comprise the Bentonville and Rogers, AR school district. Population estimate for both areas is estimated at 168,694 of which Bentonville is 54,909 or 33%
(4) Amount as of 6/30/2020 which was the most recent Audited Financial Statements available

City of Bentonville, Arkansas
Legal Debt Margin Information
Last Ten Years

As of December 31, 2020, the City has no general obligation debt.

City of Bentonville, Arkansas

Pledged Revenue Coverage – Proprietary Funds

Last Ten Years

Table 12

Year	Operating Revenue	Operating Expenses	Net Revenue Available for Debt Service	Debt Service			Coverage
				Principal	Interest	Total	
2011	$ 76,436,148	$ 69,125,852	$ 7,310,296	$ 2,454,048	$ 1,035,743	$ 3,489,791	2.09
2012	76,829,744	69,301,586	7,528,158	2,561,628	939,169	3,500,797	2.15
2013	77,853,009	68,968,824	8,884,185	2,671,957	837,173	3,509,130	2.67
2014	85,487,267	76,977,920	8,509,347	2,817,389	730,046	3,547,435	2.40
2015	88,959,008	78,826,457	10,132,551	2,779,142	718,860	3,498,002	2.90
2016	91,567,054	85,384,256	6,182,798	2,170,954	603,337	2,774,291	2.07
2017	96,228,757	89,968,643	6,260,114	2,253,374	516,855	2,770,229	2.26
2018	100,889,330	90,228,298	10,661,032	2,346,801	422,677	2,769,478	3.85
2019	101,850,203	91,906,922	9,943,281	2,436,245	303,430	2,739,675	3.63
2020	101,792,768	93,442,172	8,350,596	1,043,456	232,836	1,276,292	6.54

City of Bentonville, Arkansas

Demographic and Economic Statistics

Last Ten Years

Table 13

Fiscal Year	City of Bentonville Population (1)	Benton County Population (1)	Per Capita Income (2)	Personal Income (3)	Unemployment Rate (4)
2011	35,301	221,339	42,317	1,493,832,417	5.90%
2012	35,301	221,339	48,371	1,707,544,671	5.50%
2013	35,301	221,339	47,363	1,671,961,263	4.90%
2014	35,301	221,339	51,809	1,828,909,509	4.00%
2015	35,301	221,339	52,509	1,853,620,209	3.20%
2016	35,301	221,339	52,509	1,853,620,209	2.70%
2017	35,301	221,339	55,729	1,967,289,429	2.70%
2018	35,301	221,339	59,425	2,097,761,925	2.50%
2019	54,909	279,141	65,306	3,585,887,154	2.30%
2020	54,909	279,141	67,771	3,721,237,839	3.50%

(1) U.S. Census Bureau
(2) Fayetteville-Springdale-Rogers MSA (of which Bentonville is a part of) information from the U.S. Federal Reserve Bank of St. Louis
(3) Calculated using City of Bentonville Population and Per Capita Income
(4) Bureau of Labor Statistics

City of Bentonville, Arkansas

Principal Employers

Last Ten Years

Table 14

Employer	2020 Rank	2020 Employees	2020 Percentage of Population 54,909 (1)	2010 Rank	2010 Employees	2010 Percentage of Population 35,301 (1)
Wal-Mart/Sam's Club	1	2,500+	4.55%	1	2,500+	7.08%
Mercy Health System of Northwest Arkansas	2	1000-2499	1.82%	8	200-299	0.57%
Bentonville School District	2	1000-2499	1.82%	2	1000-2499	2.83%
Northwest Arkansas Community College	4	500-999	0.91%	5	300-499	0.85%
Benton County	4	500-999	0.91%	3	500-999	1.42%
Cognizant	4	500-999	0.91%			
City of Bentonville	4	500-999	1.42%	5	300-499	0.85%
Arvest Bank Group, Inc.	8	300-499	0.55%	3	500-999	1.42%
Northwest Health System	8	300-499	0.55%	5	300-499	0.85%
Consumer Testing Laboratories	8	300-499	0.55%			
Outdoor Cap Company				8	200-299	0.57%
Fuji Film				8	200-299	0.57%

Source: Bentonville/Bella Vista Chamber of Commerce

(1) Low figure in the range of Employees used for calculation
(2) Data as of 2010 as 2011 statistics were not available.

157

City of Bentonville, Arkansas

Full-time Equivalent City Employees by Function

Last Ten Years

Table 15

	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011
Function										
Governmental Activities										
General government	75.5	71.5	72	91	59	65	64	67	64	65
Public Safety	229	212.5	191	199	189	175	174	161	162	154
Recreation	100.5	111.5	109	187	160	90	70	47	44	38
Street Department	25	23	23	26	29	23	23	22	22	22
Library	24	24.5	26	30	28	24	24	21	21	21
Total	454.0	443.0	421.0	532.0	463.5	377.0	354.5	317.5	312.0	299.0
Business-Type Activities										
Electric	49	46	41	43	42	37	36	36	36	36
Water	45	43	41	44	39	38	38	38	37	38
Wastewater	22	22	23	26	25	22	21	22	22	22
Support	22	24	23	26	23	21	21	22	22	23
Total	138	135	128	139	129	118	116	118	117	119
Total Primary Government	592	578	549	671	593	495	470.50	435.50	429.00	418.00

Source: Various city departments

City of Bentonville, Arkansas

Operating Indicators by Function

Last Ten Years

Table 16

Function	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011
Governmental Activities										
General Government										
Building Permits Issued	1,797	1,750	1,732	1,562	1,461	1,375	1,227	1,225	1,253	866
Building Inspections performed	13,979	19,570	21,079	19,613	19,380	19,514	14,228	16,222	13,782	9,920
Fire										
Fire related calls for service *	4,238	1,420	1,485	1,553	1,534	1,453	1,309	1,229	1,100	1,128
EMS related calls for service	5,804	5,534	5,304	4,788	4,786	4,665	4,141	3,772	3,826	3,779
Police										
Calls for service Police	69,239	70,483	66,312	59,100	57,193	53,140	48,402	40,320	35,888	30,555
Calls for service Fire/EMS	7,225	6,976	6,937	6,031	6,294	6,111	5,455	5,029	4,925	4,907
Physical arrests	3,782	3,981	3,544	3,601	3,405	3,319	2,891	2,572	2,763	2,490
9-1-1 Calls	16,429	17,336	15,642	16,078	16,779	16,907	18,779	17,857	14,942	14,355
Recreation										
Program Participants	223,237	735,491	728,955	726,364	661,897	320,655	171,563	160,592	97,152	**
Transportation										
Streets Overlayed each year (miles)	7	2	2	3	3	2	4	2	3	3
Library										
Library card holders	42,518	42,615	26,867	26,929	27,058	35,514	30,621	27,190	27,108	28,066
Visits	139,034	319,697	302,398	296,311	300,766	298,585	296,819	296,031	300,652	277,059
Circulation (checkouts or materials)	551,135	725,056	667,538	675,787	679,444	651,289	602,218	560,778	541,028	482,198
Business-Type Activities										
Electric, Water, Wastewater Support Activities										
Meters read	610,224	599,999	572,648	555,128	530,850	503,834	483,297	466,085	450,585	438,307
Payments Processed (dollars)	$ 90,995,518	$ 94,437,561	$ 93,810,989	$ 90,026,317	$ 88,326,913	$ 84,237,799	$ 84,480,153	$ 73,951,337	$ 72,493,590	$ 70,010,486
Payments Processed (transactions)	226,616	215,614	206,971	193,627	190,814	185,954	188,519	182,333	177,907	173,423

** Data not available for given period.

Source: Various city departments

* Adjusted totals for Fire Related Calls in years 2009-2016

159

City of Bentonville, Arkansas

Capital Assets Statistics by Function

Last Ten Years

Table 17

Function	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011
Governmental Activities										
General Government										
Number of general government buildings	4	4	4	4	4	4	4	4	4	4
Fire										
Fire Trucks available each year	9	8	8	8	8	8	7	7	7	7
Ambulances available each year	5	6	7	7	7	7	6	6	6	6
Fire Stations	7	6	6	6	6	6	5	5	5	5
Police										
Police Units (cars/trucks) that were available each year	103	94	91	89	85	83	80	77	70	69
Recreation										
Parks Acreage	341	341	341	341	341	341	311	311	311	309
Number of Parks	20	20	20	20	20	20	19	19	19	18
Number of Trails	28	28	27	25	25	24	23	23	23	21
Baseball/softball fields	20	24	24	24	24	24	24	24	24	24
Soccer Fields / Football Fields	16	16	16	16	16	16	13	13	10	10
Tennis Courts	22	22	14	14	14	14	14	14	14	14
Basketball Courts	5	5	5	5	5	5	4	4	4	4
Swimming Pools / Splash Parks	4	4	4	4	4	4	2	2	2	2
Ice Rink	1	1	1	1	1	1	1	1	1	1
Indoor Rec Center	2	2	2	2	2	2	1	1	1	1
Transportation										
Total Paved Streets (miles)	296	284	288	274	261	250	253	246	244	237
Traffic Signals	52	50	49	45	45	41	41	41	41	41
Library										
Items Available for checkout	154,953	149,962	143,760	135,568	134,725	131,070	121,905	114,238	111,887	103,000
Business-Type Activities										
Electric										
Electric Substations	9	9	9	9	9	9	9	9	9	8
Electric Lines (miles)										
Distribution	989.00	982.10	925.50	915.68	885.88	846.25	837.40	723.50	699.50	669.00
Transmission	16.32	16.32	16.32	16.32	16.32	16.32	16.32	16.32	16.32	**
Water										
Water Lines (miles)	336.69	330.71	325.60	321.90	314.40	307.30	301.60	298.30	290.50	288.30
Sewer Lines (miles)	314.99	311.25	308.40	305.80	300.40	294.20	289.30	287.20	283.60	282.00

** Data not available for given period.

Source: Various city departments.

City of Bentonville, Arkansas

Waste and Wastewater Rates

December 31, 2020

Table 18

	Per 1,000 gallons				
	Water			Wastewater	
	Residental	Irrigation	Commerical	Residental	Commerical
Inside City monthly usage rates					
First 4,000 gallons of water	$ 3.58	N/A	N/A	N/A	N/A
Next 6,000 gallons of water	3.93	N/A	N/A	N/A	N/A
Over 10,000 gallons of water	5.43	N/A	N/A	N/A	N/A
All Consumption	N/A	$ 4.73	$ 3.76	$ 7.69	$ 8.22
Outside City monthly usage rates					
First 4,000 gallons of water	$ 4.30	N/A	N/A	N/A	N/A
Next 6,000 gallons of water	4.72	N/A	N/A	N/A	N/A
Over 10,000 gallons of water	6.52	N/A	N/A	N/A	N/A
All Consumption	N/A	$ 5.68	$ 4.51	$ 9.23	$ 9.86

	Rate per Month			
	Water	Irrigation	Wastewater	
			Residential	Commerical
Meter rates				
5/8" meter	$ 7.71	$ 10.14	$ 13.41	$ 14.33
3/4" meter	7.71	10.14	13.41	14.33
1" meter	19.28	25.66	44.16	47.19
1-1/2" meter	83.55	109.97	164.05	175.31
2" meter	89.98	118.52	175.15	187.17
3" meter	134.97	177.16	257.30	274.95
4" meter	385.63	507.06	721.32	770.81
6" meter	835.54	1,099.64	1,553.89	1,660.50

City of Bentonville, Arkansas

Schedule of Electric, Water and Wastewater Customers
And Annual Billable Water Gallons
December 31, 2020

Table 19

Type	Number of Customers
Electric	26,275
Water	22,784
Wastewater	18,551

Year Ended December 31, 2020	Gallons
Annual billable water gallons	2,679,345

City of Bentonville, Arkansas

Schedule of Insurance Coverage

December 31, 2020

Table 20

Policy Coverage	Policy Period	Coverage	Insurer
Property	7-8-20 to 7-8-21	$ 208,510,333	Affliated FM Insurance Company
Municipal vehicles - Includes property and bodily injury	1-1-20 to 1-1-21	$25,000 for one person, $50,000 for multiple person	Arkansas Municipal League
Fraudulent or dishonest acts	7-1-20 to 6-30-21	$ 300,000	Arkansas Fidelity Bond Trust Fund

Single Audit Section

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City of Bentonville, Arkansas
Schedule of Expenditures of Federal Awards
Year Ended December 31, 2020

Federal Grantor/Pass-through Grantor/Program or Cluster Title	Federal CFDA Number	Pass-through Entity Identifying Number	Passed Through to Subrecipients	Total Federal Expenditures
Department of Transportation Programs				
Highway Planning and Construction Cluster				
U.S. Department of Transportation/Arkansas State Highway and Transportation Department/Highway Planning and Construction	20.205	AHTD #090218 LY10-3314-001	$ -	$ 316,710
		Cluster Total	-	316,710
U.S. Department of Transportation/Airport Improvement Program	20.106		-	122,141
		Total Department of Transportation Programs	-	438,851
Department of Treasury				
U.S. Department of Treasury/State of Arkansas/COVID- 19 Coronavirus Relief Fund	21.019	N/A	-	1,578,493
		Total Department of Treasury Programs	-	1,578,493
United States Environmental Protection Agency				
U.S. Environmental Protection Agency/Regional Wetland Development Program	66.461		-	198,839
		Total United States Environmental Protection Agency	-	198,839
		Total Expenditures of Federal Awards	$ -	$ 2,216,183

The accompanying notes are an integral part of this Schedule.

City of Bentonville, Arkansas

Notes to the Schedule of Expenditures of Federal Awards

Year Ended December 31, 2020

Notes to Schedule

1. The accompanying schedule of expenditures of federal awards (the "Schedule") includes the federal award activity of City under programs of the federal government for the year ended December 31, 2020. The information in this Schedule is presented in accordance with the requirements of Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). Because the Schedule presents only a selected portion of the operations of the City, it is not intended to and does not present the financial position, changes in net position or cash flows of the City.

2. Expenditures reported on the Schedule are reported on the accrual basis of accounting. Such expenditures are recognized following the cost principles contained in the Uniform Guidance or other applicable regulatory guidance, wherein certain types of expenditures are not allowable or are limited as to reimbursement. The City has elected not to use the 10 percent de minimis indirect cost rate allowed under the Uniform Guidance.

BKD
CPAs & Advisors

809 S. 52nd Street, Suite A | P.O. Box 1893 | Rogers, AR 72757-1893
479.845.0270 | Fax 479.845.0840 | bkd.com

Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*

Independent Auditor's Report

The Honorable Mayor and Members of the City Council
City of Bentonville, Arkansas
Bentonville, Arkansas

We have audited, in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, the financial statements of the governmental activities, the business-type activities, each major fund and the aggregate remaining fund information of the City of Bentonville, Arkansas (the City), for the year ended December 31, 2020, and the related notes to the financial statements, which collectively compromise the City's basic financial statements and have issued our report thereon dated June 15, 2021.

Internal Control over Financial Reporting

In planning and performing our audits of the financial statements, we considered the City's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the City's internal control. Accordingly, we do not express an opinion on the effectiveness of the City's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the City's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

BKD, LLP

Rogers, Arkansas
June 15, 2021

BKD
CPAs & Advisors

809 S. 52nd Street, Suite A | P.O. Box 1893 | Rogers, AR 72757-1893
479.845.0270 | Fax 479.845.0840 | bkd.com

Report on Compliance for the Major Federal Program and Report on Internal Control Over Compliance

Independent Auditor's Report

The Honorable Mayor and Members of the City Council
City of Bentonville, Arkansas
Bentonville, Arkansas

Report on Compliance for the Major Federal Program

We have audited the City of Bentonville's (the City) compliance with the types of compliance requirements described in the *OMB Compliance Supplement* that could have a direct and material effect on the City's major federal program for the year ended December 31, 2020. The City's major federal program is identified in the summary of auditor's results section of the accompanying schedule of findings and questioned costs.

Management's Responsibility

Management is responsible for compliance with federal statutes, regulations and the terms and conditions of its federal awards applicable to its federal programs.

Auditor's Responsibility

Our responsibility is to express an opinion on compliance for the City's major federal program based on our audit of the types of compliance requirements referred to above. We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and the audit requirements of Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). Those standards and the Uniform Guidance require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the types of compliance requirements referred to above that could have a direct and material effect on a major federal program occurred. An audit includes examining, on a test basis, evidence about the City's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances.

We believe that our audit provides a reasonable basis for our opinion on compliance for the major federal program. However, our audit does not provide a legal determination of the City's compliance.

Opinion on the Major Federal Program

In our opinion, the City of Bentonville, Arkansas complied, in all material respects, with the types of compliance requirements referred to above that could have a direct and material effect on its major federal program for the year ended December 31, 2020.

Report on Internal Control over Compliance

Management of the City is responsible for establishing and maintaining effective internal control over compliance with the types of compliance requirements referred to above. In planning and performing our audit of compliance, we considered the City's internal control over compliance with the types of requirements that could have a direct and material effect on the major federal program to determine the auditing procedures that are appropriate in the circumstances for the purpose of expressing an opinion on compliance for the major federal program and to test and report on internal control over compliance in accordance with the Uniform Guidance, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of the City's internal control over compliance.

A *deficiency in internal control over compliance* exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of compliance requirement of a federal program on a timely basis. A *material weakness in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance with a type of compliance requirement of a federal program that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over compliance was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies. We did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

The purpose of this report on internal control over compliance is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance. Accordingly, this report is not suitable for any other purpose.

BKD, LLP

Rogers, Arkansas
June 15, 2021

City of Bentonville, Arkansas
Schedule of Findings and Questioned Costs
Year Ended December 31, 2020

Summary of Auditor's Results

Financial Statements

1. The type of report the auditor issued on whether the financial statements audited were prepared in accordance with accounting principles generally accepted in the United States of America (GAAP) was:

   ☒ Unmodified ☐ Qualified ☐ Adverse ☐ Disclaimer

2. The independent auditor's report on internal control over financial reporting disclosed:

Significant deficiency(ies)?	☐ Yes	☒ None reported
Material weakness(es)?	☐ Yes	☒ No

3. Noncompliance considered material to the financial statements was disclosed by the audit? ☐ Yes ☒ No

Federal Awards

4. The independent auditor's report on internal control over compliance for major federal awards programs disclosed:

Significant deficiency(ies)?	☐ Yes	☒ None reported
Material weakness(es)?	☐ Yes	☒ No

5. The opinion(s) expressed in the independent auditor's report on compliance for major federal awards was (were):

   (Check each description that applies. If any other than unmodified apply, also list the name of each major program by the type of opinion applicable to that program.)

   ☒ Unmodified ☐ Qualified ☐ Adverse ☐ Disclaimer

6. The audit disclosed findings required to be reported by 2 CFR 200.516(a)? ☐ Yes ☒ No

City of Bentonville, Arkansas

Schedule of Findings and Questioned Costs (Continued)

Year Ended December 31, 2020

7. The City's major program was:

Cluster/Program	Assistance Listing Number
COVID-19 Coronavirus Relief Fund	21.019

8. The threshold used to distinguish between Type A and Type B programs was $750,000.

9. The City qualified as a low-risk auditee? ☐ Yes ☒ No

City of Bentonville, Arkansas

Schedule of Findings and Questioned Costs (Continued)

Year Ended December 31, 2020

Findings Required to be Reported by *Government Auditing Standards*

Reference Number	Finding
	No matters are reportable.

Findings Required to be Reported by the Uniform Guidance

Reference Number	Finding
	No matters are reportable.

City of Bentonville, Arkansas

Summary Schedule of Prior Audit Findings

Year Ended December 31, 2020

Reference Number	Summary of Finding	Status
	No matters are reportable.	

Other Required Reports

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BKD
CPAs & Advisors

809 S. 52nd Street, Suite A | P.O. Box 1893 | Rogers, AR 72757-1893
479.845.0270 | Fax 479.845.0840 | bkd.com

Independent Accountant's Report on Compliance With Arkansas State Requirements

The Honorable Mayor and Members of the City Council
City of Bentonville, Arkansas
Bentonville, Arkansas

We have examined management of the City of Bentonville, Arkansas's assertions that the City of Bentonville, Arkansas complied with the requirements of Arkansas Act 15 of 1985 and the following Arkansas statutes during the year ended December 31, 2020.

(1) Arkansas Municipal Accounting Law of 1973, § 14-59-101 et seq.;

(2) Arkansas District Courts and City Courts Accounting Law, § 16-10-201 et seq.;

(3) Improvement contracts, §§ 22-9-202 – 22-9-204;

(4) Budgets, purchases, and payments of claims, etc., § 14-58-201 et seq. and 14-58-301 et seq.;

(5) Investment of public funds, § 19-1-501 et seq.; and

(6) Deposit of public funds, §§ 19-8-101 – 19-8-107.

Management is responsible for its assertion. Our responsibility is to express an opinion on management's assertion about the City's compliance with the aforementioned requirements above based upon on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. Those standards require that we plan and perform the examination to obtain reasonable assurance about whether management's assertion is fairly stated, in all material respects. An examination involves performing procedures to obtain evidence about management's assertion. The nature, timing and extent of the procedures selected depend on our judgment, including an assessment of the risks of material misstatement of management's assertion, whether due to fraud or error. We believe that the evidence we obtained is sufficient and appropriate to provide a reasonable basis for our opinion.

Our examination does not provide a legal determination on the City's compliance with specified requirements.

In our opinion, management's assertion that the City of Bentonville, Arkansas complied with the aforementioned requirements during the year ended December 31, 2020, is fairly stated, in all material respects.

This report is intended solely for the information and use of the governing body, management, and the State of Arkansas and is not intended to be and should not be used by anyone other than these specified parties.

BKD, LLP

Rogers, Arkansas
June 15, 2021

City Council Agenda Items

For the City Council Meeting of September 14, 2021

From the September 7, 2021 Planning Commission Meeting

1. **An Ordinance accepting a lot split of Lot 1 of Romi Subdivision to the City of Bentonville, Arkansas (Project Number: LS21-0040).**

   The Planning Commission voted 7-0, recommending approval.

   A lot split of unplatted section land creating new Lot 1 (+/- 0.78 acres) of Romi Subdivision. The plat dedicates right-of-way along SE 14th Street to meet the requirements of the Master Street Plan and various utility and access easements.

2. **An Ordinance accepting a lot split of Lot 11 of Dean Maxwell First Addition to the City of Bentonville, Arkansas (Project Number: LS21-0042).**

   The Planning Commission voted 7-0, recommending approval.

   A lot split of Lot 5 of Dean Maxwell First Addition creating new Lot 11 (+/- 0.215 acres) of Dean Maxwell First Addition. The plat dedicates right-of-way along NW Fifth Street to meet the requirements of the Master Street Plan and a 15-foot utility easement.

3. **An Ordinance accepting a property line adjustment of Lots 1 & 2 of 102 West Apartments Addition to the City of Bentonville, Arkansas (Project Number: PLA21-0026).**

   The Planning Commission voted 7-0, recommending approval.

   A property line adjustment of existing Lot 2 of Macs Addition and the western portion of Lot A of Joe Clement Addition, creating new Lot 1 (+/- 6.30 acres) and Lot 2 (+/- 10.20 acres) of 102 West Apartments Addition. The plat dedicates right-of-way for SW Bright Road as indicated on the Master Street Plan as well as various utility & drainage easements to serve the lots. The plat also dedicates various public access easements to allow cross access to the east and west.

4a. **Resolution adopting revision to the Future Land Use Map changing real estate from Residential Estate to Medium Density Two Family and Townhome Residential, (Project Number: RZ21-0044).**

   The Planning Commission voted 6-1, recommending approval.

   NOTE: The applicant requested they amend their original request from High Density Residential to Medium Density Residential during the Planning Commission meeting.

   The Future Land Use Plan currently depicts this property as Residential Estate. The applicant is requesting a change in the Future Land Use Plan to High Density Residential. High Density Residential areas typically include apartments, condominium buildings, senior housing, and special types of group living.

This rezoning request is not consistent with the Future Land Use Plan, however, it is consistent with surrounding zoning districts as there are existing R-3 lots directly to the south.

4b. Ordinance changing real estate in the City of Bentonville, Arkansas, from its present zoning classification of A-1, Agricultural to R-2, Medium Density Two Family and Townhome Residential. (Project Number: RZ21-0044).

The Planning Commission voted 6-1, recommending approval.

NOTE: The applicant requested they amend their original request from R-3, Medium High Multifamily Residential to R-2, Medium Density Two Family and Townhome Residential during the Planning Commission meeting.

The Future Land Use Plan currently depicts this property as Residential Estate. The applicant is requesting a change in the Future Land Use Plan to High Density Residential. High Density Residential areas typically include apartments, condominium buildings, senior housing, and special types of group living.

This rezoning request is not consistent with the Future Land Use Plan, however, it is consistent with surrounding zoning districts as there are existing R-3 lots directly to the south.

5a. Resolution adopting revision to the Future Land Use Map changing real estate from High Density Residential to Low Density Residential and Neighborhood Commercial, (Project Number: RZ21-0046).

The Planning Commission voted 7-0, recommending approval.

The Future Land Use Plan currently depicts this property as Agricultural. The applicant is requesting a change in the Future Land Use Plan to Low Density Residential and General Commercial. Low Density Residential areas include detached single-family residential properties with a typical density of 3-8 units per acre.

The rezoning request to R-1 is consistent and compatible with existing land uses. The rezoning request to C-2 is not compatible with the surrounding neighborhood uses, but staff would support a request to C-1 as that would provide a smoother transition from the single-family homes. Staff recommends approval of the Future Land Use Amendments and the rezoning to R-1, but not the rezoning to C-2.

5b. Ordinance changing real estate in the City of Bentonville, Arkansas, from its present zoning classification of A-1, Agricultural to R-1, Low Density Single Family Residential, C-1, Neighborhood Commercial. (Project Number: RZ21-0046).

The Planning Commission voted 7-0, recommending approval.

NOTE: The applicant requested they amend their original request from C-2, General Commercial to C-1, Neighborhood Commercial during the Planning Commission meeting.

The Future Land Use Plan currently depicts this property as Agricultural. The applicant is requesting a change in the Future Land Use Plan to Low Density Residential and General Commercial. Low Density Residential areas include detached single-family residential properties with a typical density of 3-8 units per acre.

The rezoning request to R-1 is consistent and compatible with existing land uses. The rezoning request to C-2 is not compatible with the surrounding neighborhood uses, but staff would support a request to C-1 as that would provide a smoother transition from the single-family homes. Staff recommends approval of the Future Land Use Amendments and the rezoning to R-1, but not the rezoning to C-2.

6. 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: RZ21-0049).

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.

7. 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: RZ21-0050).

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.

8. Ordinance changing real estate in the City of Bentonville, Arkansas, from its present zoning classification of PUD, Planned Unit Development to R-3, Medium-High Density Multifamily Residential. (Project Number: RZ21-0052).

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 R-3 zoning districts in the surrounding area.

Consent Agenda Items

For the Planning Commission meeting of September 7, 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: Lot 1 of Romi Subdivision, Romi Investments, LLC, 1080 SE 14th Street, C-2, General Commercial, *LS21-0040*

A lot split of unplatted section land creating new Lot 1 (+/- 0.78 acres) of Romi Subdivision. The plat dedicates right-of-way along SE 14th Street to meet the requirements of the Master Street Plan and various utility and access easements.

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

Lot Split: Lot 11 of Dean Maxwell First Addition, Abraham Thaddeus Grindle and Kobika Arani Kajenthira, 710 NW 5th Street, R-1, Low Density Single Family Residential, *LS21-0042*

A lot split of Lot 5 of Dean Maxwell First Addition creating new Lot 11 (+/- 0.215 acres) of Dean Maxwell First Addition. The plat dedicates right-of-way along NW 5th Street to meet the requirements of the Master Street Plan and a 15 foot utility easement.

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

Property Line Adjustment: Lot 1 & 2, 102 West Apartments Addition, G & I Properties, LLC, SW 14th Street, R-3, Medium-High Density Multifamily Residential, *PLA21-0026*

A property line adjustment of existing Lot 2 of Macs Addition and the western portion of Lot A of Joe Clement Addition, creating new Lot 1 (+/- 6.30 acres) and Lot 2 (+/- 10.20 acres) of 102 West Apartments Addition. The plat dedicates right-of-way for SW Bright Road as indicated on the Master Street Plan as well as various utility & drainage easements to serve the lots. The plat also dedicates various public access easements to allow cross access to the east and west.

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

Preliminary Plat Extension: Rolling Acres Phase 4, SW Wheatgrass Blvd., R-1, Low Density Single Family Residential, *PP20-0001*

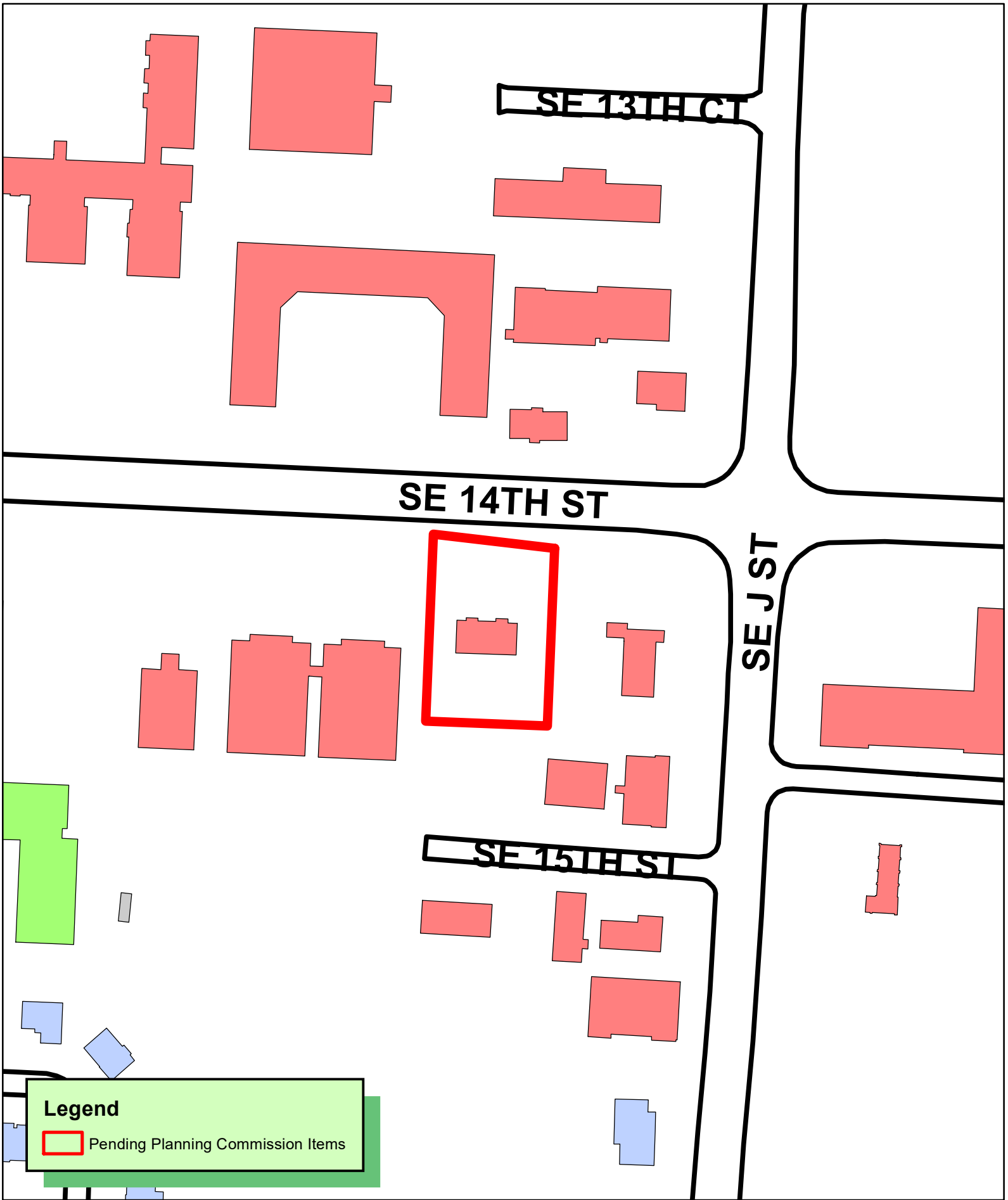
Extension of a Preliminary Plat that proposes the development of a 20 lot subdivision to be known as Rolling Acres Phase IV. All non-bondable items and guarantees of improvements must be complete and a final inspection performed and approved prior to final platting.

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

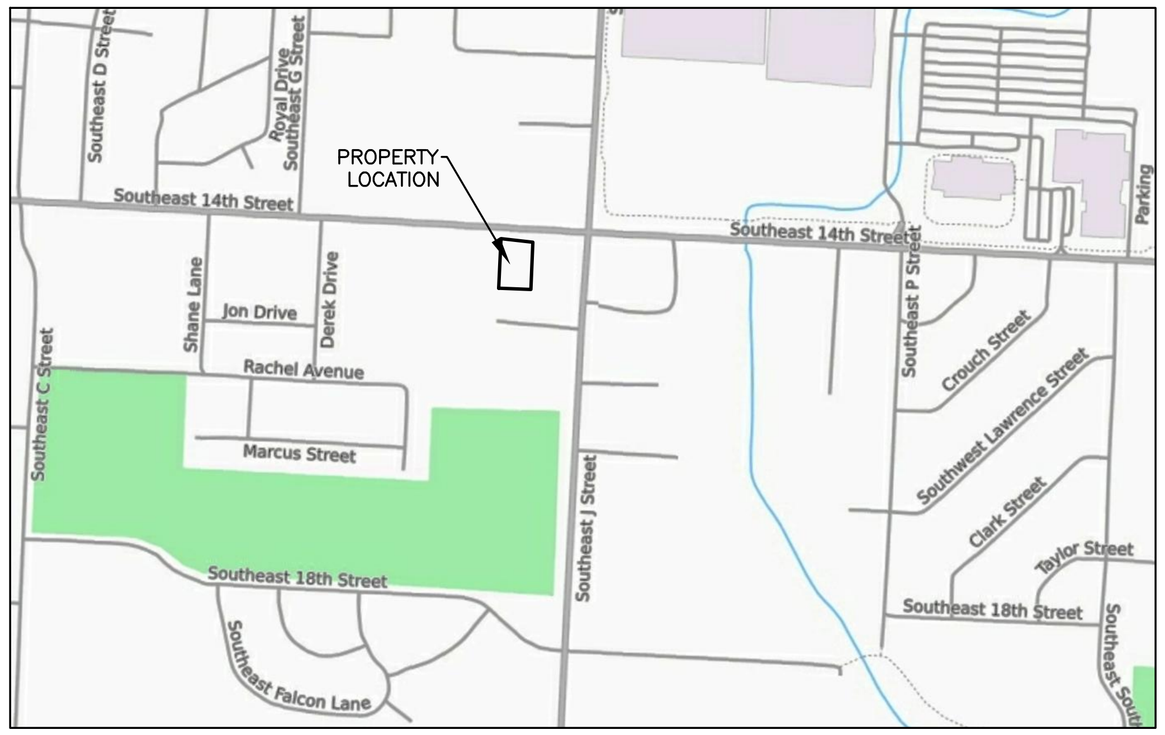
Large-Scale Development: Walmart Campus Zone 2N, Walmart, 1400 SE 5th Steet, PUD, Planned Unit Development, *LSD21-0042*

A large-scale development proposing the construction of a fitness center. Sidewalks, landscaping, grading/drainage, and site amenities are per the requirements of the Land Development Code. Access to the project will be achieved through shared access on S 5th Street. The primary materials on the exterior of the building include glass, architectural metal panel, and concrete.

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



LS21-0040
LOT SPLIT
1080 SE 14TH ST
PARCEL 01-00041-003



VICINITY MAP
SCALE: 1" = 500'

PARENT TRACT SURVEY DESCRIPTION (1080 SE 14th Street, Bentonville)

Part of the fractional Northeast Quarter (NE/4) of the Northwest Quarter (NW/4) of Section 5, Township 19 North, Range 30 West in Benton County, Arkansas being more particularly described as follows:

Commencing at the Northeast corner of said fractional NE/4 of the NW/4 being in the center of SE 14th Street (a.k.a Arkansas State Highway 102), Bentonville, Arkansas; thence N 87°37'33" W, 240.00 feet along the North line of said NE/4 of the NW/4 and said center of SE 14th Street; thence S 02°22'22" W, 55.35 feet to an existing rebar on the South right of way line of said SE 14th Street marking the Northwest corner of Lot 1 Arvest Bank Addition and being the Point of Beginning; thence S 02°22'53" W, 219.64 feet along the West line of said Lot 1 Arvest Bank Addition to an existing rebar marking the Southwest corner of said Lot 1 Arvest Bank Addition being on the North line of Lot 2 Mathews Subdivision; thence N 87°40'27" W, 150.14 feet along the North line of Lot 2 and Lot 3 of said Mathews Subdivision to a set rebar marking the Northwest corner of said Lot 3 being on the East line of Tract D–1A Alliance Subdivision; thence along said East line N 02°24'53" E, 231.01 feet to the South right of way line of said Highway 102; thence along said South right of way line S 83°20'16" E, 150.42 feet to the point of beginning, containing 33,814.15 square feet or 0.78 Acre, more or less, being subject to public road rights of way and any easements of record.

LOT 1 DESCRIPTION (1080 SE 14th Street, Bentonville)

Part of the fractional Northeast Quarter (NE/4) of the Northwest Quarter (NW/4) of Section 5, Township 19 North, Range 30 West in Benton County, Arkansas being more particularly described as follows:

Commencing at the Northeast corner of said fractional NE/4 of the NW/4 being in the center of SE 14th Street (a.k.a. Arkansas State Highway 102), Bentonville, Arkansas; thence N 87°37'33" W, 240.00 feet along the North line of said NE/4 of the NW/4 and said center of SE 14th Street; thence S 02°22'22" W, 55.35 feet to an existing rebar on the South right of way line of said SE 14th Street marking the Northwest corner of Lot 1 Arvest Bank Addition and being the Point of Beginning; thence S 02°22'53" W, 219.64 feet along the West line of said Lot 1 Arvest Bank Addition to an existing rebar marking the Southwest corner of said Lot 1 Arvest Bank Addition being on the North line of Lot 2 Mathews Subdivision; thence N 87°40'27" W, 150.14 feet along the North line of Lot 2 and Lot 3 of said Mathews Subdivision to a set rebar marking the Northwest corner of said Lot 3 being on the East line of Tract D–1A Alliance Subdivision; thence along said East line N 02°24'53" E, 230.13 feet to the South right of way line of said SE 14th Street; thence along said South right of way line S 87°37'33" E, 11.78 feet to the South right of way line of Arkansas State Highway 102; thence S 83°20'16" E, 138.61 feet to the point of beginning, containing 33,808.95 square feet or 0.78 Acre, more or less, being subject to public road rights of way and any easements of record.

LEGEND

PROPERTY LINE	
STREET CENTERLINE	
ADJACENT PROPERTY LINE	
RIGHT OF WAY LINE	R/W
LOT LINE	
EASEMENT LINE (NEW)	
EASEMENT LINE (EXISTING)	

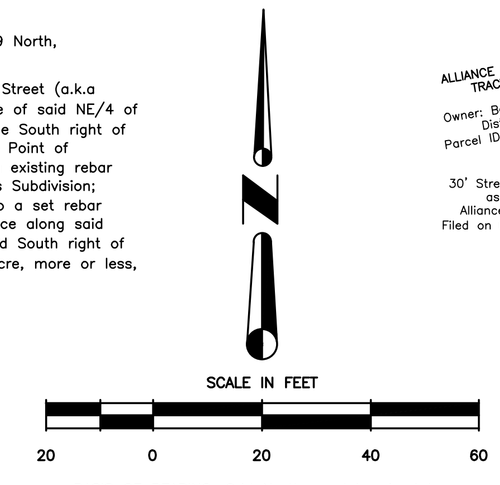
ZONING
CURRENT ZONING IS GENERAL COMMERCIAL (C–2)

AREA
GROSS AREA OF ORIGINAL TRACT IS 0.78 ACRE, 33,814.15 Sq.Ft.
AREA AFTER CURRENT ROW DEDICATION IS 0.78 ACRE, 33,808.95 Sq.Ft.

DEVELOPMENT PLAN
PROPERTY WILL REMAIN TO BE USED AS COMMERCIAL BUSINESS WITH SOME REMODELING OF EXISTING STRUCTURE.

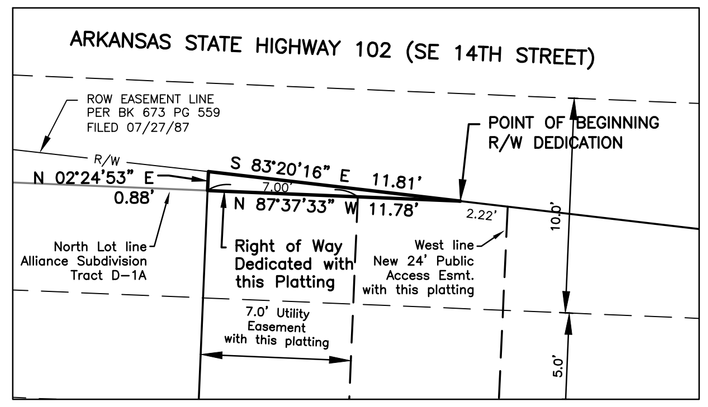
BUILDING SETBACKS
Setbacks shall be per the current zoning district as stated in the most recent City of Bentonville Zoning Code. For more info visit www.bentonvilleplanning.com or call the Planning Department at 479–271–3122.

FLOOD ZONE STATEMENT
FROM THE FLOOD INSURANCE RATE MAP FOR BENTON COUNTY, ARKANSAS AND INCORPORATED AREAS, MAP NO 05007C0255K EFFECTIVE JUNE 05, 2012, THIS PROPERTY DOES NOT LIE WITHIN A DESIGNATED FLOOD HAZARD AREA.



BASIS OF BEARING: Grid North as determined by GPS observation

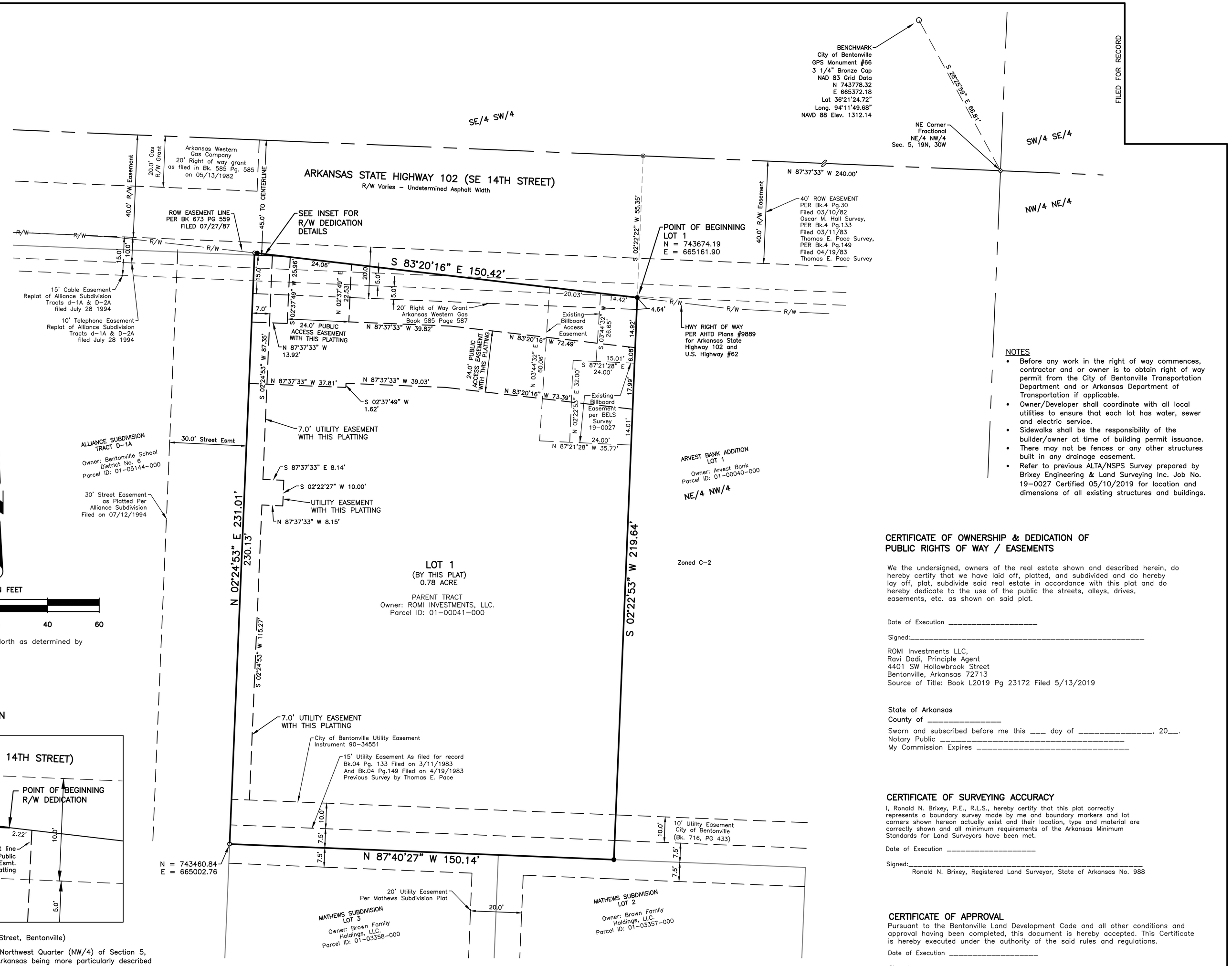
R/W DEDICATION
NOT TO SCALE



RIGHT OF WAY DEDICATION DESCRIPTION (1080 SE 14th Street, Bentonville)

Part of the fractional Northeast Quarter (NE/4) of the Northwest Quarter (NW/4) of Section 5, Township 19 North, Range 30 West in Benton County, Arkansas being more particularly described as follows:

Commencing at the Northeast corner of said fractional NE/4 of the NW/4 being in the center of SE 14th Street, Bentonville, Arkansas; thence N 87°37'33" W, 240.00 feet along the North line of said NE/4 of the NW/4 and said center of Arkansas State Highway 102 (also known as SE 14th Street); thence S 02°22'22" W, 55.35 feet to an existing rebar on the South right of way line of said Highway marking the Northwest corner of Lot 1 Arvest Bank Addition; thence along said South right of way line N 83°20'16" W, 138.61 feet to the Point of Beginning; thence N 87°37'33" W, 11.78 feet along the proposed South right of way of SE 14th Street to the East line of Tract D–1A Alliance Subdivision; thence along said East line N 02°24'53" E, 0.88 feet to the existing South right of way line of said Highway; thence along said Highway right of way line S 83°20'16" E, 11.81 feet to the point of beginning, containing 5.20 square feet.



NOTES
- 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 and or Arkansas Department of Transportation if applicable.
- Owner/Developer shall coordinate with all local utilities to ensure that each lot has water, sewer and electric service.
- Sidewalks shall be the responsibility of the builder/owner at time of building permit issuance.
- There may not be fences or any other structures built in any drainage easement.
- Refer to previous ALTA/NSPS Survey prepared by Brixey Engineering & Land Surveying Inc. Job No. 19–0027 Certified 05/10/2019 for location and dimensions of all existing structures and buildings.

CERTIFICATE OF OWNERSHIP & DEDICATION OF PUBLIC RIGHTS OF WAY / EASEMENTS

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:_____

ROMI Investments LLC,
Ravi Dadi, Principle Agent
4401 SW Hollowbrook Street
Bentonville, Arkansas 72713
Source of Title: Book L2019 Pg 23172 Filed 5/13/2019

State of Arkansas
County of _____

Sworn and subscribed before me this ___ day of _____, 20___.
Notary Public _____
My Commission Expires _____

CERTIFICATE OF SURVEYING ACCURACY

I, Ronald N. Brixey, P.E., R.L.S., 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 _____

Signed:_____
Ronald N. Brixey, Registered Land Surveyor, State of Arkansas No. 988

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:_____
BENTONVILLE PLANNING COMMISSION CHAIRMAN

Signed:_____
MAYOR – CITY OF BENTONVILLE

Signed:_____
CITY CLERK – CITY OF BENTONVILLE

ROMI SUBDIVISION

AN ADDITION TO THE CITY OF BENTONVILLE BEING
PART OF THE FRACTIONAL NORTHEAST QUARTER
OF THE NORTHWEST QUARTER
SECTION 5, TOWNSHIP 19 NORTH, RANGE 30 WEST
BENTON COUNTY, ARKANSAS

BRIXEY ENGINEERING & LAND SURVEYING, INC.
CONSULTING ENGINEERS -- LAND SURVEYORS
5223 East Highway 45 P.O. Box 6180 Fort Smith, Arkansas 72906 (479) 646-6394

© BRIXEY ENGINEERING & LAND SURVEYING, INC. 2021
Any unauthorized use of this drawing or data by others is at the sole risk of the user. Brixey Engineering & Land Surveying, Inc. shall be held harmless and without liability from claims, costs or damages of any nature including costs of defense arising from improper use of this drawing or data, or by another party.

CERTIFICATE OF AUTHORIZATION — BRIXEY ENGINEERING & LAND SURVEYING, INCORPORATED — NO. 98 — ARKANSAS ENGINEER

REGISTERED PROFESSIONAL LAND SURVEYOR — STATE OF ARKANSAS NO. 988 — RONALD N. BRIXEY — 2019 — SIGNATURE

LEGEND
Computed Point
Set Iron Pin
Exist. Iron Pin
Set R.R. Spike
Exist. R.R. Spike
Set Nail
Exist. Nail
Exist. Stone
Exist. Monument
Exist. Fence

Revisions:
07/27/2021 Addressed City Comments
08/17/2021 Additional City Comments

G:\SURVEY21\21-0311 DADI\21-0311 ADMIN PLAT 2021.dwg

LOT SPLIT CREATING
ROMI SUBDIVISION – LOT 1
PART OF THE NE/4 OF THE NW/4
SECTION 05, T–19–N, R–30–W
BENTON COUNTY, ARKANSAS

Date: 07/22/2021
Drawn By: RJA
Computed by: RNB
Job No. 21–0311
City of Bentonville Project LS21–0040

185

ORDINANCE NO._____

AN ORDINANCE ACCEPTING A LOT SPLIT OF LOT 1 OF ROMI SUBDIVISION TO THE CITY OF BENTONVILLE, ARKANSAS (PROJECT NUMBER: LS21-0040).

WHEREAS, pursuant to the provisions of the Land Development Code of the Bentonville Municipal Code, the lot split of Lot 1 of Romi Subdivision, Benton County, Arkansas, was submitted to the Bentonville Planning Commission on September 7, 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 Lot 1 of Romi Subdivision to the City of Bentonville, Arkansas, should be and the same is hereby accepted and approved for all purposes.

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

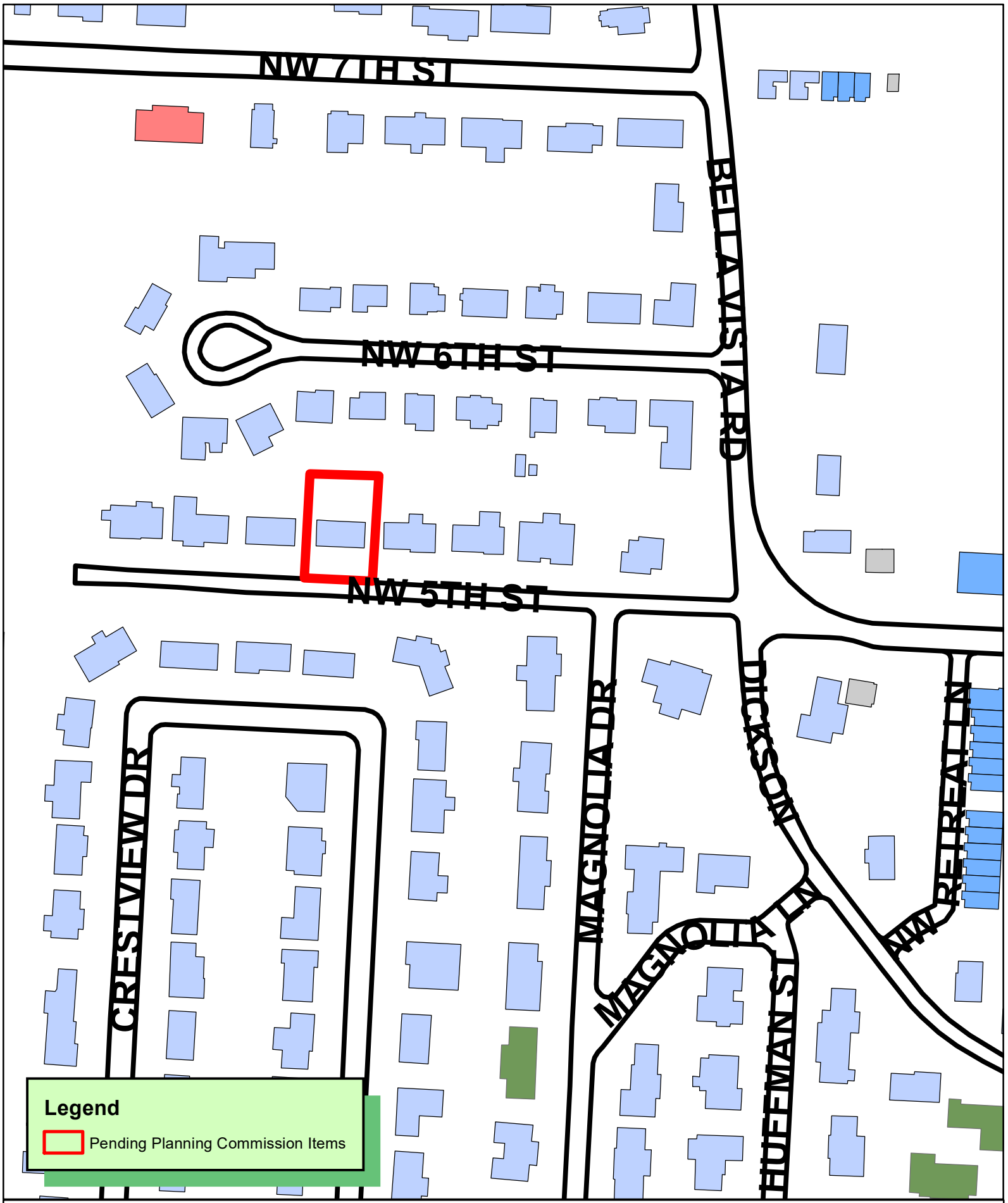
PASSED AND APPROVED this_____ day of _____, 2021.

APPROVED:

_____
Stephanie Orman, Mayor

ATTEST:

_____
Kirby Romines, City Clerk



N
W E
S

1 inch = 150 feet

LS21-0042
LOT SPLIT
DEAN MAXWELL FIRST ADDITION
LOT 5 AND PART OF LOT 6 CREATING LOT-11

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: _____

SIGNED: _____

NAME AND ADDRESS: _____

PRINT NAME: _____

SOURCE OF TITLE: D.R. _____
PAGE: _____

STATE OF ARKANSAS)

COUNTY OF BENTON)

SWORN TO AND SUBSCRIBED BEFORE ME THIS _____ DAY OF _____, 2021.

_____
NOTARY PUBLIC SIGNATURE

CERTIFICATE OF APPROVAL

PURSUANT TO THE BENTONVILLE LAND DEVELOPMENT CODE 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:
_____
MAYOR

_____
CITY CLERK

_____
PLANNING COMMISSION CHAIRMAN

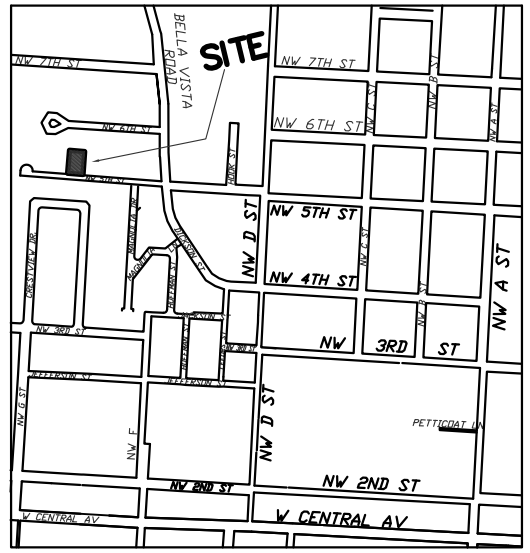
LEGEND

- S.I.P. SET IRON PIN
- F.I.P. FOUND IRON PIN
- PIPE FOUND PIPE
- PROPERTY LINE
- CL CENTERLINE
- FENCE
- ADJ. PROPERTY LINE
- NEW UTILITY EASEMENT
- AREA DEDICATED BY PLAT
- EX. POWER POLE
- EX. SEWER MANHOLE
- EX. WATER VALVE
- EX. GAS METER
- EX. WATER METER
- AC EX. AIR CONDITIONING
- A EX. AT&T VALVE

N

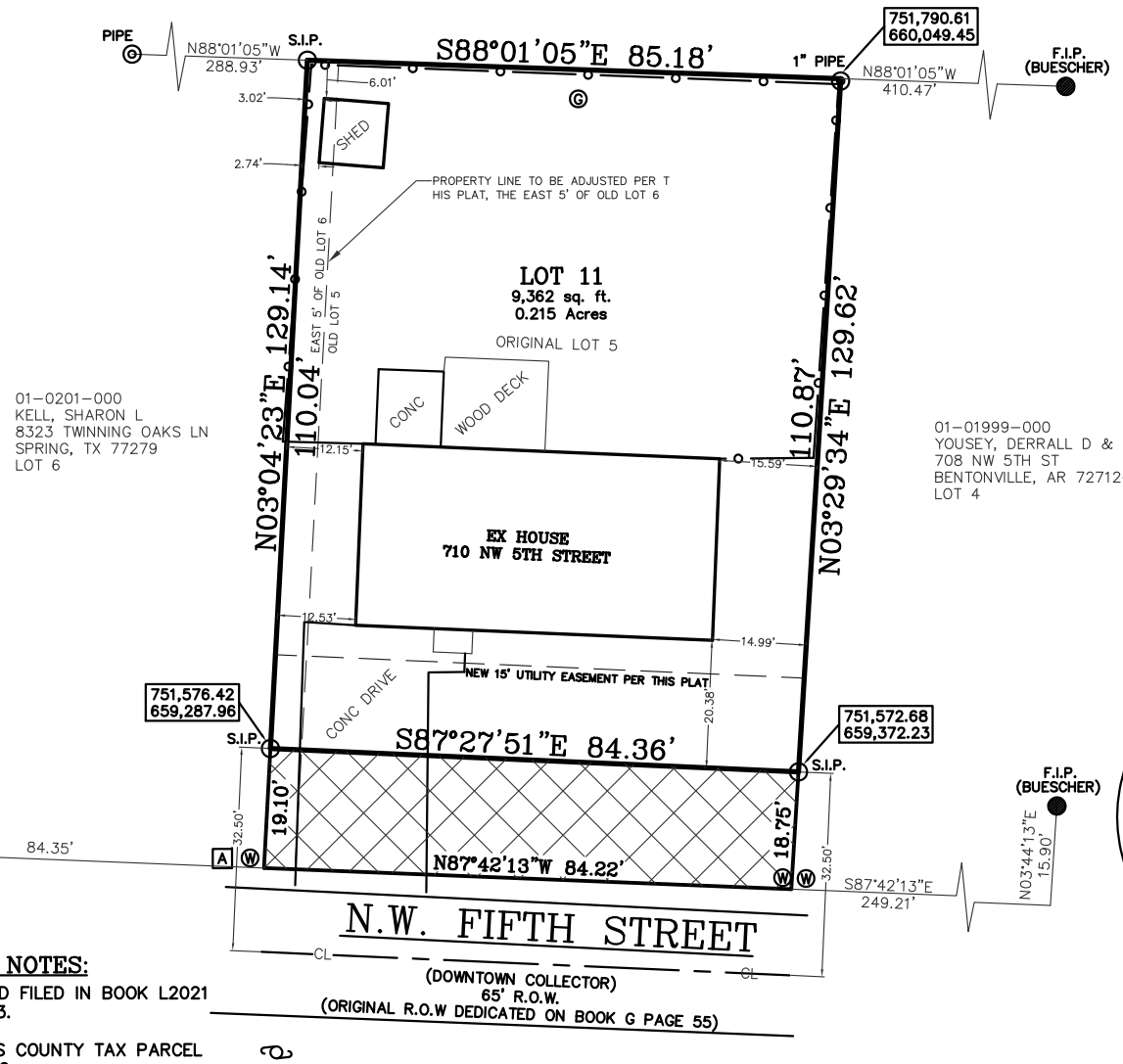
SCALE 1"=30'

30 15 0 30



01-03693-000
SMITH, ALEXANDRA F & LEE M
17732 HIGHLAND RD
BOX G136
BATON ROUGE, LA 70810

01-03692-000
CARLISLE, JORDAN TYLER &
GADBERRY, KATHRYN ANNE
713 NW 6TH ST
BENTONVILLE, AR 72712



01-0201-000
KELL, SHARON L
8323 TWINNING OAKS LN
SPRING, TX 77279
LOT 6

01-01999-000
YOUSEY, DERRALL D & JUDY L
708 NW 5TH ST
BENTONVILLE, AR 72712-4603
LOT 4

PROPERTY DESCRIPTION (PARENT)

LOT 5 AND THE EAST 5 FEET OF LOT 6 DEAN MAXWELL FIRST SUBDIVISION, BENTONVILLE, BENTON COUNTY, ARKANSAS, AS SHOWN IN PLAT RECORD "G" AT PAGE 55.

PROPERTY DESCRIPTION LOT 11

LOT 11, DEAN MAXWELL FIRST SUBDIVISION TO THE CITY OF BENTONVILLE, FORMERLY KNOW AS LOT 5 AND THE EAST 5 FEET OF LOT 6 DEAN MAXWELL FIRST SUBDIVISION, FURTHER DESCRIBED AS BEGINNING AT THE NORTHEAST (NE) CORNER OF LOT 5 (FOUND PIPE), THENCE SOUTH 03°29'34" WEST 110.88 FEET TO A SET IRON PIN; THENCE NORTH 87°27'37" WEST 84.36 FEET TO A SET IRON PIN; THENCE NORTH 03°04'23" EAST 110.04 FEET TO A SET IRON PIN; THENCE SOUTH 88°01'05" EAST 85.18 FEET TO THE POINT OF BEGINNING, CONTAINING 0.215 ACRES MORE OR LESS.

BASIS OF BEARING IS TIED INTO CITY OF BENTONVILLE MONUMENTATION (1 &38).

CITY REQUIRED NOTES:

1. SIDEWALKS SHALL BE THE RESPONSIBILITY OF THE BUILDER / OWNER AT THE TIME OF BUILDING PERMIT ISSUANCE.

2. OWNER / DEVELOPER SHALL COORDINATE WITH ALL LOCAL UTILITIES TO INSURE THAT EACH LOT HAS WATER, SEWER AND ELECTRIC SERVICE.

3. THERE MAY NOT BE FENCES OR ANY OTHER STRUCTURES BUILT IN ANY DRAINAGE EASEMENTS.

4. 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.

5. ALL STRUCTURES MUST MAINTAIN MINIMUM OF 20' CLEARANCES FROM ALL ELECTRIC LINES.

SURVEYOR NOTES:

1. PARENT DEED FILED IN BOOK L2021 AT PAGE 04993.

2. PROPERTY IS COUNTY TAX PARCEL #01-02000-000.

3. THE PLANNED ZONING FOR THE PROPERTY IS LOW DENSITY SINGLE FAMILY RESIDENTIAL (R-1). 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.

4. OUR LIMITED RESEARCH COULD NOT FIND ANY EXISTING EASEMENTS ON THE PARENT TRACT, A MORE INDEPTH SEARCH IS NEEDED TO VERIFY.

5. WORK IN THE RIGHT OF WAY TO BE REVIEWED AND APPROVED BY THE CITY ENGINEER.

FLOOD CERTIFICATION

THIS PROPERTY DOES NOT LIE IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FEMA PANEL #05007C0090 J, DATED SEPTEMBER 28, 2007.

CERTIFICATE OF ACCURACY

I, DAVID B. PLATZ, 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: _____

SIGNED: _____
REGISTERED LAND SURVEYOR
NO 1553
STATE OF ARKANSAS

REGISTERED
STATE OF ARKANSAS
NO. 1553
Signature
DAVID B. PLATZ
PROFESSIONAL LAND SURVEYOR

LOT SPLIT CREATING
LOT 11, DEAN MAXWELL
FIRST ADDITION

OWNER CONTACT INFO:
MURTHA, JOHN PATRICK
III & AMANDA ELLIS
710 NW 5TH ST
BENTONVILLE, AR 72712

273-7989
OR
366-7989

DAVID B. PLATZ
LAND SURVEYOR
P.O. BOX 223
BENTONVILLE, AR 72712

REVISIONS		
No.:	BY:	DATE:
#1	CITY	8/23/21

DRAWN BY: DP/ZS	DATE: 7/30/21
CHECKED BY:	JOB No.: 2021363
SCALE: 1"=30'	SHEET: 1

ATLAS PAGE 361 BENTONVILLE PROJECT #: LS21-0042

ORDINANCE NO._____

AN ORDINANCE ACCEPTING A LOT SPLIT OF LOT 11 OF DEAN MAXWELL FIRST ADDITION TO THE CITY OF BENTONVILLE, ARKANSAS (PROJECT NUMBER: LS21-0042).

WHEREAS, pursuant to the provisions of the Land Development Code of the Bentonville Municipal Code, the lot split of Lot 11 of Dean Maxwell First Addition, Benton County, Arkansas, was submitted to the Bentonville Planning Commission on September 7, 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 Lot 11 of Dean Maxwell First Addition to the City of Bentonville, Arkansas, should be and the same is hereby accepted and approved for all purposes.

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

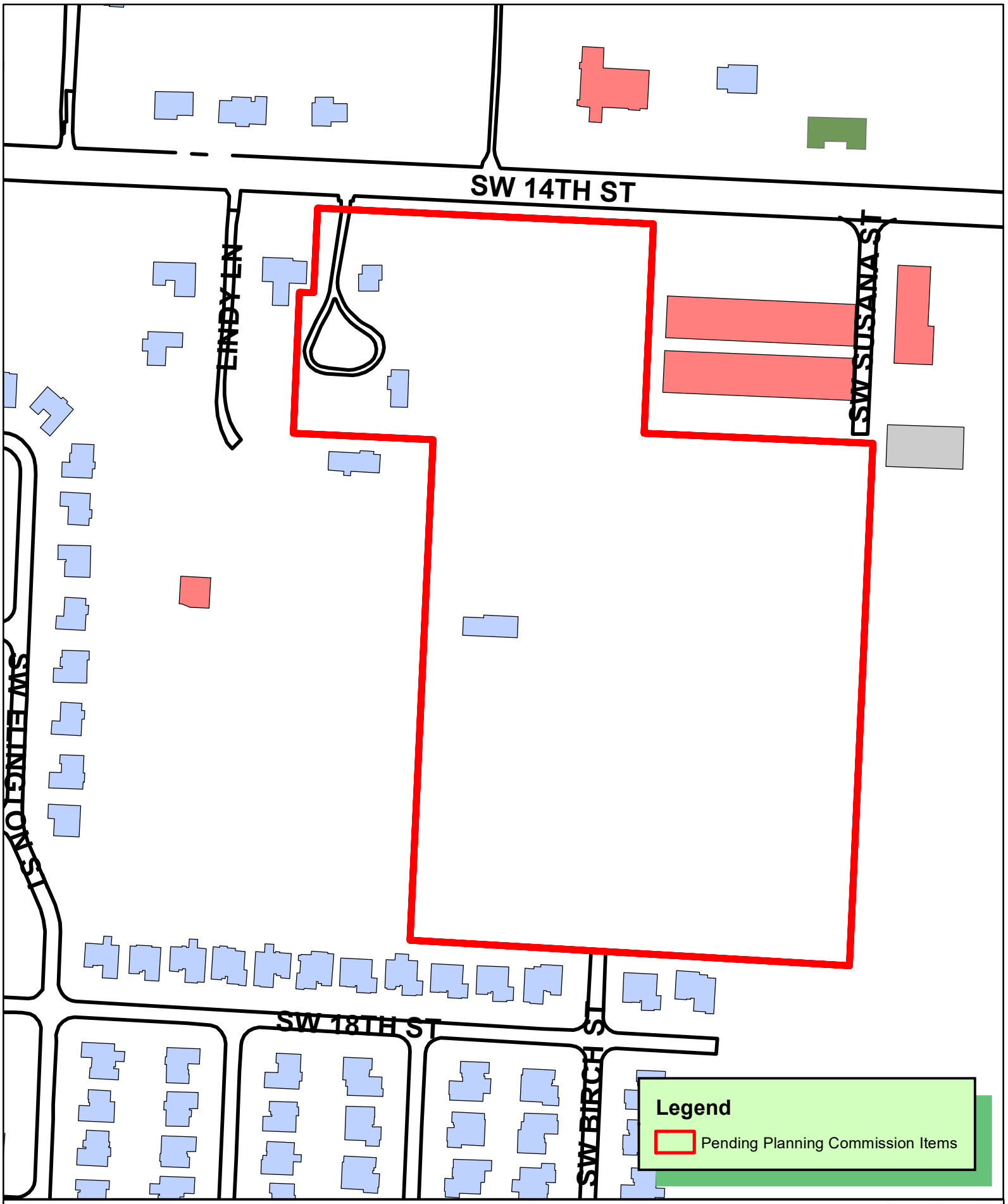
PASSED AND APPROVED this_____ day of _____, 2021.

APPROVED:

_____
Stephanie Orman, Mayor

ATTEST:

_____
Kirby Romines, City Clerk



N
W E
S

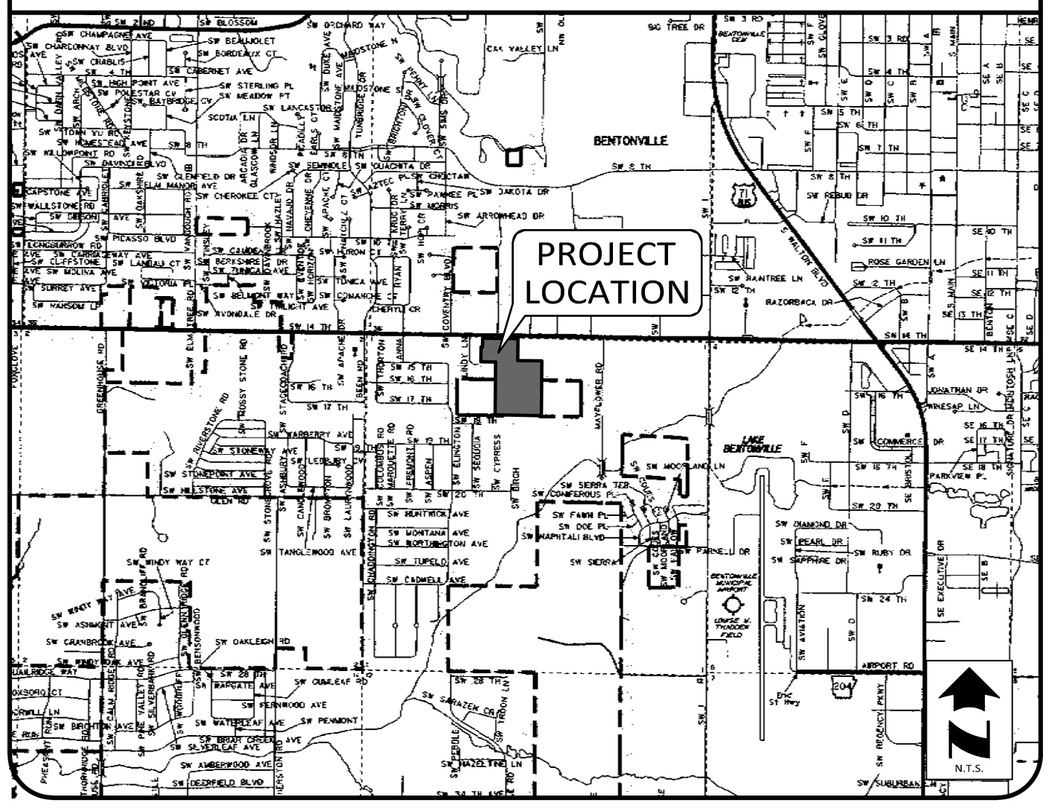
1 inch = 200 feet

PLA21-0026
PROPERTY LINE ADJUSTMENT
102 WEST APARTMENTS ADDITION
LOTS 1-2 190

THE CITY OF BENTONVILLE

PROPERTY LINE ADJUSTMENT
102 West Apartments Addition
CREATING Lots 1 & 2
Being part of the NE1/4 NW1/4,
Section 1, Township 19 North, Range 31 West
Bentonville, Benton County, Arkansas

VICINITY MAP



GENERAL NOTES:

- **Basis of Bearing -** Grid North, Arkansas State Plane Coordinate System, North Zone (0301, NAD 83, based on RT Kinematic Observations from a static GNSS base and OPUS post-processed solution, having the following published values: North 36°21'25.9387" Latitude, West 94°13'55.9218" Longitude; Convergence angle = -1°17'56"; combined scale factor = 1.000030215 (grid to ground).
- **Flood Zone Information -** based on graphical plotting only of FEMA FIRM 05007C02535K, Map Revised June 5, 2012, the subject property lies in Zone X - areas determined to be outside the 0.2% annual chance floodplain.
- **Convergence -** at a 5"x 5" concrete right-of-way marker on the south right-of-way of Highway 102, rotate left 1°17'59" for true north.
- Every recorded document reviewed and considered as part of this survey is noted hereon. Surveyor has made no investigation or independent search for easements or other encumbrances or facts that an accurate and current title search would disclose. There may exist other documents or facts affecting the parcel.

CITY OF BENTONVILLE DEVELOPMENT NOTES:

- Before any work in the street right-of-way commences, contractor and/or owner is to contact the City of Bentonville Engineering and Transportation Departments and notify said departments of the intent and type of work that will take place within the right-of-way.
- Sidewalks shall be the responsibility of the builder/owner at the time of building permit issuance.
- There may not be fences or any other structures built in any drainage easements.
- 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.
- Current Zoning: R-3, Medium-High Density Multifamily Residential
- Owner/Developer shall coordinate with all local utilities to ensure that each lot has water, sewer and electric service.
- All structures must maintain minimum of 20' clearance from all electric lines.

SURVEYOR
Morrison Shipley Engineers Inc
2407 SE Cottonwood St.
Bentonville, AR 72712
Contact: Clayton D Crotts
Telephone: (479)-273-2209

OWNER / DEVELOPER
G&I Properties, LLC
1508 N. 2nd Street
Rogers, AR 72756

CERTIFICATE OF SURVEY ACCURACY

I, Clayton D. Crotts, Hereby Certify That This Plat Correctly Represents A Boundary Survey made By Me Or Under My Supervision, And Boundary Markers And Lot Corners Shown Hereon Actually Exist And Their Location, Type And Material Are Correctly Shown And To The Best Of My Knowledge, All Minimum Requirements Of The Arkansas Standard of Boundary Survey's and Plats Have Been Met.

Date of Execution: August 23, 2021

FOR REVIEW

CERTIFICATE OF AUTHORIZATION MORRISON-SHIPLEY ENGINEERS, INC. No. 281 ARKANSAS

Arkansas Professional Surveyor, #1834

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.

Filing Block

Date of Execution: _____

Signed: _____
G & I Properties, LLC, Managing Member, Iqbal Makkar

Source of Title:

State Of Arkansas)
) SS
County Of Benton)

Sworn And Subscribed Before Me This Day _____Of _____, 2021.

Notary Public: _____

My Commission Expires: _____

CERTIFICATE OF APPROVAL:

Pursuant to the Bentonville Land Development 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

PROPERTY LINE ADJUSTMENT

102 West Apartments Addition
CREATING Lots 1 & 2

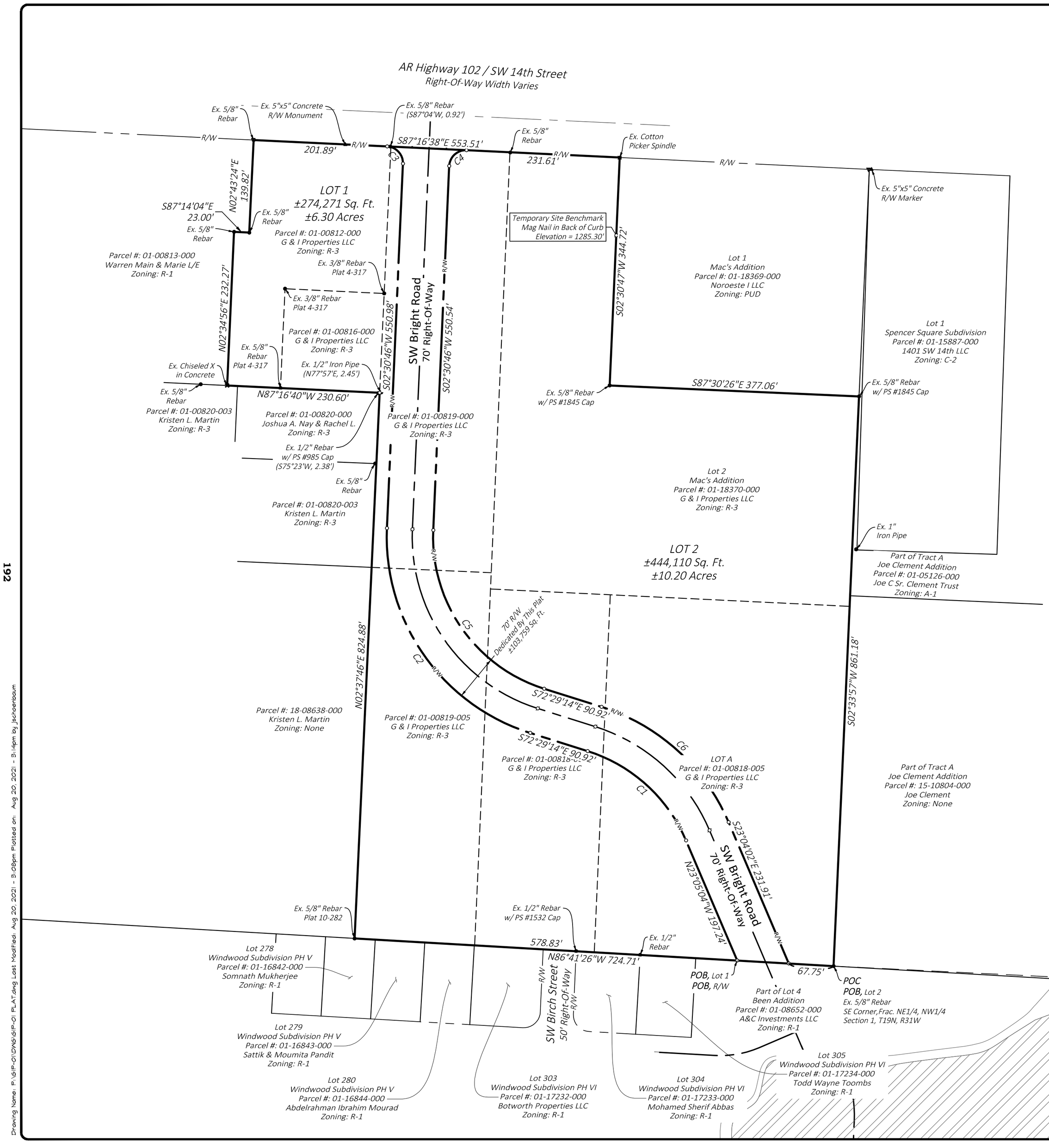
Bentonville, Benton County, Arkansas
City of Bentonville Project # PLA21-0026

Project No. GIP-01	Drawn By JDS Checked By CDC
Date 08.23.2021	Sheet 1 of 5

MORRISON SHIPLEY

2407 SE COTTONWOOD STREET • BENTONVILLE, AR 72712 • 479.273.2209 • MORRISONSHIPLEY.COM

Drawing Name: P:\GIP-01\DWG\GIP-01 PLAT.dwg Last Modified: Aug 20, 2021 - 3:08pm Plotted on: Aug 20, 2021 - 3:18pm by jschoenbaum



Grid North

100 0 100

Scale in Feet
1" = 100 Feet

Filing Block

FOR REVIEW

LEGEND

- Ex. Boundary Line Being Removed
- Ex. Boundary Line
- Ex. Adjacent Boundary Line
- Ex. Right of Way Line
- Dedicated Right of Way
- Ex. Road Centerline
- Ex. Rebar, As Noted
- Ex. T-Post
- Set 1/2" Rebar w/ PS# 1834 Cap
- Set Mag Nail w/ PS# 1834 Washer

Curve Table					
Curve #	Length	Radius	Tangent	Chord Bearing	Chord Length
C1	207.00'	240.16'	110.42'	S 47° 46' 38" E	200.65'
C2	405.79'	310.00'	237.87'	S 34° 59' 14" E	377.43'
C3	39.18'	25.00'	24.91'	S 42° 22' 56" E	35.29'
C4	39.36'	25.00'	25.09'	S 47° 37' 04" W	35.42'
C5	314.16'	240.00'	184.16'	S 34° 59' 14" E	292.21'
C6	267.39'	310.00'	142.65'	S 47° 46' 38" E	259.18'
C7	284.64'	330.00'	151.85'	N 47° 46' 38" W	275.90'
C8	180.96'	220.00'	95.95'	N 48° 55' 22" W	175.90'
C9	84.94'	220.00'	43.01'	N 08° 32' 53" W	84.42'
C10	5.21'	25.00'	2.61'	S 08° 28' 49" W	5.20'
C11	222.95'	330.00'	115.92'	S 53° 07' 58" E	218.73'
C12	189.76'	220.00'	101.23'	S 47° 46' 38" E	183.93'
C13	189.01'	330.00'	97.18'	N 13° 53' 44" W	186.44'
C14	240.40'	278.71'	128.25'	N 47° 46' 38" W	233.02'
C15	355.12'	271.29'	208.17'	N 34° 59' 14" W	330.30'

PROPERTY LINE ADJUSTMENT

102 West Apartments Addition
CREATING Lots 1 & 2

Bentonville, Benton County, Arkansas
City of Bentonville Project # PLA21-0026

Project No. GIP-01	Drawn By JDS Checked By CDC
Date 08.23.2021	Sheet 2 of 5

MORRISON SHIPLEY

2407 SE COTTONWOOD STREET • BENTONVILLE, AR 72712 • 479.273.2209 • MORRISONSHIPLEY.COM

Drawing Name: P:\GIP-01\DWG\GIP-01 PLAT.dwg Last Modified: Aug 20, 2021 - 3:08pm Plotted on: Aug 20, 2021 - 3:14pm by jschoenbaum

Drawing Name: P:\GIP-01\DWG\GIP-01 PLAT.dwg Last Modified: Aug 20, 2021 - 3:08pm Plotted on: Aug 20, 2021 - 3:14pm by jschoenbaum

AR Highway 102 / SW 14th Street
Right-Of-Way Width Varies

State Plane Coordinates N: 744185.32 E: 654483.47

Ex. 5/8" Rebar

Ex. 5"x5" Concrete R/W Monument

Ex. 5/8" Rebar (S87°04'W, 0.92')

Ex. 5/8" Rebar

State Plane Coordinates N: 744159.03 E: 655036.35

Ex. Cotton Picker Spindle

S87°16'38"E 553.51'

201.89'

231.61'

N87°29'14"W 206.90'

N87°14'59"W 90.22'

N02°32'55"E 30.04'

S87°31'10"E 70.74'

63.41'

56.59'

C3

C4

C10

N02°43'24"E 139.82'

S87°14'04"E 23.00'

Utility Easement Dedicated By This Plat

Ex. 20' Easement City of Bentonville Book 2003, Page 22464

Ex. Easement In Favor of SWEPCO Book 95, Page 13873

Ex. 50' General Utility Easement Bk 2015, Pg 19606

40' Public Access Easement Book 2017, Page 402

20' Vacated Access Easement

Book _____

Page _____

Ex. 30' Utility Easement 2017-432

Temporary Site Benchmark
Mag Nail in Back of Curb
Elevation = 1285.30'

Utility Easement Dedicated By This Plat

20'

S87°29'14"E 250.41'

Ex. 3/8" Rebar Plat 4-317 N87°29'14"W 250.44'

Ex. 3/8" Rebar Plat 4-317

38.5'

31.5'

20' Vacated Utility Easement

Book _____

Page _____

S02°30'47"W 344.72'

N02°34'56"E 232.27'

27.00'

75.11'

27' Public Access Easement Dedicated By This Plat

LOT 1
±274,271 Sq. Ft.
±6.30 Acres

Ex. 5/8" Rebar

Ex. 5/8" Rebar Plat 4-317

Ex. 1/2" Iron Pipe (N77°57'E, 2.45')

N87°16'40"W 230.60'

Ex. Chiseled X in Concrete

Ex. 1/2" Rebar w/ PS #985 Cap (S75°23'W, 2.38')

Ex. 5/8" Rebar w/ PS #1845 Cap

S87°30'26"E 377.06'

Ex. 30' Utility Easement 2017-432

N02°30'46"E 549.84'

S02°30'46"W 550.98'

N02°30'46"E 575.69'

S02°30'46"W 550.54'

N02°30'46"E 452.42'

SW Bright Road
70' Right-Of-Way

70' R/W Dedicated By This Plat
±103,759 Sq. Ft.

N87°19'25"W 20.00'

S02°30'46"W 73.34'

N02°30'46"E 73.28'

N87°29'14"W 73.90'

N87°29'14"W 359.30'

S87°29'14"E 542.18'

Utility Easement Dedicated By This Plat

20'

N87°56'53"W 20.00'

S02°30'46"W 26.69'

N02°30'46"E 26.85'

N87°29'14"W 58.41'

N02°30'46"E 52.84'

MATCHLINE SEE SHEET 4

LOT 2
±444,110 Sq. Ft.
±10.20 Acres

20' Vacated Utility Easement

Book _____

Page _____

N87°29'14"W 527.51'

S87°29'14"E 275.66'

S02°30'46"W 20.82'

S88°43'21"E 20.00'

N02°30'46"E 20.38'

S87°29'14"E 202.52'

20' Utility Easement Dedicated By This Plat

N02°37'46"E 824.88'

N59°24'40"E 63.88'

N59°24'40"E 51.63'

C13

C5

C15

C8

C2

C9

C11

38.6'

31.4'

N72°29'14"W 90.92'

S72°29'14"E 90.92'

S02°31'04"W 128.00'

R/W

Grid North

60 0 60

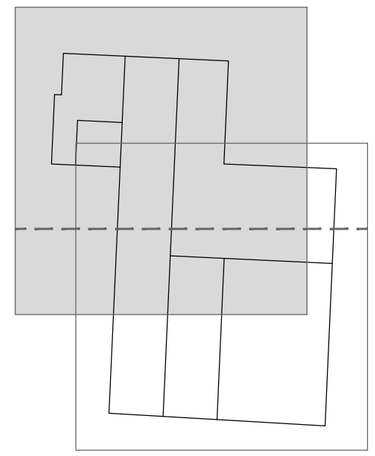
Scale in Feet
1" = 60 Feet

Curve Table					
Curve #	Length	Radius	Tangent	Chord Bearing	Chord Length
C1	207.00'	240.16'	110.42'	S 47° 46' 38" E	200.65'
C2	405.79'	310.00'	237.87'	S 34° 59' 14" E	377.43'
C3	39.18'	25.00'	24.91'	S 42° 22' 56" E	35.29'
C4	39.36'	25.00'	25.09'	S 47° 37' 04" W	35.42'
C5	314.16'	240.00'	184.16'	S 34° 59' 14" E	292.21'
C6	267.39'	310.00'	142.65'	S 47° 46' 38" E	259.18'
C7	284.64'	330.00'	151.85'	N 47° 46' 38" W	275.90'
C8	180.96'	220.00'	95.95'	N 48° 55' 22" W	175.90'
C9	84.94'	220.00'	43.01'	N 08° 32' 53" W	84.42'
C10	5.21'	25.00'	2.61'	S 08° 28' 49" W	5.20'
C11	222.95'	330.00'	115.92'	S 53° 07' 58" E	218.73'
C12	189.76'	220.00'	101.23'	S 47° 46' 38" E	183.93'
C13	189.01'	330.00'	97.18'	N 13° 53' 44" W	186.44'
C14	240.40'	278.71'	128.25'	N 47° 46' 38" W	233.02'
C15	355.12'	271.29'	208.17'	N 34° 59' 14" W	330.30'

Filing Block

FOR REVIEW

KEY MAP



LEGEND

- Ex. Boundary Line
- Ex. Adjacent Boundary Line
- Ex. Right of Way Line
- Ex. Road Centerline
- Ex. Easement Line
- Dedicated Right Of Way
- Dedicated Easement Line
- Ex. Fence Line
- Ex. Rebar, As Noted
- Ex. Cotton Picker Spindle
- Ex. T-Post
- Set 1/2" Rebar w/ PS# 1834 Cap
- Set Mag Nail w/ PS# 1834 Washer
- Ex. Sewer Manhole
- Ex. Sewer Clean-Out
- Ex. Water Meter
- Ex. Fire Hydrant
- Ex. Water Valve
- Ex. Water Spigot

PROPERTY LINE ADJUSTMENT

102 West Apartments Addition
CREATING Lots 1 & 2

Bentonville, Benton County, Arkansas
City of Bentonville Project # PLA21-0026

Project No. GIP-01	Drawn By JDS Checked By CDC
Date 08.23.2021	Sheet 3 of 5

MORRISON SHIPLEY

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Drawing Name: P:\GIP-01\DWG\GIP-01 PLAT.dwg Last Modified: Aug 20, 2021 - 3:08pm Plotted on: Aug 20, 2021 - 3:15pm by jschoenaum

Filing Block

FOR REVIEW

Curve Table					
Curve #	Length	Radius	Tangent	Chord Bearing	Chord Length
C1	207.00'	240.16'	110.42'	S 47° 46' 38" E	200.65'
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MATCHLINE SEE SHEET 3

LOT 2
±444,110 Sq. Ft.
±10.20 Acres

70' R/W Dedicated By This Plat ±103,759 Sq. Ft.

20' Vacated Utility Easement
Book _____
Page _____

Ex. 5/8" Rebar Plat 4-317
Ex. 1/2" Iron Pipe (N77°57'E, 2.45')
Ex. 1/2" Rebar w/ PS #985 Cap (S75°23'W, 2.38')
Ex. 5/8" Rebar
Ex. 5/8" Rebar w/ PS #1845 Cap
Ex. 1" Iron Pipe
Ex. 5/8" Rebar Plat 10-282
Ex. 1/2" Rebar w/ PS #1532 Cap
Ex. 1/2" Rebar

SW Bright Road
70' Right-Of-Way

SW Birch Street
50' Right-Of-Way

Ex. 30' Utility Easement 2017-432
Ex. 20' Drainage and Utility Easement 2017-432
Utility Easement Dedicated By This Plat
20' Utility Easement Dedicated By This Plat
27' Public Access Easement Dedicated By This Plat
Deed Gap

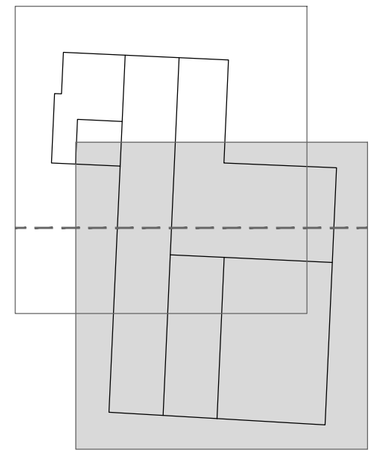
Temporary Site Benchmark
60D Nail in Center of Road
Elevation = 1271.95'

POB, Lot 1
POB, R/W
POC
POB, Lot 2
Ex. 5/8" Rebar
SE Corner, Frac. NE1/4, NW1/4
Section 1, T19N, R31W

Grid North

60 0 60
Scale in Feet
1" = 60 Feet

KEY MAP



LEGEND

- Ex. Boundary Line
- Ex. Adjacent Boundary Line
- Ex. Right of Way Line
- Ex. Road Centerline
- Ex. Easement Line
- Dedicated Right Of Way
- Dedicated Easement Line
- Ex. Fence Line
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- Ex. Water Meter
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- Ex. Water Valve
- Ex. Water Spigot

PROPERTY LINE ADJUSTMENT

102 West Apartments Addition
CREATING Lots 1 & 2

Bentonville, Benton County, Arkansas
City of Bentonville Project # PLA21-0026

Project No. GIP-01	Drawn By JDS Checked By CDC
Date 08.23.2021	Sheet 4 of 5

MORRISON SHIPLEY
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ORDINANCE NO. _____

AN ORDINANCE ACCEPTING A PROPERTY LINE ADJUSTMENT OF Lots 1 & 2 OF 102 WEST APARTMENTS ADDITION TO THE CITY OF BENTONVILLE, ARKANSAS (PROJECT NUMBER: PLA21-0026).

WHEREAS, pursuant to the provisions of the Land Development Code of the Bentonville Municipal Code, the property line adjustment of Lots 1 & 2 of 102 West Apartments Addition of the City of Bentonville, Benton County, Arkansas was submitted to the Bentonville Planning Commission on September 7, 2021; and,

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

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

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

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

Section 1: That the property line adjustment of Lots 1 & 2 of 102 West Apartments Addition to the City of Bentonville, Arkansas, should be and the same is hereby accepted and approved for all purposes.

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

PASSED AND APPROVED this_____ day of _____, 2021.

APPROVED:

_____
Stephanie Orman, Mayor

ATTEST:

_____
Kirby Romines, City Clerk

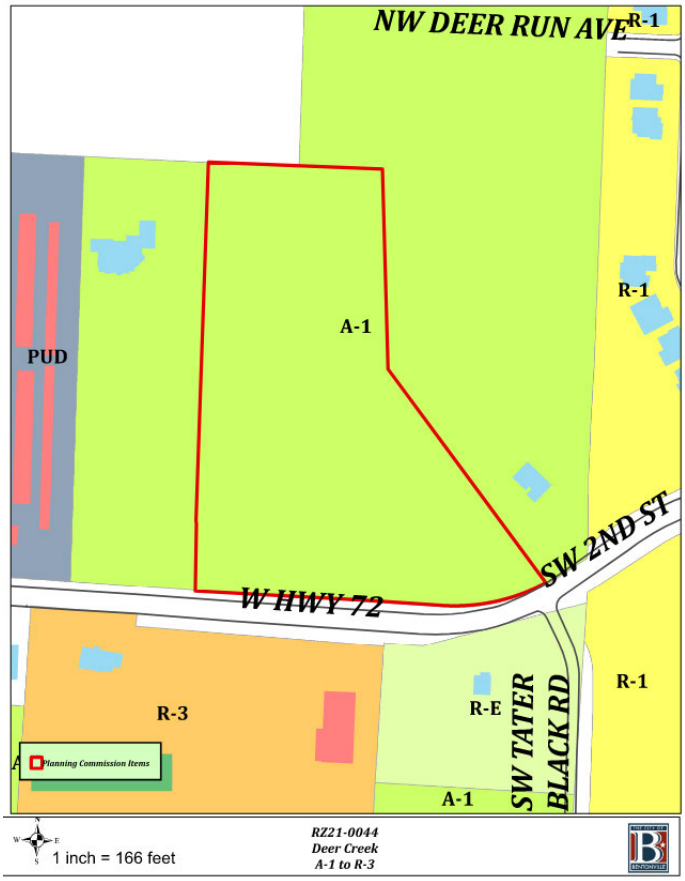
Deer Creek

W Hwy 72 & SW Tater Black Road
PC Date: 9/7/2021
Reviewer: Elizabeth Johnson, Senior Planner, AICP

Project Number	RZ21-0044
Applicant / Current Owner	Deer Creek, LLC
Site Area	+/- 9.39 acres
Current Zoning	A-1, Agricultural
Requested Zoning	R-3, Medium-High Density Multifamily Residential
Future Land Use Map Designation	Residential Estates (RE)

https://arcg.is/08HvK8

Location Map



Property Description
This property is located at W Hwy 72 and SW Tater Black Road. The property is currently zoned A-1, Agricultural. Surrounding zoning districts are A-1, Agricultural to the north, east, and west, R-3 Medium-High Density Multifamily Residential to the south, and R-E, Residential Estate to the south.

Relationship to the Bentonville Community Plan
The Future Land Use Plan currently depicts this property as Residential Estate. The applicant is requesting a change in the Future Land Use Plan to High Density Residential. High Density Residential areas typically include apartments, condominium buildings, senior housing, and special types of group living. These areas also have integrated amenities for residents, including local parks, community centers, and resident-oriented commercial uses.

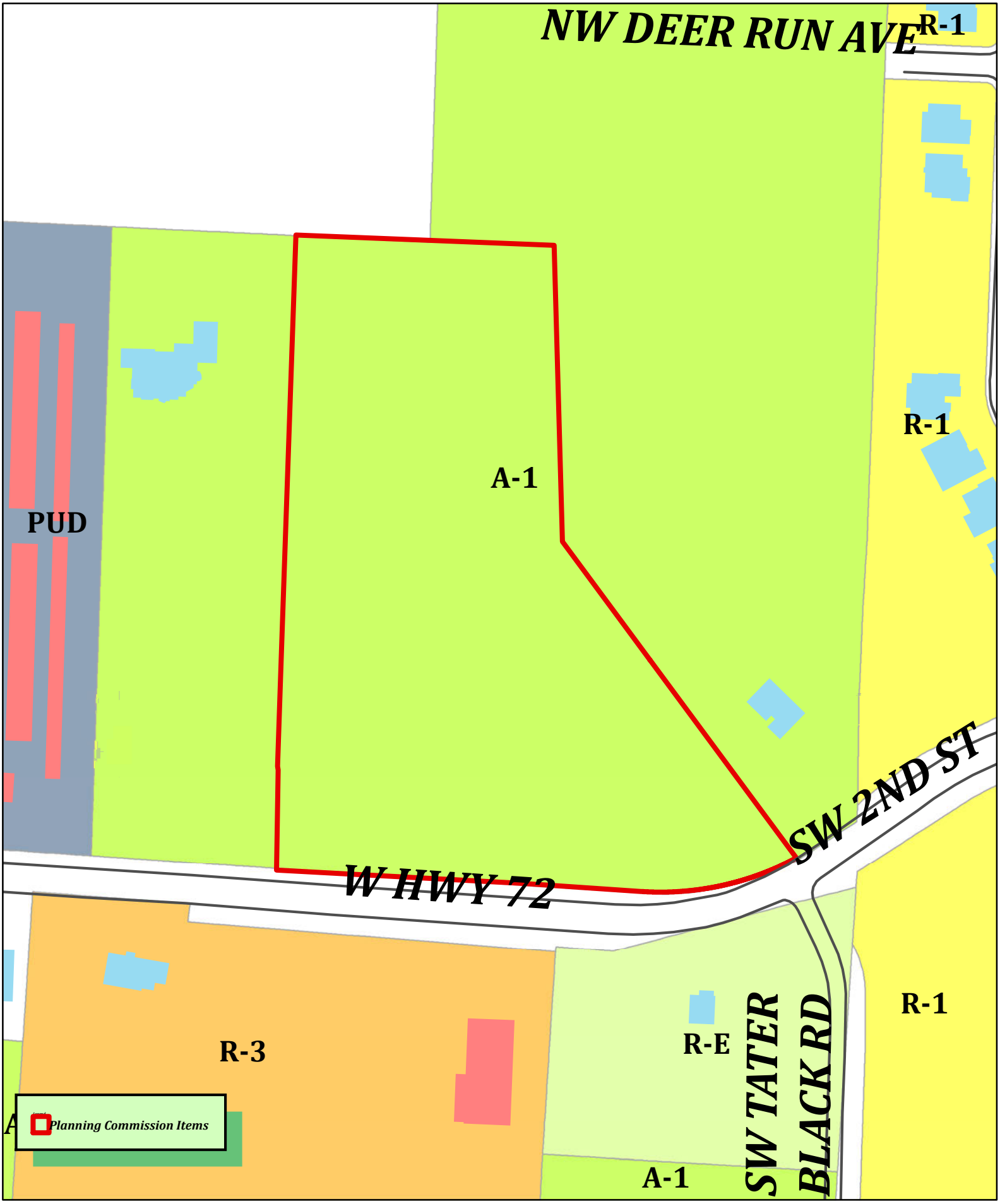
The property is located within Priority Area 3, Edge Growth, as identified in Chapter 4 of the Community Plan. This area focuses on development in areas close to existing infrastructure in order to capitalize on municipal investment that has already taken place (pg. 44).

Public Comment
Staff has not received public comments regarding this rezoning request.

Analysis
The intent of the R-3 district is to provide suitable areas for medium density residential development. Such units would be located in areas where adequate city facilities exist prior to development or would be provided in conjunction with development, and where a suitable environment for medium density residential development would be available. Such districts could be used in suburban portions of the city as buffer or transitional zones between single-family and other uses not compatible with low density residential development.

This rezoning request is not consistent with the Future Land Use Plan, however it is consistent with surrounding zoning districts as there are existing R-3 lots directly to the south.

Conclusion
This rezoning request is consistent and compatible with existing land use patterns. Staff recommends approval of the Future Land Use Map Amendment and the rezoning request.



N
W E
S
1 inch = 166 feet

RZ21-0044
Deer Creek
A-1 to R-3

WATKINS, BOYER, GRAY & CURRY, PLLC

ATTORNEYS AT LAW

WILLIAM P. WATKINS, III, P.A.
RONALD L. BOYER, P.A.
JENNIFER E. GRAY, P.A.*
ANDREW T. CURRY, P.A.
WILLIAM A. KELLSTROM
JOHN E. JENNINGS (OF COUNSEL)
* ALSO LICENSED IN MISSOURI

WRITER'S DIRECT E-MAIL
wkellstrom@watkinslawoffice.com

DELYNN HALE, SECRETARY
AMY BENSON, PARALEGAL
WHITNEY DUCKER, OFFICE MANAGER

July 11, 2021

Bentonville Planning Department
305 SW A Street
Bentonville, AR 72712

RE: Rezoning Parcel Nos. 01-00942-493, 01-00942-497 and 01-00942-454 from A-1 to R-3

Dear Planning Staff:

This law firm has been hired to assist the applicant, Deer Creek, LLC in obtaining a rezoning of Parcel Nos. 01-00942-493, 01-00942-497 and 01-00942-454 (hereinafter "the Property") from A-1 to R-3.

The primary purpose for this rezoning request is to allow the developer to subdivide the Property into lots for attached townhomes. The Property is adjacent to A-1 zoning to the West, R-3 and R-E to the South, and A-1 to the East and North. However, within close proximity to the Property is a parcel zoned I-1 to the West and a subdivision zoned R-1 to the East. The definition for the R-3 zoning district under the Bentonville City Code provides that R-3 can "be used as buffer or transitional zones between incompatible development districts." Rezoning the Property to R-3 would act as a buffer between the subdivision to the East and the industrial zoned parcel to the West, and would be a generally more compatible zoning with the surrounding area than is A-1, which has traditionally been used as merely a placeholder zoning.

Because the applicant simply plans to subdivide and place basic infrastructure on the Property, neither appearance, nor signage has been contemplated thus far. As for traffic, the parcel sits on Arkansas Highway 72, which has ample capacity for further development. Lastly, as for utilities, there is an 8" water line which runs along Highway 72, and there is an 8" sewer line which can be run from the adjacent residential subdivision.

Thank you for considering this rezoning request. If you have any questions please feel free to contact me at 479-636-2168 or at wkellstrom@watkinslawoffice.com.

Sincerely,

WATKINS, BOYER,
GRAY & CURRY, PLLC

[redacted]

Will A. Kellstrom

WK:
pc:

WATKINS, BOYER, GRAY & CURRY, PLLC

ATTORNEYS AT LAW

WILLIAM P. WATKINS, III, P.A.
RONALD L. BOYER, P.A.
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WRITER'S DIRECT E-MAIL
wkellstrom@watkinslawoffice.com

DELYNN HALE, SECRETARY
AMY BENSON, PARALEGAL
WHITNEY DUCKER, OFFICE MANAGER

July 19, 2021

Bentonville Planning Department
305 SW A Street
Bentonville, AR 72712

RE: Requesting a Change of the Future Land Use Map ("FLUM") Designation for Parcel Nos. 01-00942-493, 01-00942-497 and 01-00942-454 from Residential Estate to High Density Residential

Dear Planning Staff:

This law firm has been hired to assist the applicant, Deer Creek, LLC in obtaining a rezoning of Parcel Nos. 01-00942-493, 01-00942-497 and 01-00942-454 (hereinafter "the Property") from A-1 to R-3. Because the Property is currently designated as Residential Estate on the FLUM, a change to a High Density Residential Designation is required in order to facilitate an R-3 zoning. The purpose of this letter is to request that change.

There have been a few recent rezonings and land use map changes in this area which support this change. Directly across Highway 72 to the South, there is a parcel which is designated Residential Estate on the FLUM, but which has recently been rezoned to R-3. Moreover, there is also a nearby parcel on Highway 72 which has recently been rezoned to R-3 and given a FLUM designation of High Density Residential. The fact that the Property is located on a state highway supports the fact that the area can support increased density, and the other nearby rezonings mentioned above support this sentiment.

Additionally, this property is in close proximity to a industrially zoned parcel to the West and a residential subdivision to the East. Changing the land use designation to High Density Residential would create a buffer between the industrial use the West and the low density residential uses to the East.

Lastly, the housing market is suffering from record low supply coupled with record high demand. This is true nationally, but especially so in Northwest Arkansas due to its high rate of growth. A change in the FLUM designation for this Property would help to counter some of the factors that are rapidly making homes in Bentonville unaffordable.

If you have any questions, feel free to contact me at 479-636-2168 or wkellstrom@watkinslawoffice.com.

Sincerely,

WATKINS, BOYER,
GRAY & CURRY, PLLC

[redacted]

Will A. Kellstrom

WK:
pc:

1106 WEST POPLAR STREET
ROGERS, AR 72756
PH: 479-636-2168
FX: 479-636-6098
WWW.WATKINSLAWOFFICE.COM

REAL ESTATE, CONSTRUCTION & LIEN LAW, LAND USE & PLANNING
CORPORATE & COMMERCIAL LAW, BANKING, BANKRUPTCY
CRIMINAL LAW, FAMILY LAW, GUARDIANSHIPS, LANDLORD-TENANT
ESTATE PLANNING, ELDER LAW, PROBATE, TRUST LITIGATION
CIVIL LITIGATION, COMMERCIAL & CONSUMER DEBT COLLECTION

NOTICE OF INTENT TO REZONE

Deer Creek, LLC has requested the Bentonville Planning Commission to set a public hearing date to consider rezoning the following property from A-1 to R-3. The legal description of the property is as follows:

See Exhibit A, attached hereto and incorporated as though set forth fully herein.

The common description of the property is: **10530 W. Arkansas Highway 72 in Bentonville**

Proposed land use: **Single Family, Residential**

The public hearing will be held on August 17th, 2021 at 4:00 p.m. It will be held at 305 SW A Street, Bentonville, AR 72712.

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

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

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

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

I/we have no objections to the rezoning.

I/we object to the rezoning because:

_____

_____

_____

_____

_____

_____ _____

Signature Printed Name

_____

Physical Address

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

R-3, Medium-High Density Multifamily Residential

The R-3 District is established to provide suitable areas for medium density residential development. Such units would be located in areas where adequate city facilities existed prior to development or would be provided in conjunction with development, and where a suitable environment for medium density residential development would be available. Such districts could be used in suburban portions of the city as buffer or transitional zones between single-family and other uses not compatible with low density residential development. Within this district, zero lot line and townhouses are permitted.

Maximum Height Allowed: 40 feet

Minimum Street Frontage: 20 feet

Minimum Width of Corner Lots: 75’ at building line

Lot and Area Standards:

District	Building type	Min. lot area (sq. ft.)	Min. land area / dwelling unit (sq. ft.)	Min. lot width	Max. lot coverage	
					Interior lot	Exterior lot
R-3	Single-family	5,000	-	50’	40%	45%
	Two-family	5,000	-	50’	50%	55%
	Townhouse unit	2,000	-	20’	-	-
	Townhouse structure	6,000	2,000	60’	65%	70%
	Multi-family	6,000	1,500	60’	65%	70%
	All others not listed	10,000	-	100’	50%	55%

Minimum Setback Standards:

District	Building type	Front	Side		Rear
			Interior	Exterior	
R-3	All	20’	10’	20’	25’

Where a utility easement extends beyond the required setback, the edge of the utility easement shall be the setback.

Garage Setback Standards: *Applicable to attached and detached garages.*

Garage, Street Facing: 30 ft. from the property line the garage faces

Garage, Side- or Rear-loading: 20 ft. from the front property line

Garage, Alley Facing: 20 ft. from property line at 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.

Updated 06-02-2021

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

R-3, Medium-High Density Multifamily Residential

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.

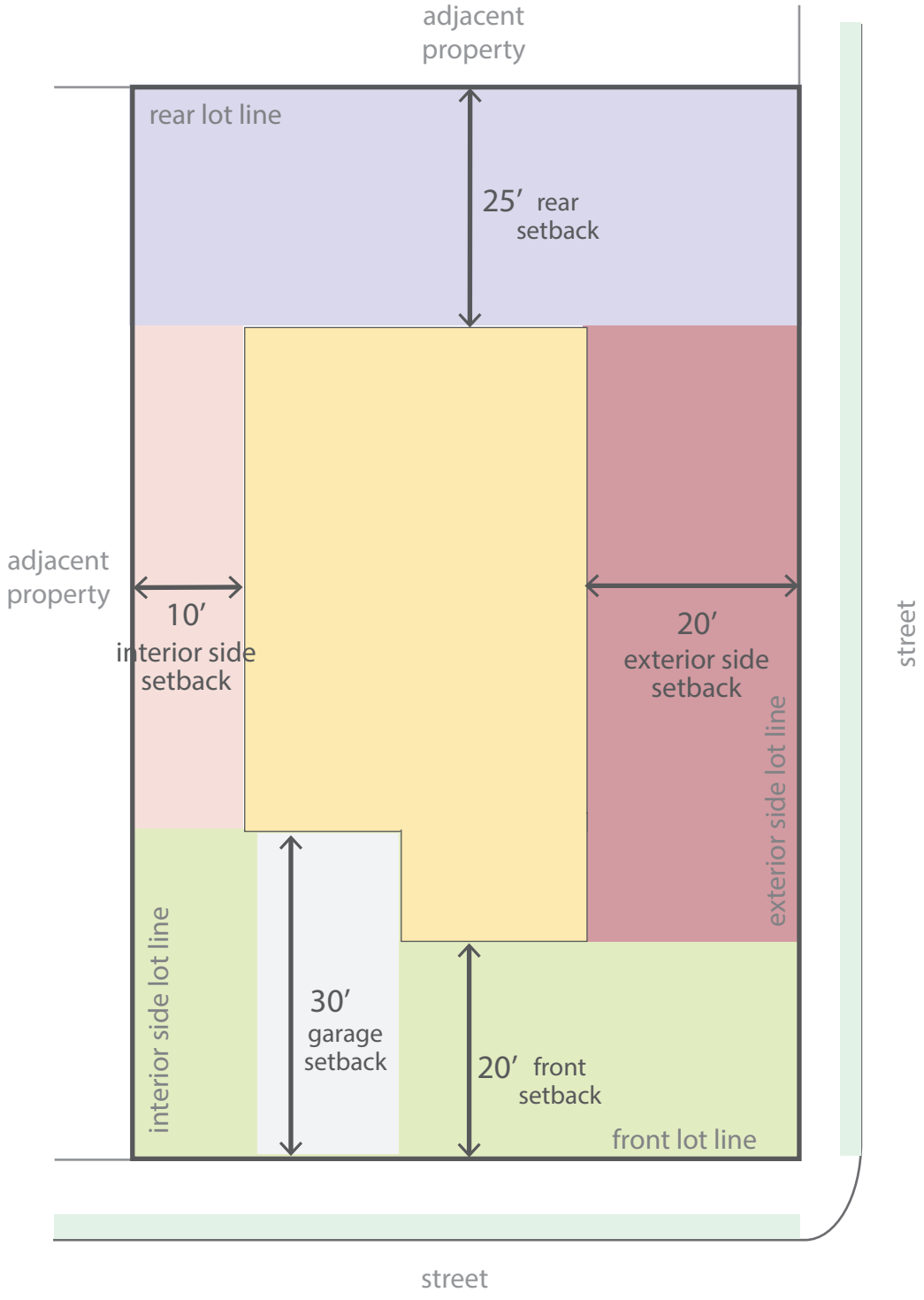
Land Uses:

ALLOWED BY RIGHT	CONDITIONAL	ACCESSORY
Agriculture and Animals Animal - domestic or household Community garden **Residential** Dwelling - condominium Dwelling - modular Dwelling - multi-family Dwelling - single family Dwelling - townhouse or rowhouse Dwelling - two-family Residential facility - assisted living Residential facility - temporary shelter **Recreation, Education & Assembly** Library Park - mini Park - neighborhood **Services** Child care - residential (4 children) **Retail** Mobile food vendor	**Agriculture and Animals** Botanical garden Urban farm **Residential** Home occupation - type b **Recreation, Education & Public** Aquarium Community center Country club Educational facility Golf course Museum Religious facilities **Services** Adult day care Cemetery or mausoleum Child care - commercial Child care - residential (5-10 children) Lodging - bed & breakfast Public safety services **Transportation / Utilities** Utility facility Wireless communication facility (cell towers) **Other** Temporary uses	**Residential** Dwelling - accessory Home occupation - type a **Transportation / Utilities** Solar energy system Wind energy system, small **Other** Building, accessory - nonresidential

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

R-3, Medium-High Density Multifamily Residential

Setback Illustration



RESOLUTION NO. _____

A RESOLUTION AMENDING THE CITY OF BENTONVILLE FUTURE LAND USE MAP FOR A SPECIFIC AREA FROM RESIDENTIAL ESTATE TO MEDIUM-DENSITY TWO FAMILY AND TOWNHOME RESIDENTIAL. (PROJECT NUMBER: RZ21-0044).

WHEREAS, The City of Bentonville, acted on the request of the Planning Commission that the properties depicted on Attachment A, situated in Benton County, Arkansas, be changed from their present land use classification of Residential Estate to Medium-Density Two Family and Townhome Residential on the City of Bentonville Future Land Use Map.

WHEREAS, the Planning Commission duly met and considered the application and duly set the petition for public hearing to be held Sept 7, 2021 at Bentonville City Hall; 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 future land use classification as presented on the property be changed.

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

Section 1: That the properties depicted on Attachment A are hereby changed from their present land use classification of Residential Estate to Medium-Density Two Family and Townhome Residential on the City of Bentonville Future Land Use Map.

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

PASSED AND APPROVED _____ day of _____, 2021.

APPROVED:

_____
Stephanie Orman, Mayor

ATTEST:

_____
Kirby Romines, City Clerk

ORDINANCE NO. _____

AN ORDINANCE CHANGING REAL ESTATE IN THE CITY OF BENTONVILLE, ARKANSAS, FROM ITS PRESENT ZONING CLASSIFICATION OF A-1, AGRICULTURAL TO R-2, MEDIUM DENSITY TWO FAMILY AND TOWNHOME RESIDENTIAL (PROJECT NUMBER: RZ21-0044).

WHEREAS, Deer Creek, LLC duly filed a petition with the Planning Commission requesting that the hereinafter described property situated in Benton County, Arkansas, be changed from its present zoning classification of A-1, Agricultural to R-2, Medium Density Two Family and Townhome Residential to be used in accordance with city zoning laws and state laws, which property is described as follows:

TRACT 1:PART OF THE NE 1/4 OF THE NE 1/4 OF SECTION 34, TOWNSHIP 20 NORTH, RANGE 31 WEST IN BENTON COUNTY, ARKANSAS, DESCRIBED AS BEGINNING 488.87 FEET WEST AND 718.60 FEET SOUTH OF THE NE CORNER OF THE SAID NE 1/4 OF THE NE 1/4; THENCE SOUTH 150.00 FEET; THENCE N87□48'38"W 340.25 FEET ALONG THE NORTH RIGHT OF WAY OF ARKANSAS HIGHWAY #72; THENCE NORTH 137.00 FEET; THENCE EAST 340.00 FEET TO THE POINT OF BEGINNING. SUBJECT TO THE RIGHT OF WAY OF SAID HIGHWAY ALONG THE SOUTH SIDE THEREOF.SUBJECT TO A 25 FOOT WIDE ACCESS EASEMENT DESCRIBED AS BEING A PART OF THE NE 1/4 OF THE NE 1/4 OF SECTION 34, TOWNSHIP 20 NORTH, RANGE 31 WEST, BENTON COUNTY, ARKANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID NE 1/4 OF THE NE 1/4; THENCE ALONG THE NORTH LINE OF SAID NE 1/4 OF THE NE 1/4, S87□43'52"E 500.61 FEET; THENCE S01□58'56"W 564.03 FEET TO THE POINT OF BEGINNING; THENCE S88□01'04"E 25.0 FEET; THENCE S01□58'56"W 162.8 FEET; THENCE S01□5200"W 137.9 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF ARKANSAS HIGHWAY 72 (R/W VARIES); THENCE ALONG SAID NORTHERLY RIGHT OF WAY LINE N86□06'08"W 25.0 FEET; THENCE N01□52'00"E 137.0 FEET; THENCE N01□58'561'E 162.83 FEET TO THE POINT OF BEGINNING, CONTAINING 0.17 ACRES, MORE OR LESS.TRACT 2:PART OF THE NE 1/4 OF THE NE 1/4 OF SECTION 34, TOWNSHIP 20 NORTH, RANGE 31 WEST, BENTON COUNTY, ARKANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID NE 1/4 OF THE NE 1/4; THENCE ALONG THE NORTH LINE OF SAID NE 1/4 OF THE NE 1/4 S87□43'52"E 500.61 FEET; THENCE S01□58'56"W 564.03 FEET TO THE POINT OF BEGINNING; THENCE S88□01'43"E 503.65 FEET; THENCE S36□27'30"E 336.75 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF ARKANSAS HIGHWAY 72 (R/W VARIES); THENCE ALONG SAID NORTHERLY RIGHT OF WAY LINE AND ALONG A CURVE TO THE RIGHT HAVING A DELTA OF 32□07'18", A RADIUS OF 392.41 FEET, A LONG CHORD THAT BEARS S77□5014"W 217.13 FEET, AN ARC DISTANCE OF 220.00 FEET; THENCE N86□06'08"W 162.11

FEET; THENCE DEPARTING SAID NORTHERLY RIGHT OF WAY LINE, N01□52'00"E 150.00 FEET; THENCE N88□16'25"W 340.14 FEET; THENCE N01□58'56"E 162.83 FEET TO THE POINT OF BEGINNING, CONTAINING 3.26 ACRES, MORE OR LESS. SUBJECT TO ANY EASEMENTS, COVENANTS OR RESTRICTIONS OF RECORD OR FACT.SUBJECT TO A 25 FOOT WIDE ACCESS EASEMENT DESCRIBED AS BEING A PART OF THE NE 1/4 OF THE NE 1/4 OF SECTION 34, TOWNSHIP 20 NORTH, RANGE 31 WEST, BENTON COUNTY, ARKANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID NE 1/4 OF THE NE 1/4; THENCE ALONG THE NORTH LINE OF SAID NE 1/4 OF THE NE 1/4, S87□43'52"E 500.61 FEET; THENCE S01□5856"W 564.03 FEET TO THE POINT OF BEGINNING; THENCE S88□01'04 E 25.0 FEET; THENCE S01□58'56"W 162.8 FEET; THENCE S01□52'00'W 137.9 FEET TO THE NORTHERLY RIGHT OFWAY LINE OF ARKANSAS HIGHWAY 72 (R/W VARIES); THENCE ALONG SAID NORTHERLY RIGHT OF WAY LINE N86□06'08'W 25.0 FEET; THENCE N01□52100"E 137.0 FEET; THENCE N01□58'56"E 162.83 FEET TO THE POINT OF BEGINNING, CONTAINING 0.17 ACRES, MORE OR LESS. TRACT 3:PART OF THE NE 1/4 OF THE NE 1/4 OF SECTION 34, TOWNSHIP 20 NORTH, RANGE 31 WEST, BENTON COUNTY, ARKANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID NE 1/4 OF THE NE 1/4; THENCE ALONG THE NORTH LINE OF SAID NE 1/4 OF THE NE 1/4, S87□43'52"E 500.61 FEET TO THE POINT OF BEGINNING; THENCE S87□43'52"E 353.06 FEET; THENCE DEPARTING SAID NORTH LINE S01□36'54"E 405.26 FEET; THENCE S36□27'30"E 201.34 FEET; THENCE N88□01 43"W 503.65 FEET; THENCE N01□58'56"E 564.03 FEET TO THE POINT OF BEGINNING, CONTAINING 5.00 ACRES, MORE OR LESS. SUBJECT TO ANY EASEMENTS, COVENANTS OR RESTRICTIONS OF RECORD OR FACT.ALONG WITH A 25 FOOT WIDE ACCESS EASEMENT DESCRIBED AS BEING A PART OF THE NE 1/4 OF THE NE 1/4 OF SECTION 34, TOWNSHIP 20 NORTH, RANGE 31 WEST, BENTON COUNTY, ARKANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID NE 1/4 OF THE NE 1/4; THENCE ALONG THE NORTH LINE OF SAID NE 1/4 OF THE NE 1/4, S87□43'52"E 500.61 FEET; THENCE S01□58'56"W 564.03 FEET TO THE POINT OF BEGINNING; THENCE S88□01 04"E 25.0 FEET; THENCE S01□58'56"W 162.8 FEET; THENCE S01□52'00"W 137.9 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF ARKANSAS HIGHWAY 72 (R/W VARIES); THENCE ALONG SAID NORTHERLY RIGHT OF WAY LINE N86□06'08"W 25.0 FEET; THENCE N01□52'00"E 137.0 FEET; THENCE N01□58'56"E 162.83 FEET TO THE POINT OF BEGINNING, CONTAINING 0.17 ACRES, MORE OR LESS.; and,

WHEREAS, the Planning Commission duly met and considered the application and duly set the petition for public hearing to be held September 7, 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 **Error! Reference source not found.** to R-2, Medium Density Two Family and Townhome 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 **Error! Reference source not found.** to R-2, Medium Density Two Family and Townhome 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

Patsy H. Simmons Revocable Trust

2805 E Central Avenue

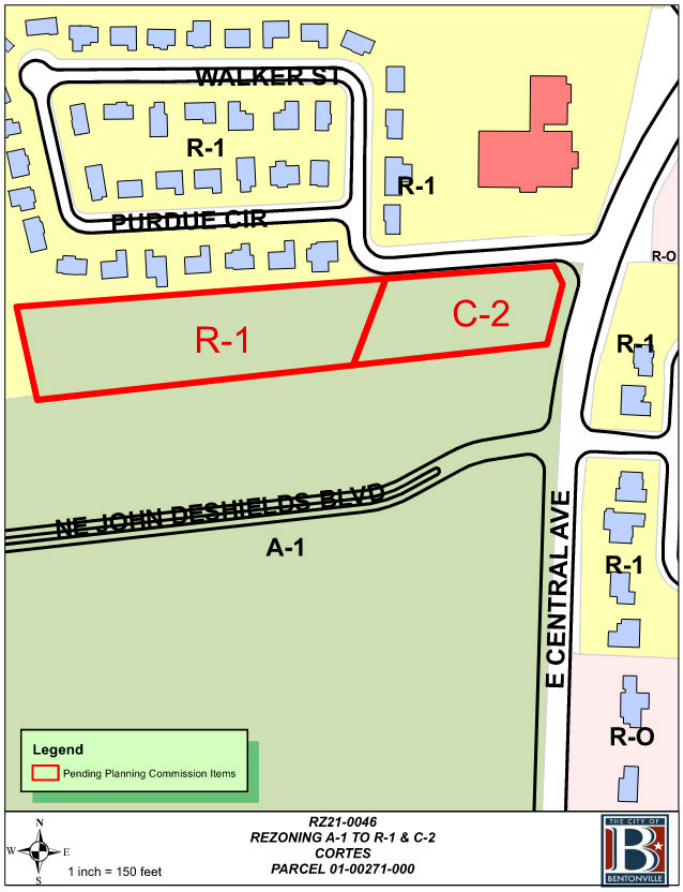
PC Date: 9/7/2021

Reviewer: Elizabeth Johnson, Senior Planner, AICP

Project Number	RZ21-0046
Applicant / Current Owner	Patsy H. Simmons Revocable Trust
Site Area	+/- 3.74 acres
Current Zoning	A-1, Agricultural
Requested Zoning	R-1, Low Density Single Family Residential and C-2, General Commercial
Future Land Use Map Designation	Agricultural (A) to Low Density Residential (LDR) and General Commercial (GC)

https://arcg.is/08HvK8

Location Map



Property Description

This property is located at 2805 E Central Avenue. The property is currently zoned A-1, Agricultural. Surrounding zoning districts are R-1, Low Density Single Family Residential to the north, east, and west, and A-1, Agricultural to the south.

Relationship to the Bentonville Community Plan

The Future Land Use Plan currently depicts this property as Agricultural. The applicant is requesting a change in the Future Land Use Plan to Low Density Residential and General Commercial. Low Density Residential areas include detached single-family residential properties with a typical density of 3-8 units per acre. These areas represent the predominate form of residential development in Bentonville. These areas may also include local amenities for residents, including neighborhood parks, places of worship, etc.

General commercial areas include uses that serve both nearby residents and those coming from other parts of the city or region. Appropriate uses in these areas include retail, restaurants, services, and offices. Vertical mixed-use developments are encouraged, but are not as high a priority as in mixed-use or downtown commercial areas. General commercial uses should balance access between pedestrians and vehicles while minimizing the impacts of parking through site design and landscaping.

The property is located within Priority Area 2, Infill, as identified in Chapter 4 of the Community 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.

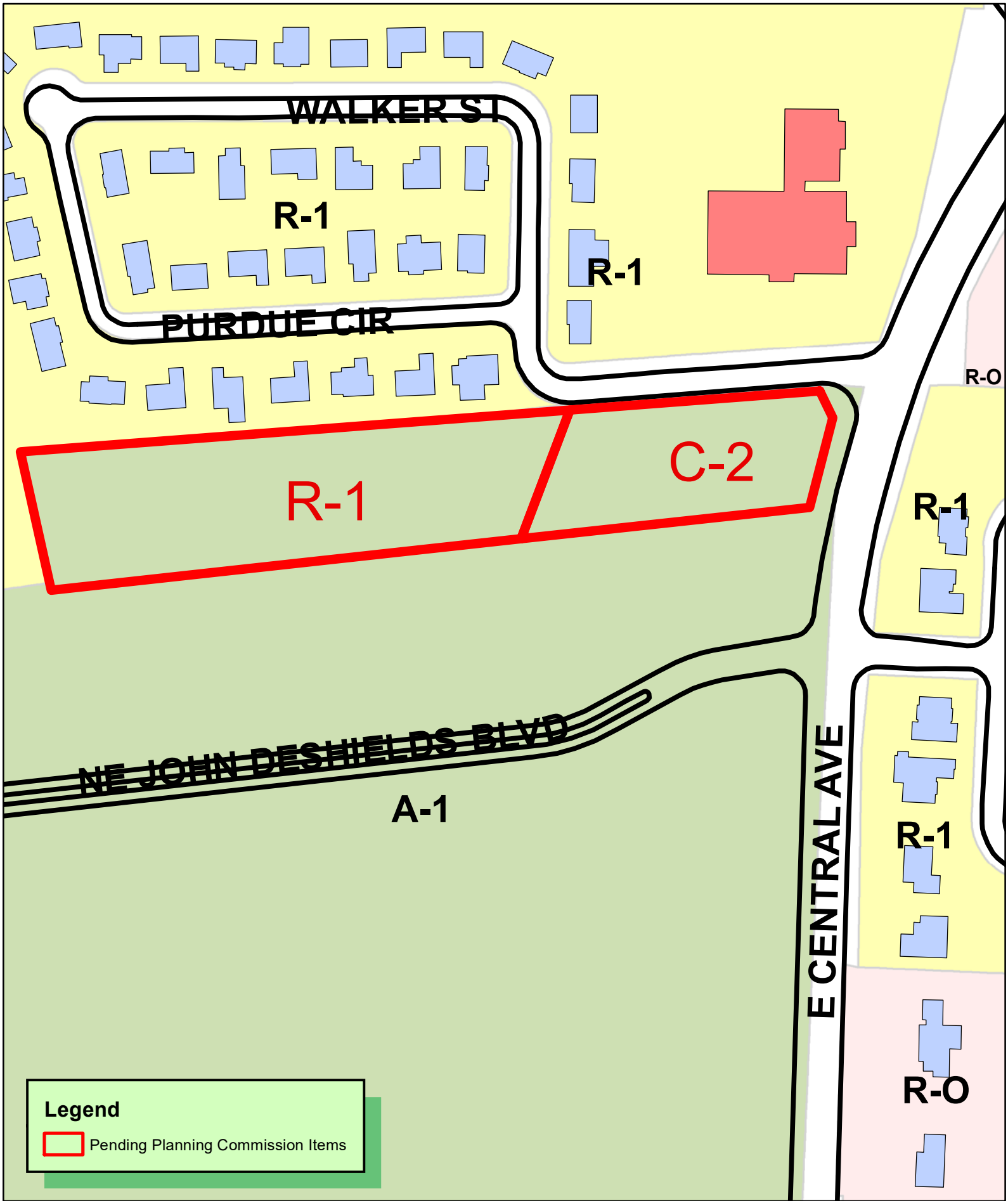
Analysis

The R-1 district serves low density developments in which housing is generally of the highest value and where strict separation of land uses is desired. Since R-1 districts are separated from all commercial and industrial activity, access to connecting traffic arteries is essential. The C-2 district represents the least restrictive of the commercial districts and is designed to serve the planning area and highway travelers. The district shall congregate on local arterial streets in such a manner as to minimize disruptions of through traffic and shall be interspersed within the corporate boundaries.

This request is not consistent with the Future Land Use Plan, which is why the applicant has requested a map amendment. The rezone to R-1 is consistent with surrounding zoning districts, but the rezone to C-2 is not.

Conclusion

The rezoning request to R-1 is consistent and compatible with existing land uses. The rezoning request to C-2 is not compatible with the surrounding neighborhood uses, but staff would support a request to C-1 as that would provide a smoother transition from the single-family homes. Staff recommends approval of the Future Land Use Amendments and the rezoning to R-1, but not the rezoning to C-2.



N
W E
S

1 inch = 150 feet

RZ21-0046
REZONING A-1 TO R-1 & C-2
CORTES
PARCEL 01-00271-000

THE CITY OF BENTONVILLE

Expedient Civil Engineering, PLLC

9200 Suits Us Dr, Ste. B
Bella Vista, AR 72714
Phone: (479) 364-0028
Email: jason@ece-pllc.com

August 16, 2021

City of Bentonville
305 SW 'A' Street
Bentonville, AR 72712

RE: CORTES SUBDIVISION TAX PARCEL #01-00271-000
REZONE
ECE PROJECT NO. 21-1027

Dear Sirs:

The property located at the southwest corner of the intersection of Highway 72 and Walker Street is now owned by Ricardo Cortes. It is currently zoned as A-1, Agricultural. In addition, the future land use map depicts the property as medium density residential. The proposed zone is R-1, Single Family Residential for the rear lots and C-2 General Commercial for the front lot. The land use plan must also be revised to allow the commercial zoning request of C-2 along Highway 72. We are requesting the C-2 portion land use to be modified to general commercial.

Reason for rezone and land use plan revision:

1. To allow approximately 7 single-family residential lots and 1 commercial lot.

There will be some increase in traffic.
A new 8" water main will connect to the existing 6" water main and extend along the new subdivision street.
A new 8" sewer main will be required to be extended through the subdivision and connect to the existing sewer along the west side of the site.

Best Regards,
EXPEDIENT CIVIL ENGINEERING, PLLC

Jason E. Ingalls, P.E.
Owner/Senior Project Manager

Cc: Ricardo Cortes

An equal opportunity employer

NOTICE OF INTENT TO REZONE

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

A-1, Agricultural to R-1, Single-family Residential

The legal description of the property is as follows:

See attached Legal Description:

The common description of the property is: 2805 East Central Avenue

Proposed land use: Single Family Residential

The public hearing will be held September 7 20 21 at 4:00 p.m. It will be held at the Commission Chambers @ Bentonville City Hall, 305 SW A Street.

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

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

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

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

☐ I / we have no objections to the rezoning.

☑ I / we object to the rezoning because:

It would lower the value of my home. Too much traffic and too many neighbors RIGHT IN MY BACKYARD. This would ruin the asethic and attract an undesirable population to the neighborhood. Also concerns of watershed issues, and have a detrimental effect on area wildlife. Not to mention the light pollution that all of this would cau[illegible] in my backyard would be a nightmare!

Please keep this area agricultural! Rezoning it will RUIN my family's home!

Signature and Physical Address [redacted]

Over-crowding is unattrative when there are already so many un-used lots in this town that already have foundations and need dealt with.

NOTICE OF INTENT TO REZONE

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

A-1, Agricultural to C-2, General Commercial

The legal description of the property is as follows:

See attached Legal Description.

The common description of the property is: 2805 East Central Avenue

Proposed land use: Commercial

The public hearing will be held September 7 20 21 at 4:00 p.m. It will be held at the Commission Chambers @ Bentonville City Hall, 305 SW A Street.

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

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

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

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

☐ I / we have no objections to the rezoning.

☑ I / we object to the rezoning because:

I'm concerned it would lower the value of my home. I'm also concerned about the infringement of my privacy if multi-family, multi-level units were built. This space

[redacted]

Signature and Physical Address

TURN OVER

is also home to a lot of natural wildlife, and this construction would not only destroy their natural habitat, but push them into the surrounding neighborhood. This land should be zoned as a protected prairie, as there are so few of these left and it provides one of the last prairie habitats in the immediate vicinity. Rezoning will destroy the livability of both my home and my neighbors' homes, resulting in a reduction in property value for all of our properties. This lot was clearly never meant used in the manner it is being proposed for now. One look at the lot in person makes this very clear. Please consider this issue critically & ~~[redacted]~~ honestly. Please don't destroy the livability & value of my family's home so another developer can make money at the expense of the community's best interest. Please protect the interest of those whose lives & property will be negatively affected if this rezoning proposal is allowed to move forward.

With Concern,

[redacted]

Low Density Residential

Future Land Use Plan Category Description

Res. No. 10-23-18A



Description

Low-density residential areas include detached single-family residential properties with a typical density of 3-8 units per acre. While lot size and overall density may vary from one part of the city to another, these areas represent the predominant form of residential development in Bentonville. These areas may also include local amenities for residents, including neighborhood parks, places of worship, etc.

General Commercial

Future Land Use Plan Category Description

Res. No. 10-23-18A



Description

General commercial areas include uses that serve both nearby residents and those coming from other parts of the city or region. Appropriate uses in these areas include retail, restaurants, services, and offices. Vertical mixed-use developments are encouraged, but are not as high a priority as in mixed-use or downtown commercial areas. General commercial uses should balance access between pedestrians and vehicles, though the impacts of parking should be minimized through site design and landscaping.

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

R-1, Low Density Single Family Residential

The R-1 District serves low density developments in which housing is generally of the highest value and where strict separation of land uses is desired. Since R-1 Districts are separated from all commercial and industrial activity, access to connecting traffic arteries is essential.

Maximum Height Allowed: 36 feet

Minimum Street Frontage: Equal to min. lot width required at building line, except for lots fronting on cul-de-sac turnarounds and on curving street frontages, which must have no less than 20 ft. of street frontage with the two side lots lines intersecting the street diverging until they are separated by the min. required lot width at the building line.

Minimum Width of Corner Lots: 75 ft. at building line.

Lot and Area Standards:

District	Building type	Min. lot area (sq. ft.)	Min. land area / dwelling unit (sq. ft.)	Min. lot width	Max. lot coverage	
					Interior lot	Exterior lot
R-1	All	6,000	-	60’	40%	45%

Minimum Setback Standards:

District	Building type	Front	Side		Rear
			Interior	Exterior	
R-1	All	20’	7’	20’	25’

Where a utility easement extends beyond the required setback, the edge of the utility easement shall be the setback.

Garage Setback Standards: *Applicable to attached and detached garages.*

Garage, Street Facing: 30 ft. from the property line the garage faces
Garage, Side- or Rear-loading: 20 ft. from the facing property line
Garage, Alley Facing: 20 ft. from property line at 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.

Updated 06-2-2021

Disclaimer: FOR INFORMATIONAL PURPOSES ONLY.
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R-1, Low Density Single Family Residential

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.

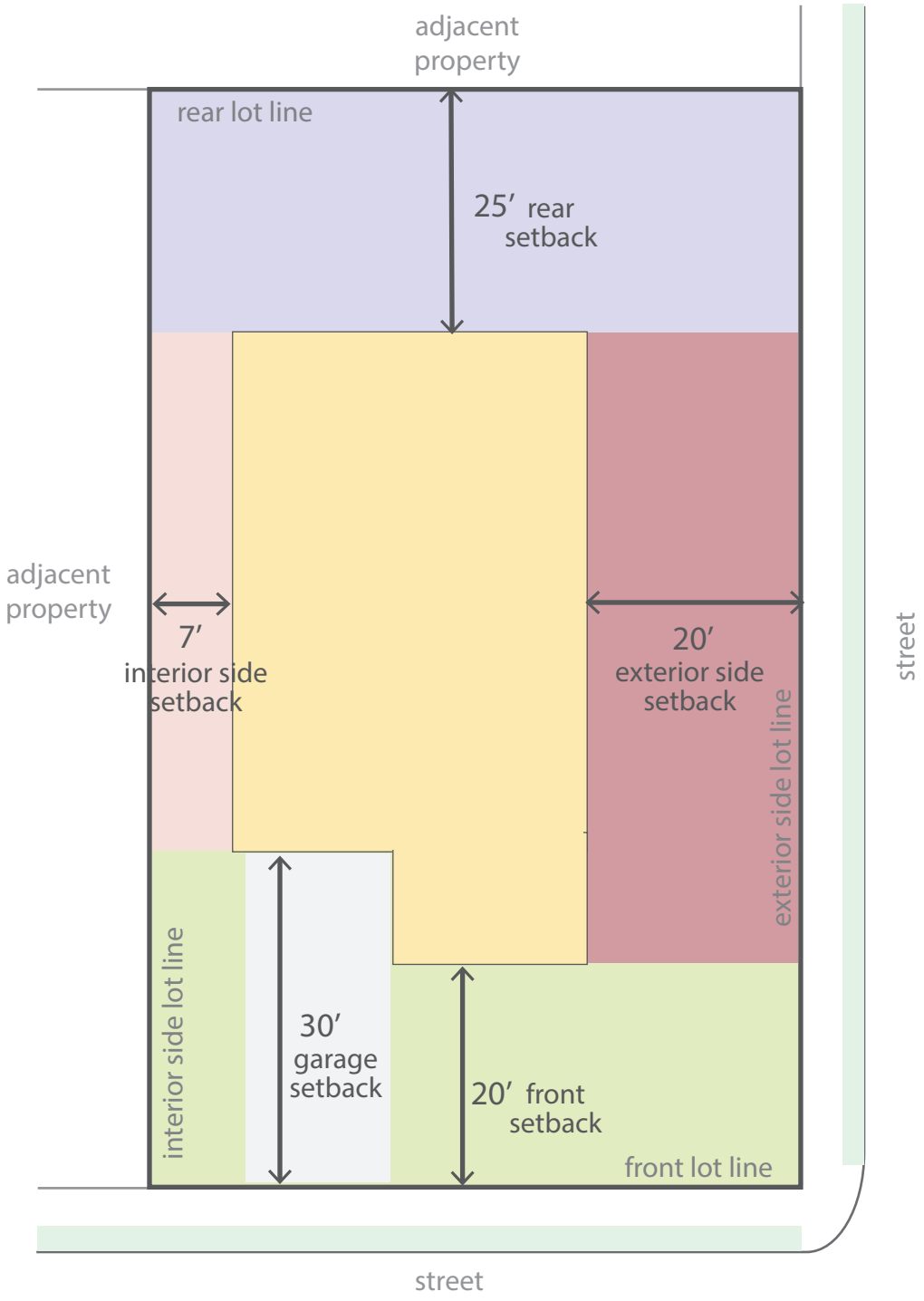
Land Uses:

ALLOWED BY RIGHT	CONDITIONAL	ACCESSORY
Agriculture and Animals Animal - domestic or household Community garden **Residential** Dwelling - modular Dwelling - single family **Recreation, Education & Assembly** Library Park - community Park - mini Park – neighborhood **Services** Child care - residential (4 children) **Retail** Mobile food vendor	**Agriculture and Animals** Animal - farm Botanical garden Urban farm **Residential** Home occupation - type a **Recreation, Education & Public** Aquarium Community center Country club Educational facility Golf course Religious facilities **Services** Adult day care Cemetery or mausoleum Child care - commercial Child care - residential (5-10 children) Lodging - bed & breakfast **Transportation / Utilities** Utility facility Wireless communication facility (cell towers) **Other** Temporary Uses	**Agriculture and Animals** Apiculture Hobby chicken **Residential** Dwelling - accessory Home occupation - type a **Transportation / Utilities** Solar energy system Wind energy system, small **Other** Building, accessory - nonresidential

Disclaimer: FOR INFORMATIONAL PURPOSES ONLY.
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R-1, Low Density Single Family Residential

Setback Illustration



Updated June 2021

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

C-1, Neighborhood Commercial

The C-1 District is designed primarily to provide convenience goods and personal services for persons living in the surrounding residential areas while maintaining a character in harmony with residential development. To this end, development in the C-1 District should harmonize in terms of form, bulk, height, materials, architecture, and overall design with surrounding residential areas. Signage and lighting should be subdued while landscaping and open space should be maximized. Parking areas should be as inconspicuous as possible as should loading and trash collection areas.

Maximum Density Allowed: N/A

Maximum Height Allowed: 40 feet

Height Exception: Any structure exceeding the listed maximum height shall be set back an additional 1 foot for each foot in excess of the maximum height allowed for that district.

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
C-1	All	7,000	-	70’	-	50%	50%

Minimum Setback Standards:

District	Front		Side		Rear	
	Parking in front	No parking in front	Adjacent to non-residential district	Adjacent to residential district	Adjacent to non-residential district	Adjacent to residential district
C-1	50’	20’	7’	15’	20’	25’

Updated 02-11-20

Disclaimer: FOR INFORMATIONAL PURPOSES ONLY.
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C-1, Neighborhood Commercial

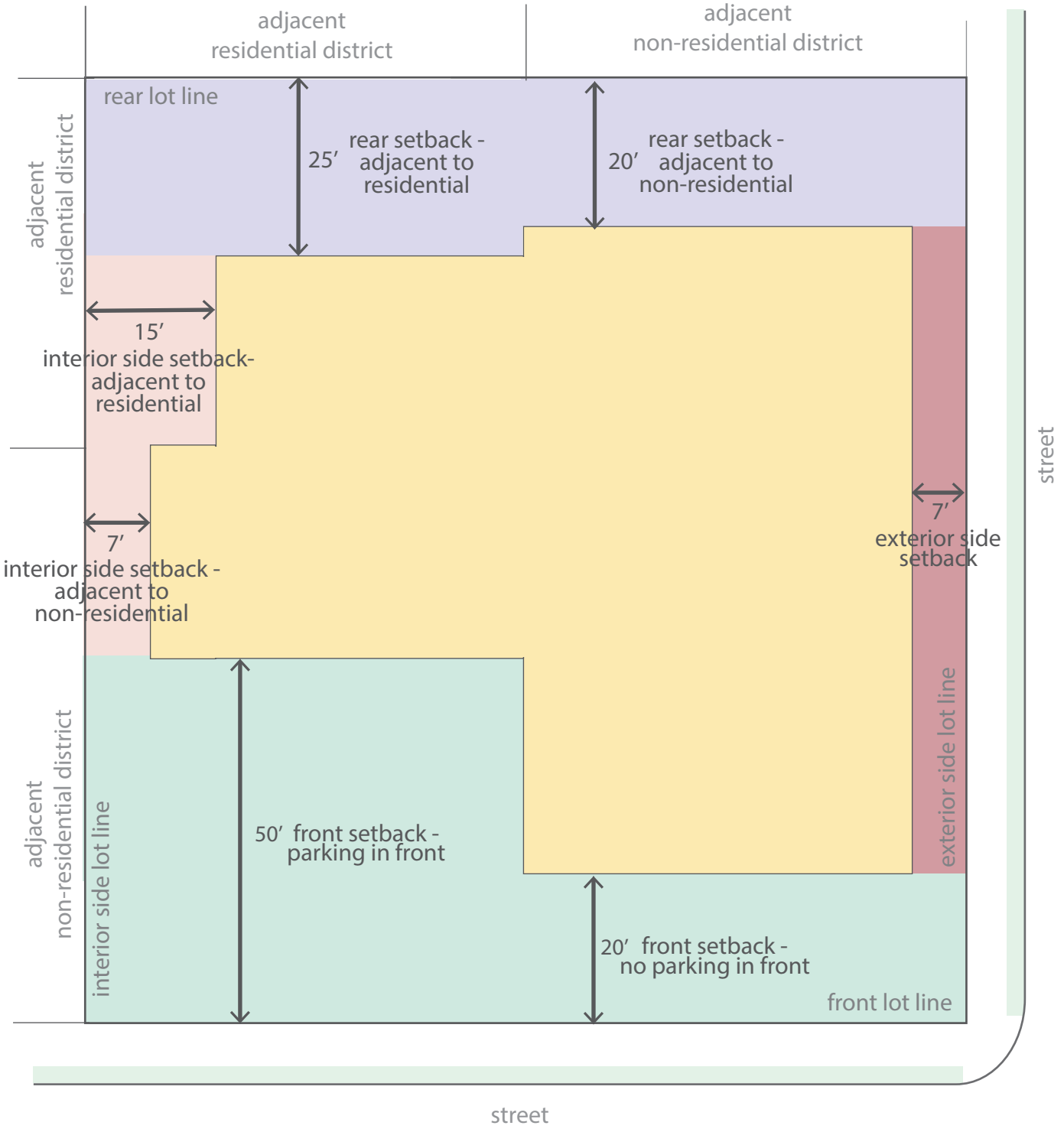
ALLOWED BY RIGHT	CONDITIONAL	ACCESSORY
Agriculture and Animals Animal - domestic or household Botanical garden **Residential** Residential facility - assisted living Residential facility - extended medical care Residential facility – rehabilitation **Recreation, Education & Assembly** Aquarium Community Center Cultural studio Library Museum Park – community Park – mini Park - neighborhood **Services** Adult day care ATM machine Auction house Cemetery or mausoleum Child care – commercial Child care – residential (4 children) Financial institution Funeral home Governmental services facility Maintenance service Medical services – doctor office Office – small scale (≤ 4,000 gsf) Personal services Postal services Repair services – household **Retail** Artisan shop Bakery Bar, lounge or tavern Convenience store Convenience store that sells beer and/or light wine for off-site consumption Convenience store that sells beer, light wine/and or spirits for off-site consumption Equipment rental – indoor Outdoor vending – private property Retail – small scale (≤ 4,000 gsf)	**Agriculture and Animals** Animal clinic Community garden **Recreation, Education & Public Assembly** Commercial recreation facility - indoor Commercial recreation facility – outdoor Educational facility Event center Golf course Religious facility **Services** Car wash Copy facilities Lodging – Bed & Breakfast Public safety services **Retail** Convenience store that sells beer and/or light wine for off-site consumption within 500 ft. of a city owned park or trail Gas station Outdoor vendor park Restaurant Restaurant, drive-through Restaurant, microbrewery **Transportation/Utilities** Airport facilities Parking facility (as principle use) Utility facility Wireless communication facility (cell tower) **Other** Temporary Uses	**Residential** Dwelling – accessory **Transportation/Utilities** Solar energy system Wind energy system, small **Other** Building – accessory nonresidential

Updated 02-11-20

Disclaimer: FOR INFORMATIONAL PURPOSES ONLY.
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C-1, Neighborhood Commercial

Setback Illustration



Updated May 2020

RESOLUTION NO. _____

A RESOLUTION AMENDING THE CITY OF BENTONVILLE FUTURE LAND USE MAP FOR A SPECIFIC AREA FROM HIGH-DENSITY RESIDENTIAL TO LOW-DENSITY RESIDENTIAL AND GENERAL COMMERCIAL. (PROJECT NUMBER: RZ21-0046).

WHEREAS, The City of Bentonville, acted on the request of the Planning Commission that the properties depicted on Attachment A, situated in Benton County, Arkansas, be changed from their present land use classification of High-Density Residential to Low-Density Residential and General Commercial on the City of Bentonville Future Land Use Map.

WHEREAS, the Planning Commission duly met and considered the application and duly set the petition for public hearing to be held Sept 7, 2021 at Bentonville City Hall; 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 future land use classification as presented on the property be changed.

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

Section 1: That the properties depicted on Attachment A are hereby changed from their present land use classification of High-Density Residential to Low-Density Residential and General Commercial on the City of Bentonville Future Land Use Map.

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

PASSED AND APPROVED _____ day of _____, 2021.

APPROVED:

_____
Stephanie Orman, Mayor

ATTEST:

_____
Kirby Romines, City Clerk

ORDINANCE NO. _____

AN ORDINANCE CHANGING REAL ESTATE IN THE CITY OF BENTONVILLE, ARKANSAS, FROM ITS PRESENT ZONING CLASSIFICATION OF A-1, AGRICULTURAL TO R-1, LOW DENSITY SINGLE FAMILY RESIDENTIAL & C-1 NEIGHBORHOOD COMMERCIAL (PROJECT NUMBER: RZ21-0046).

WHEREAS, Patsy H. Simmons duly filed a petition with the Planning Commission requesting that the hereinafter described property situated in Benton County, Arkansas, be changed from its present zoning classification of A-1, Agricultural to R-1, Low Density Single Family Residential & C-1, Neighborhood Commercial to be used in accordance with city zoning laws and state laws, which property is described as follows:

R-1:

PART OF THE NE ¼ OF THE SW ¼ OF SECTION 28, TOWNSHIP 20 NORTH, RANGE 30 WEST FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE NE CORNER OF THE NE ¼ OF THE SW ¼ OF SECTION 28; THENCE N02°26'18"E 2.32 FEET; THENCE N87°33'42"W 96.70 FEET, BEING AN ARKANSAS STATE HIGHWAY MONUMENT; AS FOUND IN JOB 090178 ON PAGE 18 OF 23; THENCE S85°39'01"W 309.26 FEET TO THE POINT OF BEGINNING; THENCE S20°38'58"W 169.82 FEET; THENCE S83°46'15"W 582.78 FEET TO A FOUND IRON PIN; THENCE N12°28'37"W 174.76 FEET TO A FOUND IRON PIN; THENCE N85°39'01"E 678.93 FEET TO THE POINT OF BEGINNING, CONTAINING 2.36 ACRES, MORE OR LESS, AND SUBJECT TO ANY KNOWN EASEMENTS OR RIGHTS OF WAY OF RECORD OR FACT; AND

C-1:

PART OF THE NE ¼ OF THE SW ¼ OF SECTION 28, TOWNSHIP 20 NORTH, RANGE 30 WEST FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE NE CORNER OF THE NE ¼ OF THE SW ¼ OF SECTION 28; THENCE N02°26'18"E 2.32 FEET; THENCE N87°33'42"W 96.70 FEET TO THE POINT OF BEGINNING, BEING AN ARKANSAS STATE HIGHWAY MONUMENT; THENCE ALONG THE WEST RIGHT OF WAY OF ARKANSAS HIGHWAY, AS FOUND IN JOB 090178 ON PAGE 18 OF 23, THE FOLLOWING BEARINGS AND DISTANCES; S24°59'24"E 36.82 FEET TO A MONUMENT; THENCE S14°21'31"W 113.76 FEET TO A FOUND 1 INCH AXLE; THENCE LEAVING SAID RIGHT OF WAY, S83°46'15"W 357.72 FEET; THENCE N20°38'58"E 169.82 FEET; THENCE N85°39'01"E 309.26 FEET TO THE POINT OF BEGINNING, CONTAINING 50,404 SQUARE FEET OR 1.16 ACRES, MORE OR LESS, AND SUBJECT TO ANY KNOWN EASEMENTS OR RIGHTS OF WAY OF RECORD OR FACT; AND,

WHEREAS, the Planning Commission duly met and considered the application and duly set the petition for public hearing to be held September 7, 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 **Error! Reference source not found.** to R-1, Low Density Single Family Residential, C-1 Neighborhood Commercial.

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 **Error! Reference source not found.** to R-1, Low Density Single Family Residential, C-1 Neighborhood Commercial to be used in accordance with the city zoning laws and state laws.

PASSED AND APPROVED this_____ day of _____, 2021.

APPROVED:

_____

ATTEST: **Stephanie Orman, Mayor**

_____

Kirby Romines, City Clerk

Lucy Diane Upchurch

202 Lake Street

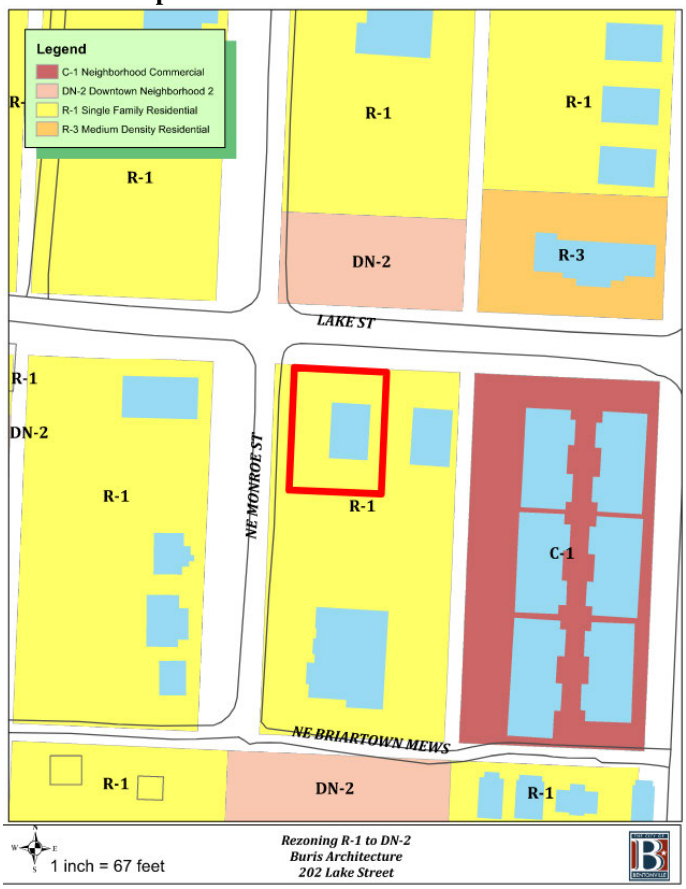
PC Date: 9/7/2021

Reviewer: Elizabeth Johnson, Senior Planner, AICP

Project Number	RZ21-0049
Applicant / Current Owner	Lucy Diane Upchurch
Site Area	+/- 0.17 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

The property is located at 202 Lake Street. The property is currently zoned R-1, Low Density Single Family Residential. Surrounding zoning districts are DN-2, Downtown Medium Density Residential to the north, C-1 Neighborhood Commercial to the east and R-1, Single-Family Residential to the south and 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 1, Downtown Intensification, as identified in Chapter 4 of the Community Plan. This area highlights reinvestment in urban neighborhoods in and around Downtown Bentonville.

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.



N
W E
S

1 inch = 67 feet

Rezoning R-1 to DN-2
Buris Architecture
202 Lake Street

THE CITY OF BENTONVILLE

WATKINS, BOYER, GRAY & CURRY, PLLC

ATTORNEYS AT LAW

WILLIAM P. WATKINS, III, P.A.
RONALD L. BOYER, P.A.
JENNIFER E. GRAY, P.A.*
ANDREW T. CURRY, P.A.
WILLIAM A. KELLSTROM
JOHN E. JENNINGS (OF COUNSEL)
* ALSO LICENSED IN MISSOURI

WRITER'S DIRECT E-MAIL
wkellstrom@watkinslawoffice.com

DELYNN HALE, SECRETARY
AMY BENSON, PARALEGAL
WHITNEY DUCKER, OFFICE MANAGER

August 4, 2021

Bentonville Planning Department
305 SW A Street
Bentonville, AR 72712

RE: Rezoning Parcel No. 01-04587-001 from R-1, Low Density Residential to DN-2, Downtown Medium Density Residential

Dear Planning Staff:

This law firm has been hired to assist the applicant, Lucy Diane Upchurch, in obtaining a rezoning of Parcel No. 01-04587-001 (hereinafter "the Property") from R-1, Low Density Residential to DN-2, Downtown Medium Density Residential.

The primary reason for this rezoning request is to bring the lot into compliance with Bentonville's updated downtown zoning codes and to take advantage of the setbacks and density regulations incident thereto. The requested zoning is in compliance with the Bentonville Future Land Use Plan ("FLUP"). The FLUP designates this parcel as Medium Density Residential, which allows for DN-2 zoning only. A larger number of parcels in this area have already been zoned DN-2, and as such, this rezoning will follow the current pattern of development in the neighborhood, as contemplated by the FLUP.

This rezoning will not increase traffic by an appreciable amount, no signage is contemplated, and the development is being designed by an architect and will be similar in appearance to other redevelopment in downtown Bentonville. Lastly, an eight inch (8") sewer line is located along NE Monroe St., and an eight inch (8") water line is located along Lake St.

Thank you for considering this rezoning request. If you have any questions please feel free to contact me at 479-636-2168 or at wkellstrom@watkinslawoffice.com.

Sincerely,

WATKINS, BOYER,
GRAY & CURRY, PLLC

[redacted]

Will A. Kellstrom

WK:
pc:

1106 WEST POPLAR STREET
ROGERS, AR 72756
PH: 479-636-2168
FX: 479-636-6098
WWW.WATKINSLAWOFFICE.COM

REAL ESTATE, CONSTRUCTION & LIEN LAW, LAND USE & PLANNING
CORPORATE & COMMERCIAL LAW, BANKING, BANKRUPTCY
CRIMINAL LAW, FAMILY LAW, GUARDIANSHIPS, LANDLORD-TENANT
ESTATE PLANNING, ELDER LAW, PROBATE, TRUST LITIGATION
CIVIL LITIGATION, COMMERCIAL & CONSUMER DEBT COLLECTION

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.

Updated 08-31-20

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

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:

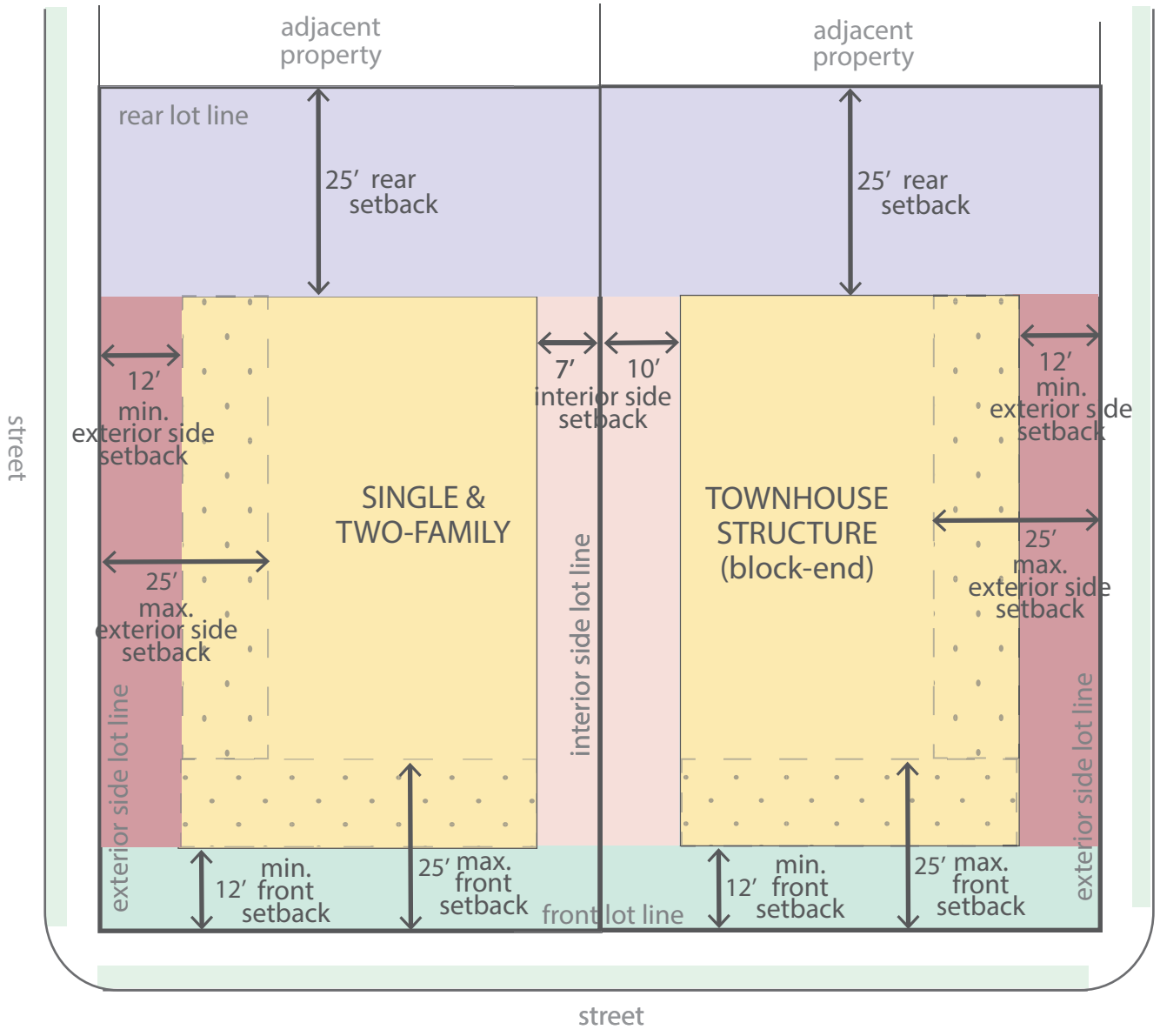
ALLOWED BY RIGHT	CONDITIONAL	ACCESSORY
Residential Dwelling - modular Dwelling - single family Dwelling - townhouse or rowhouse – end block Dwelling - two-family **Recreation, Education & Assembly** Park - mini Park - neighborhood **Services** Child care - residential (4 children)	**Agriculture and Animals** 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

Updated 08-31-20

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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: RZ21-0049).

WHEREAS, Lucy Diane Upchurch 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 11, BLOCK 10, W.A. BURK'S ADDITION, CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS, AS SHOWN IN LOT SPLIT IN PLAT RECORD 16 AT PAGE 242, RECORDS OF BENTON COUNTY, ARKANSAS.; and,

WHEREAS, the Planning Commission duly met and considered the application and duly set the petition for public hearing to be held September 7, 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 **Error! Reference source not found.** 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 **Error! Reference source not found.** 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

Robert E. Carr and Kathryn Carr

501 NW B Street

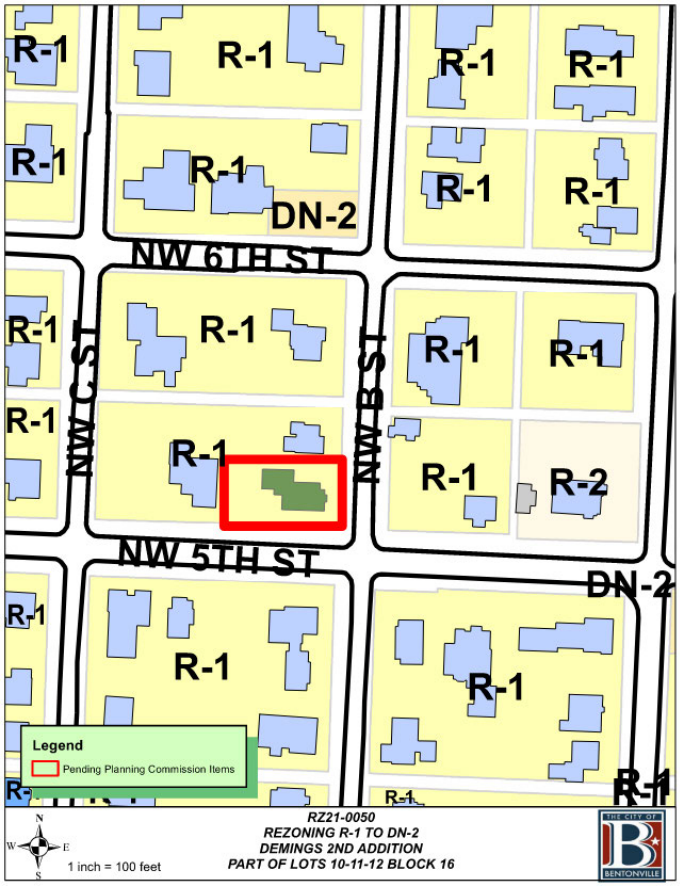
PC Date: 9/7/2021

Reviewer: Elizabeth Johnson, Senior Planner, AICP

Project Number	RZ21-0050
Applicant / Current Owner	Robert E. Carr and Kathryn Carr
Site Area	+/- 0.27 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 501 NW B 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, east, south and 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 1, Downtown Intensification, as identified in Chapter 4 of the Community Plan. This area highlights reinvestment in urban neighborhoods in and around Downtown Bentonville.

Public Comment

Staff has received public comments regarding this rezoning request.

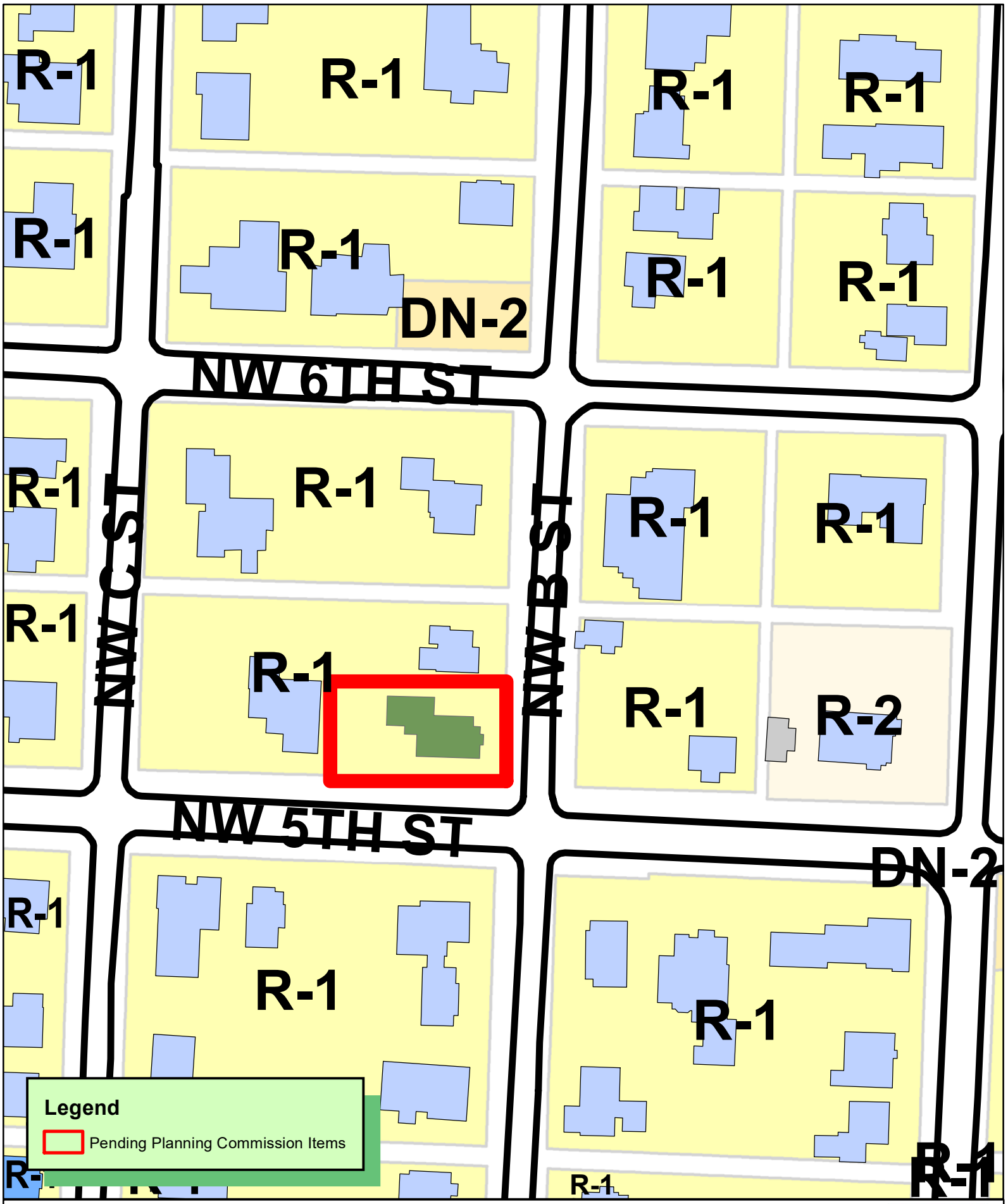
Analysis

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.



RZ21-0050
REZONING R-1 TO DN-2
DEMINGS 2ND ADDITION
PART OF LOTS 10-11-12 BLOCK 16

501 NW B 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 501 NW B (parcel ID 01-02218-000) from R1 to DN2, in order to develop a real estate project in compliance with DN2 development standards of the Bentonville Zoning Code. The current owner is Carr Rentals #1, LLC (Mailing Address: PO Box 1953, 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 a future residential development on the .27-acre lot. Currently the property is zoned R1 and serves as a 6-unit multi-family dwelling. The City of Bentonville Planning Department recommended a rezone to DN2 to fit within the future land use plan.

Statement of how the property will relate to surrounding properties: The residential development proposed for this property will fit in form and scale with design standards outlined by the City of Bentonville DN2 building standards. While many of the surrounding properties are currently zoned R1, the future land use plan indicates that this parcel lies within a medium density zone.

Use: This residential development 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. It also falls within the "potential change" area of Chapter 10, Subarea Plans, indicating that this area can accommodate "a higher density and mix of residential uses due to its proximity to new institutional and cultural development".

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 and the multiple trail systems.

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 north side 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

NOTICE OF INTENT TO REZONE

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

R-1, Single-family Residential to DN-2, Downtown Medium-density Residential

The legal description of the property is as follows:

Part of Lots 10, 11 and 12 in Block 16 in Deming's Second Addition to the City of Bentonville described as beginning at the SE corner of Lot 12, run thence West 145 feet; thence North 82 feet; thence East 145 feet; thence South 82 feet to the place of beginning.

The common description of the property is: 501 NW B Street, Bentonville, AR

Proposed land use: future residential development

The public hearing will be held September 7, 2021 at 4:00 p.m. It will be held at 305 S.W. "A" Street.

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

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

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

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

☒ I / we have no objections to the rezoning.

☐ I / we object to the rezoning because:

[redacted]

Signature and Physical Address

Signature and Physical Address

NOTICE OF INTENT TO REZONE

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

R-1, Single-family Residential to DN-2, Downtown Medium-density Residential

The legal description of the property is as follows:

Part of Lots 10, 11 and 12 in Block 16 in Deming's Second Addition to the City of Bentonville described as beginning at the SE corner of Lot 12, run thence West 145 feet; thence North 82 feet; thence East 145 feet; thence South 82 feet to the place of beginning.

The common description of the property is: 501 NW B Street, Bentonville, AR

Proposed land use: future residential development

The public hearing will be held September 7, 20 21 at 4:00 p.m. It will be held at 305 S.W. "A" Street.

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

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

☐ I / we have no objections to the rezoning.

☑ I / we object to the rezoning because:

It will not enhance or go into this block of single family, historic homes. This area is one of the few old Bentonville spots in the city and a condominium development will ruin it and what a shame to lose the small town charm sections, which is what draws many here to our town.

[redacted]

Bentonville, AR 72712

Bentonville, AR 72712

NOTICE OF INTENT TO REZONE

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

R-1, Single-family Residential to DN-2, Downtown Medium-density Residential

The legal description of the property is as follows:

Part of Lots 10, 11 and 12 in Block 16 in Deming's Second Addition to the City of Bentonville described as beginning at the SE corner of Lot 12, run thence West 145 feet; thence North 82 feet; thence East 145 feet; thence South 82 feet to the place of beginning.

The common description of the property is: 501 NW B Street, Bentonville, AR

Proposed land use: future residential development

The public hearing will be held September 7, 20 21 at 4:00 p.m. It will be held at 305 S.W. "A" Street.

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

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

☐ I / we have no objections to the rezoning.

☒ I / we object to the rezoning because:

_____

_____

[redacted]

_____

Signature and Physical Address

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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.

Updated 08-31-20

Disclaimer: FOR INFORMATIONAL PURPOSES ONLY.
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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:

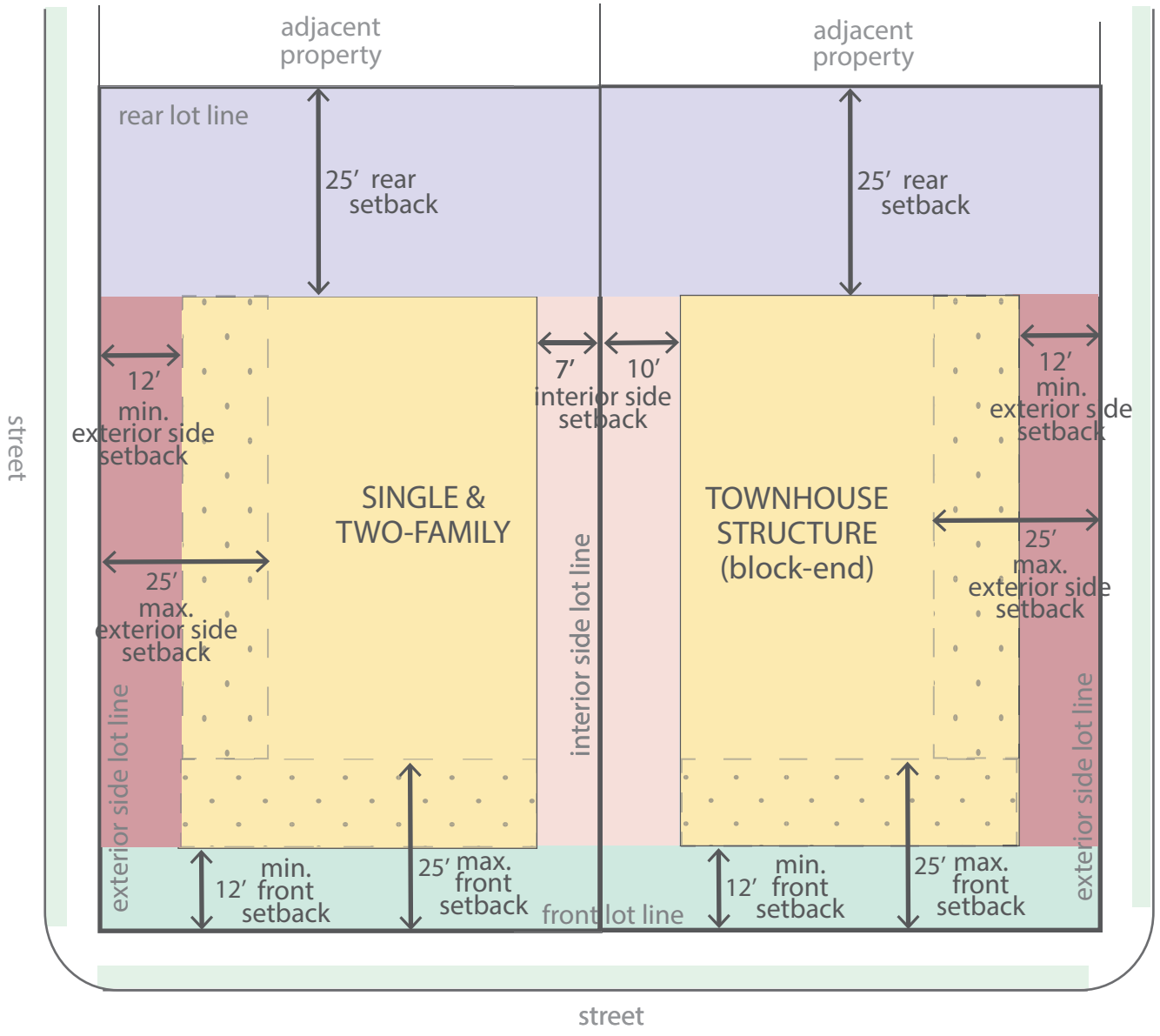
ALLOWED BY RIGHT	CONDITIONAL	ACCESSORY
Residential Dwelling - modular Dwelling - single family Dwelling - townhouse or rowhouse – end block Dwelling - two-family **Recreation, Education & Assembly** Park - mini Park - neighborhood **Services** Child care - residential (4 children)	**Agriculture and Animals** 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

Updated 08-31-20

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

Setback Illustration



Updated May 2020

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: RZ21-0050).

WHEREAS, Robert E. Carr and Kathryn Carr 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:

Part of Lots 10, 11 and 12 in Block 16 in Deming's Second Addition to the City of Bentonville described as beginning at the SE corner of Lot 12, run thence West 145 feet; thence North 82 feet; thence East 145 feet; thence South 82 feet to the place of beginning.; and,

WHEREAS, the Planning Commission duly met and considered the application and duly set the petition for public hearing to be held September 7, 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 **Error! Reference source not found.** 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 **Error! Reference source not found.** 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

Bentonville 12, Ltd.

407 SW Ranch Road
PC Date: 9/7/2021
Reviewer: Elizabeth Johnson, Senior Planner, AICP

Project Number	RZ21-0052
Applicant / Current Owner	Bentonville 12, Ltd.
Site Area	+/- 4.56 acres
Current Zoning	PUD, Planned Unit Development
Requested Zoning	R-3, Medium-High Density Multifamily Residential
Future Land Use Map Designation	Medium Density Residential (MDR)

https://arcg.is/08HvK8

Location Map



Property Description
This property is located at 407 SW Ranch Road. The property is currently zoned PUD, Planned Unit Development. Surrounding zoning districts are PUD, Planned Unit Development to the north, R-4, High Density Multifamily Residential to the east, and A-1, Agricultural to the south and 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 Community 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 not received public comments regarding this rezoning request.

Analysis
The intent of the R-3 district is to provide suitable areas for medium density residential development. Such units would be located in areas where adequate city facilities existed prior to development or would be provided in conjunction with development, and where a suitable environment for medium density residential development would be available. Such districts could be used in suburban portions of the city as a buffer or transitional zones between single-family and other uses not compatible with low density residential development.

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 R-3 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.



RZ21-0052
REZONING PUD TO R-3
LIMESTONE RANCH SUBDIVISION
LOT 13

Crafton Tull

901 N 47th Street, Suite 400
Rogers, AR 72756

479.636.4838 (ph)
479.631.6224 (fax)

August 2, 2021

Bentonville Current Planning
305 SW A Street
Bentonville, AR 72712

RE: Rezoning of Property (Parcel #01-14936-000)

Staff,

On behalf of our clients we would like to formally request a zoning change for this project from PUD, Planned Unit Development to R-3, Medium Density Residential. The property is currently owned by Bentonville 12 LTD. The adjacent properties are zoned A-1, R-4, and PUD. A proposed R-3 zoning is appropriate in this area based on proximity to other residential and commercial parcels. This proposed zoning is consistent with the Future Land Use Plan of Medium Density Residential (per GIS).

The owners of this parcel are requesting a rezone to R-3 in order to develop townhome residential units. Currently, the proposed plans for development on this property are to build 55 townhome units (12 units/acre) with associated infrastructure, storm water detention, and onsite amenities. This property has access to 3 points of ingress/egress (via SW H St, SW 41st St, and SW Ranch Rd).

There are no plans for proposed signage on this property. Owner/developer will work with city staff when planning any proposed signage.

The site currently has one single family home and one accessory building. The land is comprised of dense grass cover with some larger trees throughout. Water and sewer are readily available onsite.

By rezoning to R-4, Medium Density Residential, this property will be an excellent place for development and will be an asset to the Bentonville community.

Thank you,

[redacted]

Elizabeth Topping, E.I.

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

R-3, Medium-High Density Multifamily Residential

The R-3 District is established to provide suitable areas for medium density residential development. Such units would be located in areas where adequate city facilities existed prior to development or would be provided in conjunction with development, and where a suitable environment for medium density residential development would be available. Such districts could be used in suburban portions of the city as buffer or transitional zones between single-family and other uses not compatible with low density residential development. Within this district, zero lot line and townhouses are permitted.

Maximum Height Allowed: 40 feet

Minimum Street Frontage: 20 feet

Minimum Width of Corner Lots: 75’ at building line

Lot and Area Standards:

District	Building type	Min. lot area (sq. ft.)	Min. land area / dwelling unit (sq. ft.)	Min. lot width	Max. lot coverage	
					Interior lot	Exterior lot
R-3	Single-family	5,000	-	50’	40%	45%
	Two-family	5,000	-	50’	50%	55%
	Townhouse unit	2,000	-	20’	-	-
	Townhouse structure	6,000	2,000	60’	65%	70%
	Multi-family	6,000	1,500	60’	65%	70%
	All others not listed	10,000	-	100’	50%	55%

Minimum Setback Standards:

District	Building type	Front	Side		Rear
			Interior	Exterior	
R-3	All	20’	10’	20’	25’

Where a utility easement extends beyond the required setback, the edge of the utility easement shall be the setback.

Garage Setback Standards: *Applicable to attached and detached garages.*

Garage, Street Facing: 30 ft. from the property line the garage faces

Garage, Side- or Rear-loading: 20 ft. from the front property line

Garage, Alley Facing: 20 ft. from property line at 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.

Updated 06-02-2021

Disclaimer: FOR INFORMATIONAL PURPOSES ONLY.
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R-3, Medium-High Density Multifamily Residential

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.

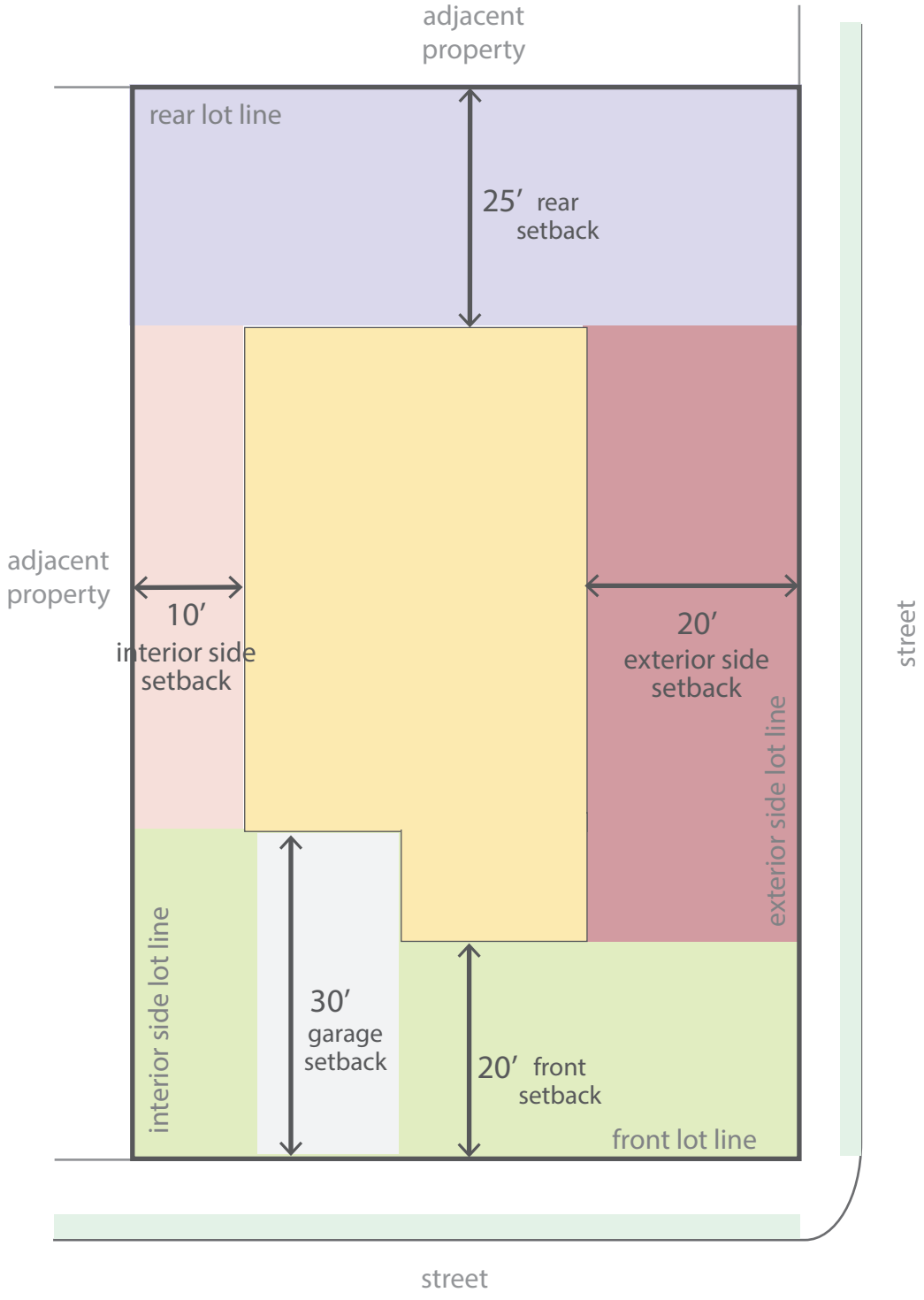
Land Uses:

ALLOWED BY RIGHT	CONDITIONAL	ACCESSORY
Agriculture and Animals Animal - domestic or household Community garden **Residential** Dwelling - condominium Dwelling - modular Dwelling - multi-family Dwelling - single family Dwelling - townhouse or rowhouse Dwelling - two-family Residential facility - assisted living Residential facility - temporary shelter **Recreation, Education & Assembly** Library Park - mini Park - neighborhood **Services** Child care - residential (4 children) **Retail** Mobile food vendor	**Agriculture and Animals** Botanical garden Urban farm **Residential** Home occupation - type b **Recreation, Education & Public** Aquarium Community center Country club Educational facility Golf course Museum Religious facilities **Services** Adult day care Cemetery or mausoleum Child care - commercial Child care - residential (5-10 children) Lodging - bed & breakfast Public safety services **Transportation / Utilities** Utility facility Wireless communication facility (cell towers) **Other** Temporary uses	**Residential** Dwelling - accessory Home occupation - type a **Transportation / Utilities** Solar energy system Wind energy system, small **Other** Building, accessory - nonresidential

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R-3, Medium-High Density Multifamily Residential

Setback Illustration



ORDINANCE NO. _____

AN ORDINANCE CHANGING REAL ESTATE IN THE CITY OF BENTONVILLE, ARKANSAS, FROM ITS PRESENT ZONING CLASSIFICATION OF PUD, PLANNED UNIT DEVELOPMENT TO R-3, MEDIUM-HIGH DENSITY MULTIFAMILY RESIDENTIAL (PROJECT NUMBER: RZ21-0052).

WHEREAS, Bentonville 12, LTD 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 PUD, Planned Unit Development to R-3, Medium-High Density Multifamily Residential to be used in accordance with city zoning laws and state laws, which property is described as follows:

Lot 13 of Limestone Ranch Subdivision to Bentonville, Benton County, Arkansas, as shown on plat filed under Book 2015 and Page 651, 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 September 7, 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 **Error! Reference source not found.** to R-3, Medium-High Density Multifamily 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 **Error! Reference source not found.** to R-3, Medium-High Density Multifamily 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

Agenda Item Form

Date of City Council Meeting	**9/14/2021**
Department	**Community Development/Administration**
Submitted by	**Ellen Norvell**
Phone	**(479) 271-5993**

Item Type: (*Check Applicable Item Type)*

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

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

Staff requests approval of an administrative assistant to provide support to both the Community Development and Administration Departments.

Estimated Cost	**$10,330.79**
Is this Item Budgeted?	☐ Yes ☑ No

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

To be paid for from Reserves.

Budget Adjustment Request

Date of City Council Meeting	**9/14/2021**
Department	**Community Development/Administration**
Submitted by	**Ellen Norvell**
Phone	**(479)271-5993**

Purpose of Budget Adjustment ***(Enter purpose in space below):***

Staff requests approval of a budget adjustment to fund the addition of an Administration Assistant in the Community Development/Administration Departments. This position will provide support to both the Community Development Department and the Mayor's Office. This position will be located in the front office on the second floor of City Hall. Their primary duties will be to greet customers; answer phones for City Hall, Planning, Code Enforcement, and the Mayor's office; assist with preparing agendas and minutes for various committees and commissions; provide clerical support; and order supplies.

General Ledger Account Information*

Org (Department)	Object	Account Description	Revenue + (-)	Expense + (-)
101610	41010	Salary		$ 7,480.00
101610	41510	Taxes		570.35
101610	41710	Health Insurance		1,068.00
101610	41740	Dental Insurance		68.00
101610	41810	APERS		1,144.44
		Totals	$ -	$ 10,330.79
		Net Impact on Fund Balance	$	(10,330.79)

*Final Account Number will be determined by Accounting Department after approval and purchase

MEMORANDUM

To: Mayor Stephanie Orman and Bentonville City Council

From: Ellen L. Norvell, Community Development Director

CC Date: September 14, 2021

Subject: Budget Adjustment for Administrative Assistant

Staff requests approval of a budget adjustment to fund the addition of an Administration Assistant position in the Community Development/Administration Departments. This position will provide support to both the Community Development Department and the Mayor's Office and will be located in the front office on the second floor of City Hall. Their primary duties will be to greet customers; answer phones for City Hall, Planning, Code Enforcement, and the Mayor's office. They will also provide clerical support, assist with preparing agendas and minutes for various committees and commissions, and order supplies.

We attempted to fill this position using a temporary staffing agency through the end of the year, knowing that we were going to request a full time position in the 2022 budget. Finding an acceptable candidate through temporary agencies has proven unsuccessful. With the pace of development and city growth in general, this position is needed so that we can continue to provide good customer service to our residents and the development community.

Agenda Item Form

Date of City Council Meeting	**9/14/2021**
Department	**Electric**
Submitted by	**Travis Matlock, PE**
Phone	**479-271-5941**

Item Type: (*Check Applicable Item Type)*

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

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

Resolution to amend existing Ampirical agreement for Substation "I" engineering to include bidding services and construction observation/oversight for $322,209.00. Approved by Utility Board 5-0.

Estimated Cost	**$322,209.00**
Is this Item Budgeted?	☐ Yes ☑ No

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

Expenses will be paid for from Reserves.

M E M O R A N D U M

DATE: September 14, 2021

TO: **City Council, Mayor Orman**

FROM: Travis Matlock, Electric Utility Director

RE: **Amendment to Ampirical Engineering Contract to provide construction services**

BEUD recommends amending the contract with Ampirical for the engineering on Substation "I" to include construction services (bidding and construction observation/oversight) for $322,209.

The original contractor for the Substation "I" engineering was approved at the August 11, 2020 City Council and the engineering began in late 2020. BEUD is now ready to begin the bidding phase of design and recommend the amendment in order to allow Ampirical to work with Purchasing to procure the large materials and bid the construction of Substation "I".

As a reminder, with the expansion of Substation "E", the existing transformer will be relocated to Substation "I" as the new, upsized transformers are delivered to Substation "E" in 2022. This will save the City approximately $600,000 in material costs.

This is a non-budgeted item and would be paid for from Electric Department reserves.

AMPIRICAL	AMENDMENT BEUD WMT Substation/T-Line Relocation	Doc. No.:	20081-BEUD-CO-PM-002	
		Project No.:	20081.00.00	
		Client AFE:		
		Rev. No./Date:	0	8/18/2021
		Issue for:		
		File Loc.:		

To:

Travis Matlock, PE
Electric Utility Director
City of Bentonville
3200 Municipal Drive
Bentonville, AR 72712
Phone: (479) 271-5941

Description of Change

Provide project management, engineering, and construction management services for BEUD's Substation "I" Upgrade project per estimate letter dated August 16, 2021.

Estimated Change Costs

Total	**$ 322,209.00**

Attachments

1) Substation "I" Upgrade Estimate Letter dated August 16, 2021

WE AGREE hereby to make the change(s) specified above at this price		**$ 322,209.00**
Date:	**PREVIOUS CONTRACT AMOUNT**	**$182,548.00**
Authorized Signature (Ampirical)	**NEW CONTRACT TOTAL**	**$504,757.00**

ACCEPTED - The above prices and specifications of this Change Order are satisfactory and are hereby accepted.
All work to be performed under same terms and conditions as specified in original contract unless otherwise stipulated.

Date of Acceptance: _____

Signature: _____

{Name, Title} Contractor, Authorizing Agent

4 Sanctuary Boulevard, Mandeville, LA 70471 Phone (985) 809-5240 Fax (985) 809-5250

Bentonville Electric Utility Department

Ampirical Project: TBD
August 16, 2021

Subject: Substation "I" Upgrade Estimate

Dear Mr. Matlock,

As requested, Ampirical has prepared the estimate below to provide project management services and construction management oversight for the Substation I Upgrade Construction.

SCOPE DESCRIPTION:

- Provide engineering, project management, project controls, and construction management support to:
  - Develop preliminary project schedule to submit with bid request packages.
  - Develop contracting strategy for subcontractor scopes.
  - Develop subcontractor scopes and price sheets for bid request packages.
  - Develop requests for material quotes.
  - Evaluate subcontractor proposals in relation to scope of work to be executed and provide recommendation for successful bidder.
  - Evaluate material quotations and provide recommendation on successful bidder.
  - Support BEUD through contract execution phase by corroborating successful bidder's pricing with scope of work to be completed and developing project execution schedule.
  - Construction manager to attend pre-construction meeting with subcontractors.
  - Support project through construction phase.
    - Collaborate with BEUD to address issues related to subcontractor's scope of work
    - Provide quality control support
    - Collect and manage quality control documentation
    - Provide daily reports to BEUD outlining project progress and risks
  - Create As-Builts and submit construction closeout documentation.

ESTIMATE OVERVIEW:

Ampirical Solutions, LLC shall perform the above scope of work for the Time & Material cost of **$322,209**.

Time shall be billed on a monthly basis according to Ampirical's Rate Sheet included as Exhibit A.

SCHEDULE OVERVIEW:

The estimated procurement and construction schedule for the Substation I Upgrade project is below.

PROJECT PHASE	START DATE	FINISH DATE
SCOPING	9/7/2021	9/17/2021
BID PREPARATION	9/20/2021	10/8/2021
RFQ POSTING	10/11/2021	10/29/2021
BID EVALUATION	11/1/2021	11/19/2021
CONTRACT EXECUTION	11/29/2021	12/31/2021
PRE-CONSTRUCTION MEETINGS	1/3/2022	1/28/2022
CONSTRUCTION	1/31/2022	6/3/2022
CLOSEOUT	6/6/2022	7/8/2022

OPINION OF PROBABLE COST (OPC) ESTIMATE:

The estimated total cost of the Substation I Upgrade Project is based on the following:

- The existing south power transformer at Substation E will be transferred to the existing transformer foundation by January 31, 2022.
- The existing control house will remain in-service, and no modifications to the control house structure are necessary.

OPC Estimate to Complete Procurement & Construction: $ 4,000,000

CLARIFICATIONS/ASSUMPTIONS:

1) The City of Bentonville will contract all required subcontractors to complete work.
2) The City of Bentonville will procure and expedite all material required to complete work.
3) The City of Bentonville has existing subcontracts and other required legal documents to contract required work.
4) Project manager support during construction is not included in estimated Time & Material cost.
5) Site construction management support is based on providing a construction manager on-site for 50 hours/week for 18 weeks.
    a. Construction manager time over 40 hours per week will be billed at 1.5 times the Construction Manager rate in Exhibit A.
    b. Construction manager per diem will be invoiced using applicable Lodging, Meals & Incidentals rates per U.S. General Services Administration website.
6) The construction and procurement scope of work is based on Substation "I" drawings submitted to BEUD on July 2, 2021.

a. Work is restricted to Substation I. No overhead or underground transmission/distribution modifications are required beyond limits shown on drawing ESI-0401.

EXHIBITS:
A – Ampirical 2021 Rate Sheet

Ampirical appreciates the opportunity to work with Bentonville Electric Utility Department on its Substation I Upgrade Project, and we look forward to continuing to develop and execute this project to completion.

If you have any questions or comments, feel free to contact me.

Thank you again for the opportunity to support BEUD and the City of Bentonville.

Best Regards,

[redacted]

AMPIRICAL
Project Manager
scurry@ampirical.com

AMPIRICAL

4 Sanctuary Boulevard • Suite 100 • Mandeville, LA 70471
Phone: 985.809.5240 • Fax: 985.809.5250 • info@ampirical.com

2021 ENGINEERING RATES

Classification	Hourly Rate
Principal Engineer	$241.00
Director	$196.00
Design Manager	$187.00
Staff Engineer	$189.00
Sr. Project Manager	$187.00
Program Manager	$199.00
Project Manager II	$157.00
Project Manager I	$134.00
Construction Manager	$167.00
Project Controls Specialist	$157.00
Sr. Safety Consultant	$159.00
Safety Consultant	$121.00
Lead Engineer	$178.00
Senior Engineer	$165.00
Engineer III	$139.00
Engineer II	$126.00
Engineer I	$114.00
Sr. Technical Specialist	$167.00
Technical Specialist	$157.00
Senior Designer	$134.00
Designer	$108.00
Senior Drafter	$87.00
Drafter	$70.00
Document Specialist	$89.00
Lead Procurement Specialist	$116.00
Procurement Specialist	$102.00
Project Support Specialist	$62.00
Clerk	$58.00

Future Rates
Escalation of 1% annually shall apply to all rates for years beyond that shown above.

Billing
The above rates include direct labor plus *all* other components, such as payroll taxes, benefits, insurance, worker's compensation, overhead, and profit. Therefore, the total amount billed will be the straight time hours worked multiplied by the above numbers.

Overtime
Overtime rates are the above hourly wages multiplied by 1.5. These rates begin as soon as 10 hours per day or 40 hours per week are exceeded or for any work on holidays and weekends.

4 Sanctuary Boulevard • Suite 100 • Mandeville, LA 70471
Phone: 985.809.5240 • Fax: 985.809.5250 • info@ampirical.com

Subcontractors

If any subcontracting is necessary, these services will be invoiced at cost plus 9%.

Other Charges

Travel Expenses	- Travel time shall be billed at straight time not to exceed 8 hours - Cost of travel expenses (Airfare, Car Rental/Fuel, Lodging, Meals, etc.) shall be billed at cost - Company/Personal Car mileage shall be reimbursed at the current standard IRS Rate
Drawing Reproduction Services	Letter or Legal B&W: $0.08 per copy Letter or Legal Color: $0.39 per copy Tabloid (11x17) B&W: $0.292 per copy Tabloid (11x17) Color: $2.92 per copy Large Format B&W: $0.225 per sq.ft. Large Format Color: $2.25 per sq.ft.
Material	Cost plus 9%
Equipment	Cost plus 9%

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CLERK TO ENTER INTO AN AMENDMENT TO THE AGREEMENT WITH AMPIRICAL RELATED TO SUBSTATION "I" ENGINEERING SERVICES.

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

Section 1: That the Mayor and Clerk be and are hereby authorized to enter into an Amendment to the Agreement with Ampirical for bidding services and construction observation and oversight related to Substation "I" 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	**9/14/2021**
Department	**Electric**
Submitted by	**Travis Matlock, PE**
Phone	**479-271-5941**

Item Type: (*Check Applicable Item Type)*

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

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

Budget adjustment using $322,209.00 from Reserves to pay for amendment with Ampirical. Approved by Utility Board 5-0.

Estimated Cost	**$322,209.00**
Is this Item Budgeted?	☐ Yes ☑ No

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

Expenses will be paid for from Reserves.

Budget Adjustment Request

Date of City Council Meeting	**9/14/2021**
Department	**Electric**
Submitted by	**Travis Matlock, PE**
Phone	**479-271-5941**

Purpose of Budget Adjustment ***(Enter purpose in space below):***

Reserves will be used to pay for Ampirical amendment for Construction Services.

General Ledger Account Information*				
Org (Department)	**Object**	**Account Description**	**Revenue + (-)**	**Expense + (-)**
503010	**47310**	**Capital Improvements - Other**		**$ 322,209.00**
		Totals	**$ -**	**$ 322,209.00**
		Net Impact on Fund Balance	**$**	**(322,209.00)**

***Final Account Number will be determined by Accounting Department after approval and purchase**

Agenda Item Form

Date of City Council Meeting	**9/14/2021**
Department	**Water Utilities**
Submitted by	**Mike Bender**
Phone	**(479) 271-6873, (479) 271-3140**

Item Type: (*Check Applicable Item Type)*

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

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

Resolution recommended by Staff authorizing the Mayor and City Clerk to enter into a professional services agreement with Raftelis Financial Consultants, Inc. (Raftelis) in an amount not to exceed $59,120.00 to perform a wastewater rate analysis and financial plan for the Water Utility. The City's 2021 budget includes $60,000.00 for the wastewater rate analysis. This firm was selected following the City's standard RFQ solicitation and selection process for the procurement of professional services in accordance with state law. This item was approved 5-0 by the Utility Board.

Estimated Cost	**$59,120.00**
Is this Item Budgeted?	☑ Yes ☐ No

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

Memo

To: City Council, Mayor Orman

From: Mike Bender

CC:

Date: September 2, 2021

Re: Contract for Wastewater Rate Analysis and Financial Plan – Raftelis Financial Consultants, Inc.

Staff recommends approval of a resolution authorizing the Mayor and City Clerk to enter into a professional services agreement with Raftelis Financial Consultants, Inc. (Raftelis) in an amount not to exceed $59,120.00 to perform a wastewater rate analysis and financial plan. Staff consisting of Jake Harper, Gary Wilson, Preston Newbill, Nancy Busen, and Mike Bender reviewed and discussed Statements of Qualifications of two responding firms. Raftelis was determined to be best qualified to perform the rate study. The last wastewater rate analysis was performed in 2015 by HDR, Inc. Due to the issues discovered with the condition of the NACA line and potential impacts, the wastewater rate analysis was delayed until NACA's corrective actions and associated costs were more definitive.

The City's 2021 budget includes $60,000.00 for this wastewater rate analysis.

Thank you for your consideration of this request.

PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF BENTONVILLE, ARKANSAS AND RAFTELIS FINANCIAL CONSULTANTS, INC.

This Consulting Agreement ("Agreement") is entered into this ___ day of _____, 2021 (hereinafter referred to as the effective date of the agreement) by and between, the City of Bentonville, Arkansas (the "Client") and Raftelis Financial Consultants, Inc., 227 W. Trade Street, Suite 1400, Charlotte, NC 28202 ("Raftelis").

Witnesseth

WHEREAS, Raftelis has substantial skill and experience in public finance, management, and pricing, and service delivery, and

WHEREAS, The Client desires to hire Raftelis and Raftelis desires to provide services to the Client,

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the terms and conditions set forth herein.

Article 1. Statement of Work

Raftelis shall provide professional consulting services to prepare a Wastewater Rate Analysis and Financial Plan for the City of Bentonville. Raftelis will perform these services as set forth in the scope of work included herein as Attachment A.

Article 2. Time for Completion

This agreement will commence upon approval by the Client and remain in effect for a period of one year. Further renewals of this Agreement are at the option of the Parties and shall be in writing.

Article 3. Compensation

Client shall pay to Raftelis the sum not to exceed $59,120, which includes professional fees and direct expenses incurred in performing the scope of services, as well as an hourly technology expense reimbursement, outlined in Attachment B. The parties understand that this sum is based upon the scope of work contained herein at Raftelis' current standard hourly rate schedule included in Attachment B. Any expansion of the scope of work by the Client shall involve the discussion of additional fees by both parties.

Raftelis shall submit invoices to the Client on a monthly basis for services rendered to the date thereof. Such invoices shall be supported by appropriate documentation; at a minimum, the task performed, the individuals working on such task, the level of each such individual, and expenses incurred. Each invoice will contain all hours and expenses from the Raftelis for the month. Upon

receipt of monthly invoice, the Client will remit payment of same amount to the Raftelis within 30 days.

Article 4. Additional Services

At the Client's request, Raftelis may submit proposals for additional professional services. Each proposal submitted shall detail: (1) scope of work for the additional services, (2) period of services to be performed, and (3) method and amount of compensation. The Client shall provide written acceptance and authorization to Raftelis prior to the commencement of work on any proposed additional services. Each proposal for additional services accepted and approved by the Client shall become part of this Agreement and shall be governed by the terms and conditions contained herein.

Article 5. Place of Performance

Raftelis shall be responsible for maintaining its own office facilities and will not be provided with either office facilities or support by the Client.

Article 6. Indemnification

Raftelis hereby agrees to indemnify the Client and to hold the Client harmless against any and all claims, action, or demands against the Client and against any and all damages for injury to or death of any person and for loss of or damage to any and all property arising out of the negligent acts, errors or omissions of Raftelis under this Agreement. Raftelis shall not be held responsible for any claims caused by the negligence of the Client.

Article 7. Insurance

Raftelis shall maintain the types and levels of insurance during the life of this Agreement as specified below. The Client will be named as additional insured on Raftelis' Certificates of Insurance and Raftelis will provide the Client with these Certificates of Insurance.

Commercial general liability insurance - $1,000,000 for each occurrence and $2,000,000 in the aggregate

Comprehensive automobile liability insurance - $1,000,000 combined single limit each occurrence-hired and non-owned only

Workers Compensation insurance – Statutory limits

Professional liability insurance - $5,000,000 occurrence and $5,000,000 in the aggregate

Excess or Umbrella Liability - $5,000,000 occurrence and $5,000,000 in the aggregate

Article 8. Confidential Information

Raftelis acknowledges and agrees that in the course of the performance of the services pursuant to this Agreement, Raftelis may be given access to, or come into possession of, confidential information from the Client, of which information may contain privileged material or other confidential information. Raftelis acknowledges and agrees, except if required by judicial or administrative order, trial, or other governmental proceeding pertaining to this matter, that it will

not use, duplicate, or divulge to others any such information belonging to or disclosed to Raftelis by the Client without first obtaining written permission from the Client. All tangible embodiments of such information shall be delivered to the Client by Raftelis upon termination hereof, or upon request by the Client, whichever occurs first. The Client acknowledges Raftelis has the right to maintain its own set of work papers which may contain confidential information.

Article 9. Independent Contractor Status

It is understood and agreed that Raftelis will provide the services under this Agreement on a professional basis as an independent contractor and that during the performance of the services under this Agreement, Raftelis' employees will not be considered employees of the Client within the meaning or the applications of any federal, state, or local laws or regulations including, but not limited to, laws or regulations covering unemployment insurance, old age benefits, worker's compensation, industrial accident, labor, or taxes of any kind. Raftelis' employees shall not be entitled to benefits that may be afforded from time to time to Client employees, including without limitation, vacation, holidays, sick leave, worker's compensation, and unemployment insurance. Further, the Client shall not be responsible for withholding or paying any taxes or social security on behalf of Raftelis' employees. Raftelis shall be fully responsible for any such withholding or paying of taxes or social security.

Article 10. Reliance on Data

In performance of the services, it is understood that the Client and/or others may supply Raftelis with certain information and/or data, and that Raftelis will rely on such information. It is agreed that the accuracy of such information is not within Raftelis' control and Raftelis shall not be liable for its accuracy, nor for its verification, except to the extent that such verification is expressly a part of Raftelis' scope of services.

Article 11. Opinions and Estimates

Raftelis' opinions, estimates, projections, and forecasts of current and future costs, revenues, other levels of any sort, and events shall be made on the basis of available information and Raftelis' expertise and qualifications as a professional. Raftelis does not warrant or guarantee that its opinions, estimates, projections or forecasts of current and future levels and events will not vary from the Clients's estimates or forecasts or from actual outcomes. Raftelis identifies costs, allocates costs to customer classes and provides rate models. It does not establish rates, which is the legislative responsibility of the Client.

Article 12. No Consequential Damages

To the fullest extent permitted by law, neither party shall be liable to the other for any special, indirect, consequential, punitive or exemplary damages resulting from the performance or non-performance of this Agreement notwithstanding the fault, tort (including negligence), strict liability or other basis of legal liability of the party so released or whose liability is so limited and shall extend to the officers, directors, employees, licensors, agents, subcontractors, vendors and related entities of such party.

Article 13. Termination of Work

This Agreement may be terminated as follows:

1. **By Client** (a) for its convenience on 30 days' notice to Raftelis, or (b) for cause, if Raftelis materially breaches this Agreement through no fault of Client and Raftelis neither cures such material breach nor makes reasonable progress toward cure within 15 days after Client has given written notice of the alleged breach to Raftelis.
2. **By Raftelis** (a) for cause, if Client materially breaches this Agreement through no fault of Raftelis and Client neither cures such material breach nor makes reasonable progress toward cure within 15 days after Raftelis has given written notice of the alleged breach to Client, or (b) upon five days' notice if Work under this Agreement has been suspended by either Client or Raftelis in the aggregate for more than 30 days.
3. **Payment upon Termination**. In the event of termination, Raftelis shall be compensated for all work performed prior to the effective date of termination.

Article 14. Notices

All notices required or permitted under this Agreement shall be in writing and shall be deemed deliverable when delivered in person or deposited in the United States mail, postage prepaid, addressed as follows:

If for the Client:

Camille Thompson
Name

City Staff Attorney
Title

1000 SW 14th Street
Address

Bentonville, AR 72712

If for Raftelis:

Raftelis Financial Consultants, Inc.
3013 Main Street
Kansas City, MO 64108
Attention: Collin Drat

Article 15. Compliance with Applicable Laws

Raftelis agrees not to discriminate in its employment practices, and will render services under this Agreement without regard to race, color, religion, sex, national origin, veteran status, political affiliation or disabilities.

Any act of discrimination committed by Raftelis, or failure to comply with these statutory obligations when applicable, shall be grounds for termination of this Agreement.

Article 16. General Provisions

A. Entire Agreement: This Agreement represents the entire and sole agreement between the Parties with respect to the subject matter hereof.

B. Waiver: The failure of either Party to require performance by the other of any provision hereof shall in no way affect the right to require performance at any time thereafter, nor shall the waiver of a breach of any provision hereof be taken to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself. All remedies afforded in this Agreement shall be taken and construed as cumulative; that is, in addition to every other remedy available at law or in equity.

C. Relationship: Nothing herein contained shall be construed to imply a joint venture, partnership, or principal-agent relationship between Raftelis and the Client; and neither Party shall have the right, power, or authority to obligate or bind the other in any manner whatsoever, except as otherwise agreed to in writing.

D. Assignment and Delegation: Neither Party shall assign or delegate this Agreement or any rights, duties, or obligations hereunder without the express written consent of the other. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the successors, legal representatives, and assignees of the Parties hereto.

E. Severability: If any provision of this Agreement is declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary and possible to render it valid and enforceable. In any event, the unenforceability or invalidity of any provision shall not affect any other provision of this Agreement, and this Agreement shall continue in force and effect, and be construed and enforced, as if such provision had not been included, or had been modified as above provided, as the case may be.

F. Governing Law: This Agreement shall be governed by, and construed in accordance with, the laws of the State of Arkansas.

G. Paragraph Headings: The paragraph headings set forth in this Agreement are for the convenience of the Parties, and in no way define, limit, or describe the scope or intent of this Agreement and are to be given no legal effect.

H. Third Party Rights — Nothing in this Agreement shall be construed to create or confer any rights or interest to any third party or third party beneficiary. It is the intent of the parties that no other outside, non-party claimant shall have any legal right to enforce the terms of this Agreement.

Article 17. Disclosures

As a registered Municipal Advisor under the Dodd-Frank Act, Raftelis is required to inform our clients of any existing or potential conflicts of interest that may be relevant to any proposed scope of services that may include providing "advice" as that term is defined in the Dodd-Frank Act. As of the date of this engagement letter, no conflicts of interest are known to exist.

Under the Dodd-Frank Act the definition of "advice" includes providing any opinion, information or assumptions related to the size, timing and terms of possible future debt issues or borrowing. This type of information may be integrated into the capital and financial planning components of a Wastewater Rate Analysis and Financial Plan. This definition is applicable regardless of whether this information is developed and used solely for planning and decision making purposes. For the services addressed in the scope of work identified for this engagement, any information that is developed by Raftelis that falls under this definition of municipal advice is not intended to represent a recommendation that the City of Bentonville should issue debt based on the terms and assumptions used to develop the financial plan or forecast, or that the City of Bentonville will, in fact, be able to issue debt under the exact terms and conditions assumed and used to develop the financial plan or forecast. The information developed as part of this Wastewater Rate Analysis and Financial Plan, including any related municipal advice, is intended only to provide information useful in evaluating the potential impact on the utility and future rate adjustments of one potential course of action for the City Bentonville. If the City of Bentonville decides at some future date to issue debt, then at that time the City of Bentonville will need to engage an independent, registered Financial Advisor to assist in evaluating the availability of different types of debt, and the specific terms and conditions for issuing debt, which will be affected by market conditions and the City of Bentonville's credit rating at the time of issuance. At that time, as a registered Municipal Advisor, Raftelis can also provide additional assistance related to a specific bond or debt issue, such as preparing a bond feasibility report or financial forecast for inclusion in bond documents, without requiring additional oversight or supervision by the Financial Advisor.

The Municipal Securities Rulemaking Board (MSRB) provides significant protections for municipal entities and obligated persons that are clients of a municipal advisor. To understand the protections provided and how to file a complaint with an appropriate regulatory authority, visit the MSRB web site at www.msrb.org

Raftelis does not have any legal events or disciplinary history on Raftelis' Form MA and Form MA-I, which includes information about any criminal actions, regulatory actions, investigations, terminations, judgements, liens, civil judicial actions, customer complaints, arbitrations, and civil litigation. Raftelis' most recent form MA and each most recent Form MA-I filed with the SEC may be assessed electronically at the following website:

www.sec.gov/edgar/searchedgar/companysearch.html

There have been no material changes to a legal or disciplinary event disclosure on any Form MA or Form MA-I filed with the SEC. If any material legal or regulatory actions is brought against Raftelis, Raftelis will provide complete disclosure to the City of Bentonville in detail.

By signing this professional services agreement indicating its approval and acceptance of the of the proposed scope of work and fees, the City of Bentonville is also explicitly acknowledging that Raftelis has provided the necessary disclosures addressing conflicts of interest and any limitations on the scope of Municipal Advisory services to be provided by Raftelis' part of this engagement.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives.

By: _____

Signature

_____

Title

_____

Date

_____

Witness

Raftelis Financial Consultants, Inc.

By: _____

Signature

_____

Title

_____

Date

_____

Witness

Attachment A – Scope of Services

RAFTELIS

Scope of Services for:
Wastewater Rate Analysis and Financial Plan

RFQ-21-34 / JULY 30, 2021

City of Bentonville



Scope of Services

Task 1: Project Initiation, Management, and Stakeholder Engagement

The project team will lead a kick-off meeting, during which we will confirm the work plan, schedule, data requirements, and deliverables. Prior to the kick-off meeting, we will review the data provided by the City and begin framing preliminary analyses and formulate any questions. During the kick-off meeting, we will conduct interviews with City staff to obtain a thorough understanding of the operations of the wastewater utility. Throughout the project we will manage the process via consistent communication, regular meetings (virtual and onsite) with City staff and a robust QA/QC process.

In addition, we will engage the City of Bentonville City Council (Council) and the Bentonville Utility Board (Utility Board) to explain the purpose and process of the study, via a *Ratemaking 101* presentation, which overviews the process we will follow to conduct the study, and a *Community Values Workshop*, which asks participants to rank the various policy trade-offs associated with different rate structure options.

PLANNED MEETINGS:

- Virtual meetings as needed to prepare for onsite meeting.
- Onsite Meeting #1 – Kick-off meeting with City staff, Bentonville Utility Board, Bentonville City Council

DELIVERABLES:

- Kick-off meeting materials
- Kick-off meeting summary memorandum
- Ratemaking 101 and Community Values Exercise materials and results

Task 2: Financial Plan Development

The project team will develop a long-range financial plan for the wastewater utility. The financial plan will identify the overall level of revenue necessary to fund operations and maintenance expense (O&M), routine repair and replacement capital expenditures, and repayment of debt service (current and future), while also achieving the City's financial management objectives. Determining the revenue requirement involves a detailed cash flow forecast, which compares projected baseline revenues to projected expenditures and identifies the any adjustments to revenues necessary to fund utility operations in a financially sustainable manner. This involves the following subtasks: a projection of revenue under existing rates (Task 2.1); a projection of O&M expense (Task 2.2); a projection of routine and major capital expenditures (Task 2.3); and a projection of revenue adjustments based on detailed cash flow analysis (Task 2.4).

The projections we develop for the City will include the balance of the City's current fiscal year, plus the following 10 fiscal years. To the extent that the City has identified major capital improvements or incremental increases in O&M which lie outside of the 10-year window, we can extend the plans to include the additional years at no additional cost to the City.

Task 2.1 — Projection of Revenue Under Existing Rates

Raftelis will develop revenue projections under existing rates and projected customer usage by customer class. This will serve as a baseline for revenues if no adjustments to rate levels or structures are made. In Task 2.4, we will compare these baseline revenue projections to projected expenditures to determine the overall level of revenue necessary (including any revenue increases) to fund these projected expenditures and achieve the City's financial performance objectives.

Using historical customer billing data, we will evaluate trends in customer accounts and usage per account and establish a normalized usage per account, which avoids assigning undue weight to usage in wetter or drier periods. In addition to evaluating usage data considering weather patterns and conservation trends, we will also work with City staff to understand any potential changes in the local economy that might impact the demands of City customers.

We will then calculate revenues under existing rates at projected consumption levels. We will also incorporate analysis and projections of miscellaneous revenues. We will compare these revenues to the operating and capital expenses forecast in Tasks 2.2 and 2.3 to understand the sufficiency of existing revenues to fund projected expenditures.

Task 2.2 — Projection of O&M Expense

The City's budgets (for the current year and any available future years) will serve as the starting point for the projection of O&M expense. To project O&M expenses for the forecast period we typically make three adjustments: budget performance adjustments, incremental expense adjustments, and inflationary adjustments.

Budget performance adjustments will be made based on a detailed review of budgeted O&M expense compared to actual performance. To the extent that the utility tends to outperform in certain areas (i.e., spend less than budgeted), we will discuss potential adjustments so that the projection of baseline O&M (i.e., before any incremental expenses and inflationary adjustments) is a reasonable reflection of what is likely to occur.

Incremental expense adjustments account for expected future changes in O&M expense that exceed inflation. There are two reasons such adjustments are typically made. First, the City anticipates adding new personnel or programs that are not currently captured in the existing budgets. In this case, an adjustment will be made to include the costs of those additional personnel or programs. The current budget may also include one-time expenses that are not expected to be incurred in the future. In this case, the one-time expense will either be excluded from future years or, if it occurs periodically, normalized in future years.

Inflationary adjustments account for expected future inflation in O&M expense, after accounting for budget performance and any incremental expenses. Inflationary adjustments will be based on the best and most relevant data possible. Expenses driven by customer growth and usage (e.g., power and chemicals) will be adjusted based on the projections in Task 2.1. Personnel costs will be adjusted based on planned compensation adjustments from the City. For expenses where less detailed data is available, we will rely on historical trends, discussions with City staff, and our experience working with similar utilities throughout the United States.

Task 2.3 — Projection of Routine and Major Capital Expenditures

Task 2.3 involves developing a capital improvement financing plan that identifies the City's capital projects (routine and major) and the mix of cash and debt used to finance them. The cash flow impact of the capital financing plan is incorporated into the cash flow analysis in Task 2.4 as annual cash outlays (i.e., PAYGO or revenue-funded capital) and new debt service.

To develop the capital financing plan, we will review the City's approved capital improvement plan (CIP) and work with City staff to ensure that the appropriate level of investment is balanced against the potential rate implications. To the extent that the CIP is in current year dollars, we will include adjustments for future construction cost inflation based on an analysis of trends for the appropriate cost indices (e.g., Engineering News Record). We will also incorporate any projects that the City already has in progress from prior approved CIPs that will be completed in the first few years of the forecast period. The CIP will incorporate both routine repair and replacement expenditures as well as major capital improvements. Given the recurring nature of routine expenditures (i.e., sewer line replacement), many utilities employ a PAYGO funding approach. Major capital improvements are funded with debt to spread out the financial burden on customers and to ensure that the cost of major improvements is borne by all customers, not just current customers. We will work with City staff to develop an optimal mix of cash and debt financing to achieve the City's financial management objectives. The projected capital costs, including PAYGO and any new debt service, will be incorporated into the cash flow projections in Task 2.4.

Task 2.4 — Utility Cash Flow Forecasts and Revenue Adjustments

We will develop a detailed cash flow forecast for the multi-year planning horizon. This forecast will compare existing revenues (Task 2.1) to forecast expenditures (Tasks 2.2 and 2.3), identifying any deficiencies in funding under existing revenues. Throughout Task 2.4, we will discuss the City's existing financial policies and objectives (formal and informal). This will include a review of the performance of the utility relative to key financial ratios (e.g., days cash, capital structure, and debt service coverage). Throughout these discussions, we will provide recommendations to ensure the City's financial management strategies align with industry best practices.

We will structure rate adjustments to achieve the City's strategic financial management objectives and maintain alignment with best financial management practices regarding debt service coverage ratios and reserve balances. Where possible, revenue adjustments will be smoothed, mitigating the impact on customers in any given year. The ultimate outcome of Task 2.4 will be the identification of the overall level of revenue required (including any adjustments to revenue) to fund the provision of safe and reliable wastewater service in a financially sustainable manner. This revenue requirement will be attributed to the City's customer classes based on their use of the wastewater system in Task 3.

PLANNED MEETINGS:

- Virtual meetings as needed.
- Onsite Meeting #2 – review study assumptions and inputs with Bentonville Utility Board and Bentonville City Council

DELIVERABLES:

- Meeting materials
- Meeting summary memorandum

Task 3: Cost-of-Service Analysis

The project team will utilize our experience, combined with industry best practices as set forth in the Water Environment Federation's (WEF) *Manual of Practice No. 27, Financing and Charges for Wastewater Systems,* to assign the revenue requirement determined in the wastewater financial plan to the City's customer classes.

This will involve three steps: functionalization (Task 3.1), which assigns the revenue requirement to the various components of the wastewater system (e.g., collection and treatment); classification, which assigns the functionalized costs to demand parameters, or the components of customer demand which drive costs (e.g., sanitary flow, infiltration and inflow, biochemical oxygen demand, and total suspended solids) (Task 3.2); and distribution, which assigns costs to customer classes in proportion to the demands they place on the wastewater system (Task 3.3).

Task 3.1 — Functionalize Revenue Requirement

Applying the principle of cost causation requires a determination of how the costs incurred relate to the design and operation of the wastewater system. The functionalization step allocates the revenue requirement to the various functions each utility performs in order to deliver service. The cost of each function is then related to the demand characteristics, which drive variation in those costs (Task 3.2) and ultimately to customer classes based on their proportionate share of that demand (Tasks 3.3).

Functional categories for the wastewater utility may include:

- Laterals
- Collection mains
- Pump stations
- Treatment plant
- Industrial waste control
- Customer service

Task 3.1 involves allocating the revenue requirement to these functions. The project team will work closely with City staff to determine allocations that reasonably align the costs incurred with each function. We will functionalize O&M expenses based on an evaluation of the City's detailed wastewater budget and interviews with City staff. We will functionalize capital expenditures (i.e., PAYGO capital and debt service) based on the City's investment in wastewater assets.

Task 3.2 — Allocate Functionalized Revenue Requirement to Cost Components

The cost of each function from Task 3.1 is driven by different types of customer demand. Task 3.2 attributes the functionalized costs to these cost components. The result is an understanding of the proportion of the revenue requirement that can be attributed to each type of customer demand. This allows for a distribution of the revenue requirement based on customer demands in Tasks 3.3.

The City's wastewater system was designed around the volume and strength of wastewater contributed by customers. Volume includes sanitary flow that is the result of customers direct contribution of wastewater into the City's collection system and infiltration and inflow (I/I). Infiltration in many systems is largely driven by aging customer sewer laterals, which deteriorate over time resulting in root intrusion, cracks, joint misalignment, and general leakage, causing groundwater penetration, especially during heavy rain events. The age and condition of the sewer collection system also contributes to infiltration. Inflow can be caused by directly connected residential storm drainage systems, broken or missing cleanout caps, faulty manhole covers or frames, and other issues.

Wastewater strength relates to the concentration of pollutants that must be removed from City wastewater via the physical and biological processes at the City's wastewater treatment plants. Wastewater strength includes measures such as biochemical oxygen demand (BOD) and total suspended solids (TSS).

The cost drivers related to wastewater customer demand include:

- Sanitary flow
- I/I
- BOD
- TSS
- Customer bills

Costs that are driven by wastewater volumes will be allocated to sanitary flow and I/I. Costs related to strength are allocated to BOD or TSS. Functions that are driven by multiple demand components will be allocated between those components based on the design and operation of the infrastructure used to meet the type of demand in question. For

example, the design of different components of the wastewater treatment process is a function of volume and the different strength components. We will work with City staff to determine appropriate allocations between the various cost components.

Task 3.3 — Distribute Costs to Customer Classes
While Tasks 3.1 and 3.2 allocate the revenue requirement according to the various types of customer demand, Task 3.3 will involve assigning the revenue requirement to each customer class proportionate to their share of the type of demand, which drives variation in those costs. This involves three steps:

First, we will determine customer class units of service. To determine the units of service by customer class for the wastewater utility, we will create a mass balance analysis, which uses a combination of customer billing information and wastewater plant discharge monitoring reports (DMR) to determine customer class units of service.

The mass balance analysis will assign influent volumes received at the City's wastewater treatment plants to each customer class based on an analysis of the available usage data. Volume-related units include sanitary flow plus I/I. The total influent volume (sanitary plus I/I) at the City's wastewater treatment plant is known. We will estimate the breakdown of total influent volume between sanitary flow and I/I using winter period water usage, customer billing data and collection system data (e.g., lengths of collection mains of various diameters).

We will determine strength-related units in a similar fashion. The strength loadings at the City's wastewater treatment plants are known. Strength units for surcharge customers (whose loadings are monitored) would be subtracted from the wastewater plant loadings with the remaining amount to be distributed to the non-monitored customers based on assumed strength loadings.

Second, we will calculate a unit cost of service for each demand parameter by dividing the costs (by component) determined in Task 3.2 by the units of service (by component). The result is a unit cost of service for each component of demand.

Finally, we will distribute costs to each customer class be used to distribute costs to the City's customer classes by multiplying the applicable unit cost for each component of demand by each customer class' units of service. The outcome is an understanding of each customer class' responsibility for the overall revenue requirement identified in Task 2. Raftelis will develop a comparison of class cost of service to class revenue generation under the City's existing rates. This comparison will identify variances between the level cost each class causes the City to incur and the revenue currently recovered from that class. To the extent that significant variances are identified, these can be used as a guide for recommended rate adjustments in Task 4.

PLANNED MEETINGS:

- Virtual meetings as needed to review preliminary cost of service analysis results.

DELIVERABLES:

- Meeting materials
- Meeting summary memorandum

Task 4: Rate Design and Analysis of Bill Impacts

The project team will recommend adjustments to the City's wastewater rate structure to improve alignment with cost of service, industry best practices, and the community values identified in Task 1. Once rate alternatives are established, the project team will assess the impact on City customers via traditional methods, such as typical customer bills and peer

benchmarking. We will also conduct a high level investigation of affordability using a typical residential customer bill and household income information available from the United States Census Bureau. We will work with City staff to ensure that any recommended changes are compatible with the City's billing system.

During Task 4 we will evaluate the level of revenue recovery from the City's base facility charge relative to the volume charge. This will involve an investigation the level of fixed revenue generation relative to fixed costs and the impact of adjusting the base facility charge on lower volume customers. In addition, we will also investigate the proportion of wastewater revenues which may be considered effectively fixed even though they are recovered on a volumetric basis, such as revenues associated with essential indoor water use.

PLANNED MEETINGS:

- Virtual meetings as needed to review interim deliverables and materials for onsite meeting.
- Onsite Meeting #3 – present preliminary findings to Bentonville Utility Board and Bentonville City Council

DELIVERABLES:

- Presentation materials
- Meeting summary memorandum

Task 5: Rate Study Report and Presentation of Study Results

Task 5.1 — Reports and Presentations
The project team will produce a report which summarizes the results of the study. Drafts will be circulated to City staff and any comments will be incorporated into a Final Draft report, which will be provided in hard copy and electronic format to the City. Senior members of our project team will also present the draft final results of the study to the Utility Board and the City Council. After incorporating feedback from the Utility Board and City Council, the project team will present the final study results at a meeting for adoption of the rate ordinance and be available to answer any final questions.

Task 5.2 – Strategic Communications Review of Deliverables
Sam Villegas, our Director of Strategic Communications Services, will review our public-facing deliverables to ensure that they can be understood by a non-technical audience. We will also create an infographic explaining, in lay terms, the results of the study including how rates are calculated; the approach used for the study; the findings and recommendations and the impacts on typical City customers.

Task 5.3 – Communications Materials and Website Review
The project team will produce materials which will communicate any potential changes in the rates in an accessible, non-technical fashion. These communications materials include: an infographic, a frequently asked questions (FAQ) document, and 3 targeted social media postings. We will provide the graphical components of these documents (icons, graphics etc.) as separate files so that they can be used by the City in the future. All materials will use the City's typeface and color scheme so that they match the City's existing communications materials. In addition, our Strategic Communications Services team will review the City's website as it relates to engagement with utility customers and provide recommendations to ensure clarity, messaging, and the customer experience.

PLANNED MEETINGS:

- Virtual meetings as needed to review interim deliverables and materials for onsite meeting.
- Onsite Meeting #4 – Meet with City staff to review draft report and presentation materials.
- Onsite Meeting #5 – Present draft final study to Bentonville Utility Board and Bentonville City Council
- Onsite Meeting #6 – Present final report to Bentonville City Council at meeting for rate adoption.

DELIVERABLES:

- Presentation materials
- Rate Study Report
- Infographic
- FAQ Document
- Social Media Posting

Task 6: Development of the Cost-of-Service Model

The project team will develop a user- friendly rate model in Excel, which the City can use as a decision support tool moving forward. This model will be non-proprietary and accessible by the City without any licensing restrictions or fees. We will also provide up to 8 hours per year of model support at no additional cost to the City.

PLANNED MEETINGS:

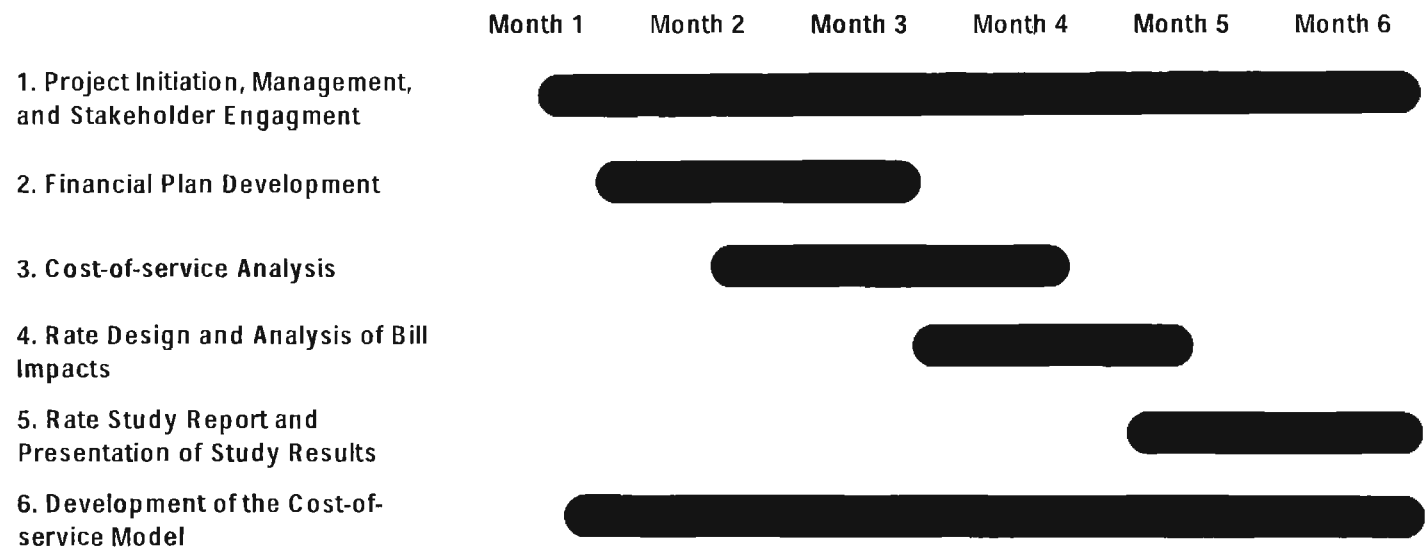
- Virtual meetings for model training.
- Virtual meetings for model support (up to 8 hours/year).

DELIVERABLES:

- Wastewater financial planning, cost of service and rate model

Schedule

The draft schedule below assumes that six months will be required to complete the study. During the project kick-off, we will work with City staff to establish a detailed timeline for project delivery, including milestones for interim project deliverables and the onsite meetings.



Price Proposal

	Hours						
Tasks	**TB**	**CD**	**SC**	**BS**	**SV**	**Total**	**Total Fees & Expenses**
1. Project Initiation, Management, and Stakeholder Engagement	2	6	8			16	**$3,810**
2. Financial Plan Development	4	8	32			44	**$10,080**
3. Cost-of-Service Analysis	2	8	32	6		48	**$12,160**
4. Rate Design and Bill Impacts	4	4	16			24	**$5,660**
5. Rate Study Report and Presentation of Study Results	4	20	30		30	84	**$19,940**
6. Development of the Cost-of-Service Model	0	2	8			10	**$2,210**
Total Estimated Hours	**16**	**48**	**126**	**6**	**30**	**226**	
Hourly Billing Rate	**$310**	**$245**	**$215**	**$450**	**$245**		
Total Professional Fees	**$4,960**	**$11,760**	**$27,090**	**$2,700**	**$7,350**	**$53,860**	

TB - Tom Beckley
CD - Collin Drat
SC - Staff Consultants
BS - Bill Stannard
SV - Sam Villegas

Total Fees	**$53,860**
Travel Expenses	**$3,000**
Technology & Communication Charge	**$2,260**
Total Fees & Expenses	**$59,120**

Attachment B – RAFTELIS' 2021 Standard Hourly Billing Rates

Position	Hourly Billing Rate **
Chair	$450
Chief Executive Officer/President	$400
Executive Vice President	$340
Vice President/Principal Consultant	$310
Vice President of Communications and Marketing	$310
Director of Governmental Services	$310
Senior Manager	$275
Director of Florida Operations	$225
Manager	$245
Director of Strategic Communication Services	$245
Senior Consultant	$215
Consultant	$185
Associate	$155
Creative Services	$125
Analyst	$110
Administration	$80
Technology/Communications Charge*	$10

* Technology/Communications Charge – this is an hourly fee charged monthly for each hour worked on the project to recover telephone, facsimile, computer, postage/overnight delivery, conference calls, electronic/computer webinars, photocopies, etc.

** For services related to the preparation for and participation in deposition and trial/hearing, the standard billing rates listed above will be increased by an amount up to 50%.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH RAFTELIS FINANCIAL CONSULTANTS, INC. FOR A WASTEWATER RATE ANALYSIS AND FINANCIAL PLAN

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

Section 1: That the Mayor and City Clerk be and are hereby authorized to enter into an Professional Services Agreement with Raftelis Financial Consultants, Inc. for a wastewater rate analysis and financial plan in an amount not to exceed $59,120.00 as set forth in the agreement attached hereto as Exhibit “A”.

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

PASSED and APPROVED this _____ day of _____, 2021.

APPROVED:

_____
Stephanie Orman, MAYOR

ATTEST:

_____
Kirby Romines, CITY CLERK

Agenda Item Form

Date of City Council Meeting	**9/14/2021**
Department	**Public Works Maintenance**
Submitted by	**Mike Bender**
Phone	**(479) 271-6873**

Item Type: (*Check Applicable Item Type)*

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

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

Staff recommends City Council approval of Change Order No. 1 and Final Reconciliation of the Guaranteed Maximum Price Contract with C.R. Crawford Construction, LLC for construction services associated with the new Public Works Maintenance Facility recognizing a decrease of $10,374.00 reducing the contract total from $2,797,473.00 to $2,787,099.00.

Estimated Cost	
Is this Item Budgeted?	☑ Yes ☐ No

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

Memo

To: City Council, Mayor Orman

From: Mike Bender

CC:

Date: September 2, 2021

Re: Change Order No. 1 and Final Reconciliation – C.R. Crawford Construction, LLC Contract for Construction of Public Works Maintenance Facility

---

Staff recommends City Council approval of Change Order No. 1 and Final Reconciliation of the Guaranteed Maximum Price Contract with C.R. Crawford Construction, LLC for construction services associated with the new Public Works Maintenance Facility recognizing a decrease of $10,374.00 reducing the contract total from $2,797,473.00 to $2,787,099.00.

Thank you for your consideration of this request.

AIA® Document G701™ – 2017

Change Order

PROJECT: *(Name and address)*	CONTRACT INFORMATION:	CHANGE ORDER INFORMATION:
Maintenance Facility Annex City of Bentonville Bentonville, AR	Contract For: General Construction Date: October 3, 2019	Change Order Number: 1 Date: August 17, 2021
OWNER: *(Name and address)*	**ARCHITECT:** *(Name and address)*	**CONTRACTOR:** *(Name and address)*
City of Bentonville, AR Bentonville, AR	Hight Jackson Associates PA Rogers, AR	CR Crawford Construction, LLC Fayetteville, AR

THE CONTRACT IS CHANGED AS FOLLOWS:
(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)

Item 1: Contingency Allowance not used.	Deduct $ 10,323.00
Item 2: Glass & Glazing, Door Hardware	Deduct $ 51.00
	TOTAL DEDUCT $10,374.00

The original Contract Sum was	$ 2,797,473.00
The net change by previously authorized Change Orders	$ 0.00
The Contract Sum prior to this Change Order was	$ 2,797,473.00
The Contract Sum will be decreased by this Change Order in the amount of	$ 10,374.00
The new Contract Sum including this Change Order will be	$ 2,787,099.00

The Contract Time will be unchanged by Zero (0) days.
The new date of Substantial Completion will be unchanged

NOTE: This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

Hight Jackson Associates PA	CR Crawford Construction, LLC	City of Bentonville
[redacted]		
SIGNATURE	**SIGNATURE**	**SIGNATURE**
Brian T. Jackson, President	Jason Keathley, Vice President	Stephanie Orman, Mayor
PRINTED NAME AND TITLE	**PRINTED NAME AND TITLE**	**PRINTED NAME AND TITLE**
	8-23-21	
DATE	**DATE**	**DATE**

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User Notes: (3B9ADA41)

Change Orders

A	B	C	D	E	F	G		H	I
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED		MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD					
29	PCCO#001								
29.1	PCO#001								
29.1.1	8-400.M Glass and Glazing Sub.Materials Door Hardware	$(51.00)	$0.00	$(51.00)	$0.00	$(51.00)	100.00%	$0.00	$0.00
29.1.2	1-860.O Contingency Allowance.Other Owner Contingency	$(10,323.00)	$0.00	$(10,323.00)	$0.00	$(10,323.00)	100.00%	$0.00	$0.00
	TOTALS:	$(10,374.00)	$0.00	$(10,374.00)	$0.00	$(10,374.00)	100.00%	$0.00	$0.00

Grand Totals

A	B	C	D	E	F	G		H	I
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED		MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD					
	GRAND TOTALS:	$2,787,099.00	$2,782,683.00	$4,416.00	$0.00	$2,787,099.00	100.00%	$0.00	$0.00

TO OWNER/CLIENT:
City of Bentonville (Customer)
117 W Central
Bentonville, Arkansas 72712

PROJECT:
B'Ville Maint. Facility Annex
2401 SW Aviation St
Bentonville, Arkansas 72712

APPLICATION NO: 11
INVOICE NO: 11
PERIOD: 06/01/21 - 06/30/21
PROJECT NO: 20-035
CONTRACT DATE: 7/30/2020

FROM CONTRACTOR:
C.R. Crawford Construction, LLC
1102 S. Happy Hollow Road
Fayetteville, Arkansas 72701

VIA ARCHITECT/ENGINEER:
Mark Haguewood (Hight-Jackson Associates, PA)
5201 Village Parkway #300
Rogers, Arkansas 72758

CONTRACT FOR: Bentonville Maintenance Facili

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet is attached.

1.	Original Contract Sum		$2,797,473.00
2.	Net change by change orders		$(10,374.00)
3.	Contract Sum to date (Line 1 ± 2)		$2,787,099.00
4.	Total completed and stored to date (Column G on detail sheet)		$2,787,099.00
5.	Retainage:		
	a. 0.00% of completed work	$0.00	
	b. 0.00% of stored material	$0.00	
	Total retainage (Line 5a + 5b or total in column I of detail sheet)		$0.00
6.	Total earned less retainage (Line 4 less Line 5 Total)		$2,787,099.00
7.	Less previous certificates for payment (Line 6 from prior certificate)		$2,713,070.63
8.	Current payment due:		$74,028.37
9.	Balance to finish, including retainage (Line 3 less Line 6)		$0.00

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner/Client:	$0.00	$0.00
Total approved this month:	$0.00	$(10,374.00)
Totals:	$0.00	$(10,374.00)
Net change by change orders:	$(10,374.00)	

The undersigned certifies that to the best of the Contractor's knowledge, information and belief, the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work which previous Certificates for payment were issued and payments received from the Owner/Client, and that current payments shown herein is now due.

C[redacted]

B[redacted] Date: 6/24/2021

State of: Arkansas
County of: [redacted]
Subscribed
me this
Notary Publ
My commis
8-25-

ASHLEY R. MENARD
Notary Public - Arkansas
Washington County
Commission # 12349976
My Commission Expires Aug 25, 2026

ARCHITECT'S/ENGINEER'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on the on-site observations and the data comprising this application, the Architect/Engineer certifies to the Owner/Client that to the best of the Architect's/Engineer's knowledge, information and belief that Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED: $74,028.37

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to confirm the amount certified.)

ARCHITECT/ENGINEER:

By: [redacted] Date: 8/16/2021

This [redacted] ertified is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to the rights of the Owner/Client or Contractor under this Contract.

Document SUMMARY SHEET, APPLICATION AND CERTIFICATE FOR PAYMENT, containing
Contractor's signed Certification is attached.
Use Column I on Contracts where variable retainage for line items apply.

APPLICATION NUMBER: 11
APPLICATION DATE: 6/24/2021
PERIOD: 06/01/21 - 08/30/21

Contract Lines

A		B	C	D	E	F	G		H	I
ITEM NO.	BUDGET CODE	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED		MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE
				FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD					
1		General Conditions	$154,755.00	$154,755.00	$0.00	$0.00	$154,755.00	100.00%	$0.00	$0.00
2		General Liability & Builders R	$19,835.00	$19,835.00	$0.00	$0.00	$19,835.00	100.00%	$0.00	$0.00
3		OH&P	$133,212.00	$133,212.00	$0.00	$0.00	$133,212.00	100.00%	$0.00	$0.00
4		Owner Contingency	$77,022.00	$64,181.00	$12,841.00	$0.00	$77,022.00	100.00%	$0.00	$0.00
5		Erosion Control, Earthwork, St	$411,219.00	$411,219.00	$0.00	$0.00	$411,219.00	100.00%	$0.00	$0.00
6		Asphalt Paving/Mill & Overlay	$79,085.00	$79,085.00	$0.00	$0.00	$79,085.00	100.00%	$0.00	$0.00
7		Landscaping & Irrigation	$67,163.00	$67,163.00	$0.00	$0.00	$67,163.00	100.00%	$0.00	$0.00
8		Fencing & Gates	$68,285.00	$68,285.00	$0.00	$0.00	$68,285.00	100.00%	$0.00	$0.00
9		Utilities	$30,644.00	$30,644.00	$0.00	$0.00	$30,644.00	100.00%	$0.00	$0.00
10		Concrete	$438,420.00	$438,420.00	$0.00	$0.00	$438,420.00	100.00%	$0.00	$0.00
11		Unit Masonry	$83,800.00	$83,800.00	$0.00	$0.00	$83,800.00	100.00%	$0.00	$0.00
12		Misc. Steel	$57,878.00	$57,878.00	$0.00	$0.00	$57,878.00	100.00%	$0.00	$0.00
13		Rough Carpentry and Misc Insta	$12,295.00	$12,295.00	$0.00	$0.00	$12,295.00	100.00%	$0.00	$0.00
14		Millwork	$12,033.00	$12,033.00	$0.00	$0.00	$12,033.00	100.00%	$0.00	$0.00
15		Thermal and Moisture Protectio	$22,085.00	$22,085.00	$0.00	$0.00	$22,085.00	100.00%	$0.00	$0.00
16		Doors & Hardware	$30,113.00	$30,113.00	$0.00	$0.00	$30,113.00	100.00%	$0.00	$0.00
17		Glass & Glazing	$31,500.00	$31,500.00	$0.00	$0.00	$31,500.00	100.00%	$0.00	$0.00
18		Overhead Doors	$104,000.00	$104,000.00	$0.00	$0.00	$104,000.00	100.00%	$0.00	$0.00
19		Door Hardware Allowance	$2,000.00	$51.00	$1,949.00	$0.00	$2,000.00	100.00%	$0.00	$0.00
20		Drywall Assemblies & Acoustica	$167,250.00	$167,250.00	$0.00	$0.00	$167,250.00	100.00%	$0.00	$0.00
21		Finishes	$59,921.00	$59,921.00	$0.00	$0.00	$59,921.00	100.00%	$0.00	$0.00
22		Specialties	$22,383.00	$22,383.00	$0.00	$0.00	$22,383.00	100.00%	$0.00	$0.00
23		Canopies and Shades	$21,835.00	$21,835.00	$0.00	$0.00	$21,835.00	100.00%	$0.00	$0.00
24		Aluminum Letters Allowance	$6,000.00	$6,000.00	$0.00	$0.00	$6,000.00	100.00%	$0.00	$0.00
25		PEMB	$247,891.00	$247,891.00	$0.00	$0.00	$247,891.00	100.00%	$0.00	$0.00
26		Fire Sprinkler System, Firelin	$76,346.00	$76,346.00	$0.00	$0.00	$76,346.00	100.00%	$0.00	$0.00
27		Plumbing & HVAC	$204,116.00	$204,116.00	$0.00	$0.00	$204,116.00	100.00%	$0.00	$0.00
28		Electric, Fire Alarm, Struc. C	$156,387.00	$156,387.00	$0.00	$0.00	$156,387.00	100.00%	$0.00	$0.00
		TOTALS:	$2,797,473.00	$2,782,683.00	$14,790.00	$0.00	$2,797,473.00	100.00%	$0.00	$0.00

Change Orders

A	B	C	D	E	F	G		H	I
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED		MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD					
29	PCCO#001								
29.1	PCO#001								
29.1.1	8-400.M Glass and Glazing Sub.Materials Door Hardware	$(51.00)	$0.00	$(51.00)	$0.00	$(51.00)	100.00%	$0.00	$0.00
29.1.2	1-860.O Contingency Allowance.Other Owner Contingency	$(10,323.00)	$0.00	$(10,323.00)	$0.00	$(10,323.00)	100.00%	$0.00	$0.00
	TOTALS:	**$(10,374.00)**	**$0.00**	**$(10,374.00)**	**$0.00**	**$(10,374.00)**	**100.00%**	**$0.00**	**$0.00**

Grand Totals

A	B	C	D	E	F	G		H	I
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED		MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD					
	GRAND TOTALS:	**$2,787,099.00**	**$2,782,683.00**	**$4,416.00**	**$0.00**	**$2,787,099.00**	**100.00%**	**$0.00**	**$0.00**

Agenda Item Form

Date of City Council Meeting	**09/14/22021**
Department	**ENGINEERING**
Submitted by	**TRACY BILLINGS**
Phone	**(479) 696-0229**

Item Type: (*Check Applicable Item Type)*

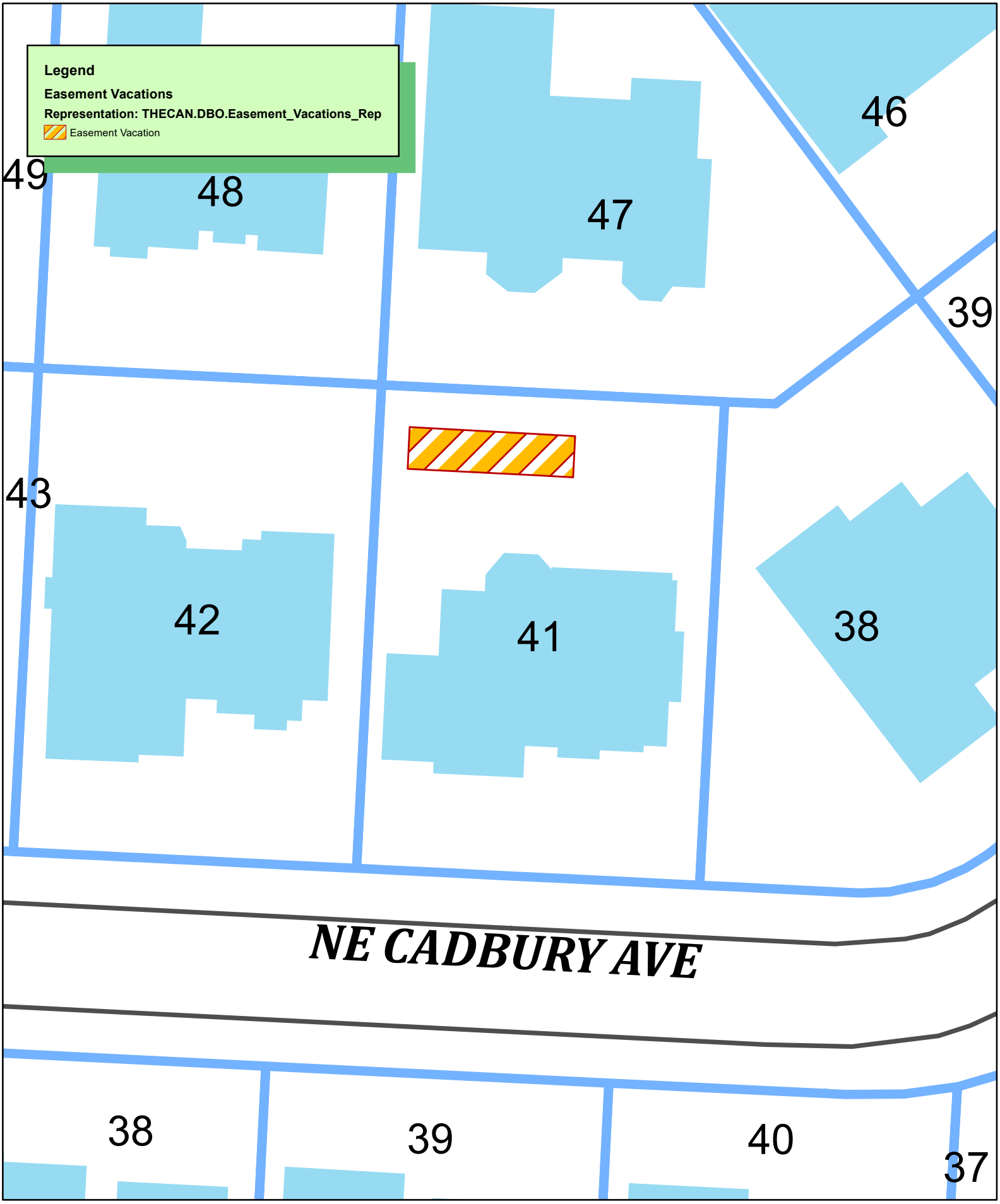
☐ Budget Adjustment	☐ Change Order	☐ Informational	☑ Ordinance	☐ Resolution	☐ Bid Award

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

Public hearing and ordinance vacating a Utility/Drainage Easement 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

ORDINANCE NO_____

AN ORDINANCE VACATING A UTILITY/DRAINAGE EASEMENT LOCATED AT LOT 41 OF KENSINGTON SUBDIVISION PHASE 2 TO THE CITY OF BENTONVILLE, ARKANSAS, BENTON COUNTY ARKANSAS (VAC21-0020).

WHEREAS, a petition was filed with the City Council of the City of Bentonville, Arkansas, by PDM Designs,Inc. asking the City Council to vacate a utility/drainage easement located in the City of Bentonville, Benton County, Arkansas, which portion is more particularly 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, 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/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 utility/drainage easement designated 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.

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	**09/14/22021**
Department	**ENGINEERING**
Submitted by	**TRACY BILLINGS**
Phone	**(479) 696-0229**

Item Type: (*Check Applicable Item Type)*

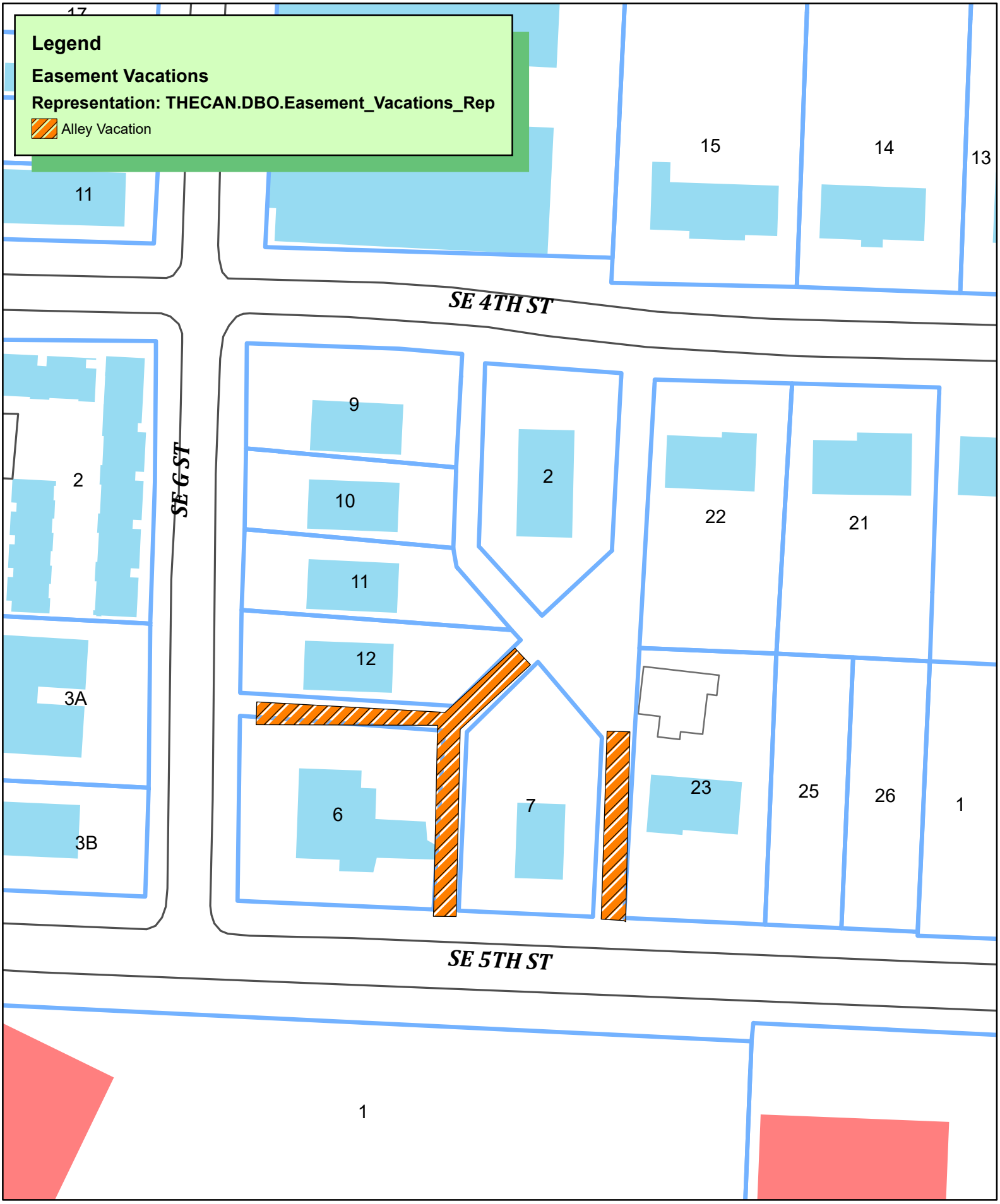
☐ Budget Adjustment	☐ Change Order	☐ Informational	☐ Ordinance	☑ Resolution	☐ Bid Award

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

Resolution setting a public hearing for September 28, 2021 for Alley Right of Way Vacations requested for 407 SE G Street of Young's Addition (VAC21-0021).

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 = 67 feet

VAC 21-0021
Proposed Alley Vacation

PLAT OF VACATION

Survey Description

LOT 7, BLOCK 3, IN YOUNG'S ADDITION TO THE CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD "G" AT PAGE 165. HAVING A TOTAL AREA OF 9,110 SQ. FEET OR 0.209 ACRES MORE OR LESS AND IS SUBJECT TO EXISTING COVENANTS, EASEMENTS, AND RIGHTS-OF-WAY OF RECORD.

PROPOSED ALLEY VACATION 1:
COMMENCING AT A FOUND 5/8" REBAR BEING THE SOUTHWEST CORNER OF LOT 6, BLOCK 3, YOUNGS ADDITION; THENCE S86°42'35"E 100.00' TO A SET 5/8" CAPPED REBAR TAGGED "1826" BEING THE TRUE POINT OF BEGINNING; THENCE N01°15'28"E 99.75' TO A SET 5/8" CAPPED REBAR TAGGED "1826"; THENCE N86°48'11"W 99.78' TO A SET 5/8" REBAR LOCATED ON THE RIGHT-OF-WAY LINE OF SOUTHEAST G STREET; THENCE N01°22'46"E 12.51' TO A SET 5/8" CAPPED REBAR TAGGED "1826"; S86°48'11"E 103.75' TO A FOUND 5/8" REBAR; THENCE N47°19'16"E 52.21' TO A FOUND 5/8" REBAR; THENCE S43°01'29"E 12.50' TO A SET 5/8" CAPPED REBAR TAGGED "1826"; THENCE S47°19'16"W 52.51'; THENCE S01°15'50"W 103.41' TO A SET 5/8" CAPPED REBAR TAGGED "1826"; THENCE N86°42'35"W 12.50' TO THE POINT OF BEGINNING, CONTAINING 0.075 ACRES MORE OR LESS.

PROPOSED ALLEY VACATION 2:
BEGINNING AT A FOUND 1/2" REBAR BEING THE SOUTHWEST CORNER OF LOT 23, EAST 3RD ADDITION; THENCE N86°42'35"W 12.50' TO A SET PK NAIL; THENCE N01°16'11"E 104.23' TO A SET 5/8" CAPPED REBAR TAGGED "1826"; THENCE S88°43'49"E 12.49'; THENCE S01°16'11"W 104.67' TO THE POINT OF BEGINNING, CONTAINING 0.030 ACRES MORE OR LESS.

Miscellaneous Notes

COMPLETED FIELD WORK:
SEPTEMBER 09, 2020

BASIS OF BEARING:
ARKANSAS STATE PLANE, NORTH ZONE, NAD 83
LATITUDE: 36°22'03.0411"
LONGITUDE: -94°11'59.0696"
CONVERGENCE ANGLE: -01°16'48.09967
THE DISTANCES SHOWN ON THIS PLAT ARE OF COMBINED FACTOR (GRID TO GROUND) 1.000028001784078

REFERENCE DOCUMENTS:
1. WARRANTY DEED FILED IN DEED BOOK 2019 AT PAGE 33931.
2. SURVEY PLAT FILED IN PLAT BOOK 2016 AT PAGE 593.

SOME FEATURES SHOWN ON THIS PLAT MAY BE SHOWN OUT OF SCALE FOR CLARITY.

DIMENSIONS ON THIS PLAT ARE EXPRESSED IN FEET AND DECIMAL PARTS THEREOF UNLESS OTHERWISE NOTED. MONUMENTS WERE FOUND AT POINTS WHERE INDICATED.

BY GRAPHIC PLOTTING ONLY, THIS PROPERTY IS IN ZONE "X" OF THE FLOOD INSURANCE RATE MAP, COMMUNITY PANEL NO. 05007C0255K, WHICH BEARS AN EFFECTIVE DATE OF 06/05/2020 AND IS NOT IN A SPECIAL FLOOD HAZARD AREA.

EXCEPT AS SPECIFICALLY STATED OR SHOWN ON THIS PLAT, THIS SURVEY DOES NOT PURPORT TO REFLECT OF ANY OF THE FOLLOWING WHICH MAY BE APPLICABLE TO THE SUBJECT PROPERTY: EASEMENTS, OTHER THAN POSSIBLE EASEMENTS WHICH WERE VISIBLE AT THE TIME OF SURVEY; RESTRICTIVE COVENANTS; SUBDIVISION RESTRICTIONS OR OTHER LAND USE REGULATIONS; AND ANY OTHER FACTS WHICH AN ACCURATE TITLE SEARCH MAY DISCLOSE.

Utility Notes

THE LOCATION OF UTILITIES SHOWN HEREON ARE FROM OBSERVED EVIDENCE OF ABOVE GROUND APPURTENANCES ONLY. THE SURVEYOR WAS NOT PROVIDED WITH UNDERGROUND PLANS OR SURFACE GROUND MARKINGS TO DETERMINE THE LOCATION OF ANY SUBTERRANEAN USES. BEFORE DIGGING IN THIS AREA, CALL "ONE CALL" 811 FOR FIELD LOCATIONS (REQUEST FOR GROUND MARKINGS) OF UNDERGROUND UTILITY LINES

BENTON COUNTY CERTIFICATE OF DEDICATION:
WE, THE UNDERSIGNED, DO HEREBY SWEAR THAT WE ARE THE SOLE OWNERS OF THE HEREON PLATTED PROPERTY AND DO HEREBY DEDICATE ALL STREET AND EASEMENTS FOR USE BY THE GENERAL PUBLIC AND FOR THE INSTALLATION OF UTILITIES.

_____ _____ _____
OWNER DATE

_____ _____ _____
OWNER DATE

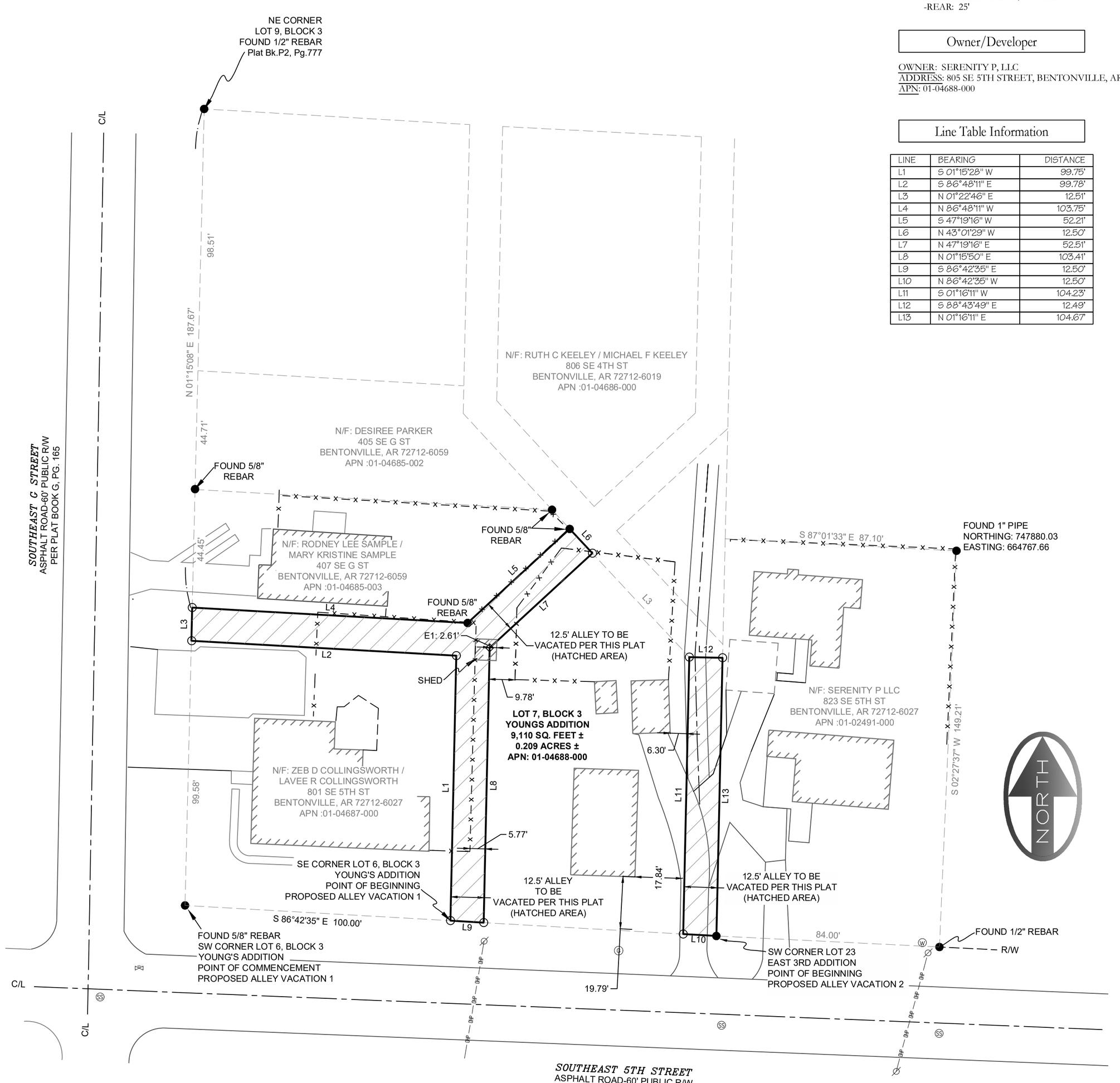
STATE OF ARKANSAS
COUNTY OF BENTON
SUBSCRIBED AND SWORN BEFORE ME THIS _____DAY OF _____ 2021.

_____
NOTARY PUBLIC

MY COMMISSION EXPIRES _____

PLANNING BOARD ACCEPTANCE:
THIS PLAT IS HEREBY ACCEPTED THIS _____DAY OF _____, 2021, BY THE PLANNING COMMISSION OF THE COUNTY OF BENTON, AR.

_____
CHAIRMAN



Zoning & Setback Information

THE PROPERTY IS ZONED IN: R1-SF RESIDENTIAL

BUILDING SETBACK REQUIREMENTS:

-FRONT: 20'
-SIDE: 20' EXTERIOR; 7' INTERIOR
-REAR: 25'

Owner/Developer

OWNER: SERENITY P, LLC
ADDRESS: 805 SE 5TH STREET, BENTONVILLE, AR
APN: 01-04688-000

Line Table Information

LINE	BEARING	DISTANCE
L1	S 01°15'28" W	99.75'
L2	S 86°48'11" E	99.78'
L3	N 01°22'46" E	12.51'
L4	N 86°48'11" W	103.75'
L5	S 47°19'16" W	52.21'
L6	N 43°01'29" W	12.50'
L7	N 47°19'16" E	52.51'
L8	N 01°15'50" E	103.41'
L9	S 86°42'35" E	12.50'
L10	N 86°42'35" W	12.50'
L11	S 01°16'11" W	104.23'
L12	S 88°43'49" E	12.49'
L13	N 01°16'11" E	104.67'

Legend of Symbols & Abbreviations

- COMPUTED POINT
- SET P/K NAIL
- SET CAPPED 5/8" REBAR BY PS 1826
- FOUND MONUMENT AS NOTED
- SS SANITARY SEWER
- POWER POLE
- EM ELECTRIC METER
- W WATER METER
- WATER VALVE
- G GAS METER
- R/W RIGHT-OF-WAY
- C/L CENTERLINE
- BOUNDARY LINE
- LOT LINE
- CENTERLINE OF ROAD
- RIGHT-OF-WAY
- x — x — FENCE
- OHP — OHP — OVERHEAD POWER LINE
- NOT TO SCALE

0' 30' 60' 90'

1 INCH = 30 FEET

I HEREBY CERTIFY THIS TO BE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF ON THIS THE 5TH DAY OF APRIL, 2021.

LICENSED PROFESSIONAL SURVEYOR
STATE OF ARKANSAS
No. 1826
SIGNATURE
HEATH A MYERS

IF THE SIGNATURE ON THIS SEAL IS NOT AN ORIGINAL AND NOT BLUE IN COLOR THEN IT SHOULD BE ASSUMED THAT THIS PLAT MAY HAVE BEEN ALTERED. THE ABOVE CERTIFICATION SHALL NOT APPLY TO ANY COPY THAT DOES NOT BEAR AN ORIGINAL SEAL AND SIGNATURE.

FIRM:
BLEW & ASSOCIATES, PA
CIVIL ENGINEERS & LAND SURVEYORS
3825 N. SHILOH DRIVE
FAYETTEVILLE, ARKANSAS 72703
OFFICE: 479.443.4506
FAX: 479.582.1883
www.BLEWINC.com
Certificate of Authorization № 1534

DRAWN BY & DATE:	REVIEWED BY:	SURVEYED BY:
AJO 04/05/2021	TN & HM	DA
COUNTY & STATE: BENTON COUNTY, AR	JOB NUMBER: 21-1335	
LOCATION: 805 SE 5TH STREET, BENTONVILLE, ARKANSAS		
FOR THE USE AND BENEFIT OF: RODNEY SAMPLE		

300

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 Serenity P, LLC requesting Alley Right-of-Way Vacations (VAC21-0021) within the City of Bentonville, Arkansas be vacated, which said alley right of way is described as follows:

LOT 7, BLOCK 3, IN YOUNG'S ADDITION TO THE CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD "G" AT PAGE 165. HAVING A TOTAL AREA OF 9,110 SQ. FEET OR 0.209 ACRES MORE OR LESS AND IS SUBJECT TO EXISTING COVENANTS, EASEMENTS, AND RIGHTS-OF-WAY OF RECORD.

PROPOSED ALLEY VACATION 1:
COMMENCING AT A FOUND 5/8" REBAR BEING THE SOUTHWEST CORNER OF LOT 6, BLOCK 3, YOUNGS ADDITION; THENCE S86°42'35"E 100.00' TO A SET 5/8" CAPPED REBAR TAGGED "1826" BEING THE TRUE POINT OF BEGINNING; THENCE N01°15'28"E 99.75' TO A SET 5/8" CAPPED REBAR TAGGED "1826"; THENCE N86°48'11"W 99.78' TO A SET 5/8" REBAR LOCATED ON THE RIGHT-OF-WAY LINE OF SOUTHEAST G STREET; THENCE N01°22'46"E 12.51' TO A SET 5/8" CAPPED REBAR TAGGED "1826"; S86°48'11"E 103.75' TO A FOUND 5/8" REBAR; THENCE N47°19'16"E 52.21' TO A FOUND 5/8" REBAR; THENCE S43°01'29"E 12.50' TO A SET 5/8" CAPPED REBAR TAGGED "1826"; THENCE S47°19'16"W 52.51'; THENCE S01°15'50"W 103.41' TO A SET 5/8" CAPPED REBAR TAGGED "1826"; THENCE N86°42'35"W 12.50' TO THE POINT OF BEGINNING, CONTAINING 0.075 ACRES MORE OR LESS.

PROPOSED ALLEY VACATION 2:
BEGINNING AT A FOUND 1/2" REBAR BEING THE SOUTHWEST CORNER OF LOT 23, EAST 3RD ADDITION; THENCE N86°42'35"W 12.50' TO A SET PK NAIL; THENCE N01°16'11"E 104.23' TO A SET 5/8" CAPPED REBAR TAGGED "1826"; THENCE S88°43'49"E 12.49'; THENCE S01°16'11"W 104.67' TO THE POINT OF BEGINNING, CONTAINING 0.030 ACRES MORE OR LESS.

WHEREAS, Ark. Code Ann. Section 14-301-302(c) provides that the City Council shall by resolution fix a day for the hearing of the petition and shall direct the City Clerk and Recorder to give notice of the meeting, by publication, once per week for two (2) consecutive weeks in some newspaper published in and having general circulation in Bentonville, Benton County, Arkansas.

NOW, THEREFORE, BE IT RESOLVED, by the City of Bentonville, Arkansas, that the petition to vacate the above described Alley Right-of-Ways is set for a hearing September 28, 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	**09/14/22021**
Department	**ENGINEERING**
Submitted by	**TRACY BILLINGS**
Phone	**(479) 696-0229**

Item Type: (*Check Applicable Item Type)*

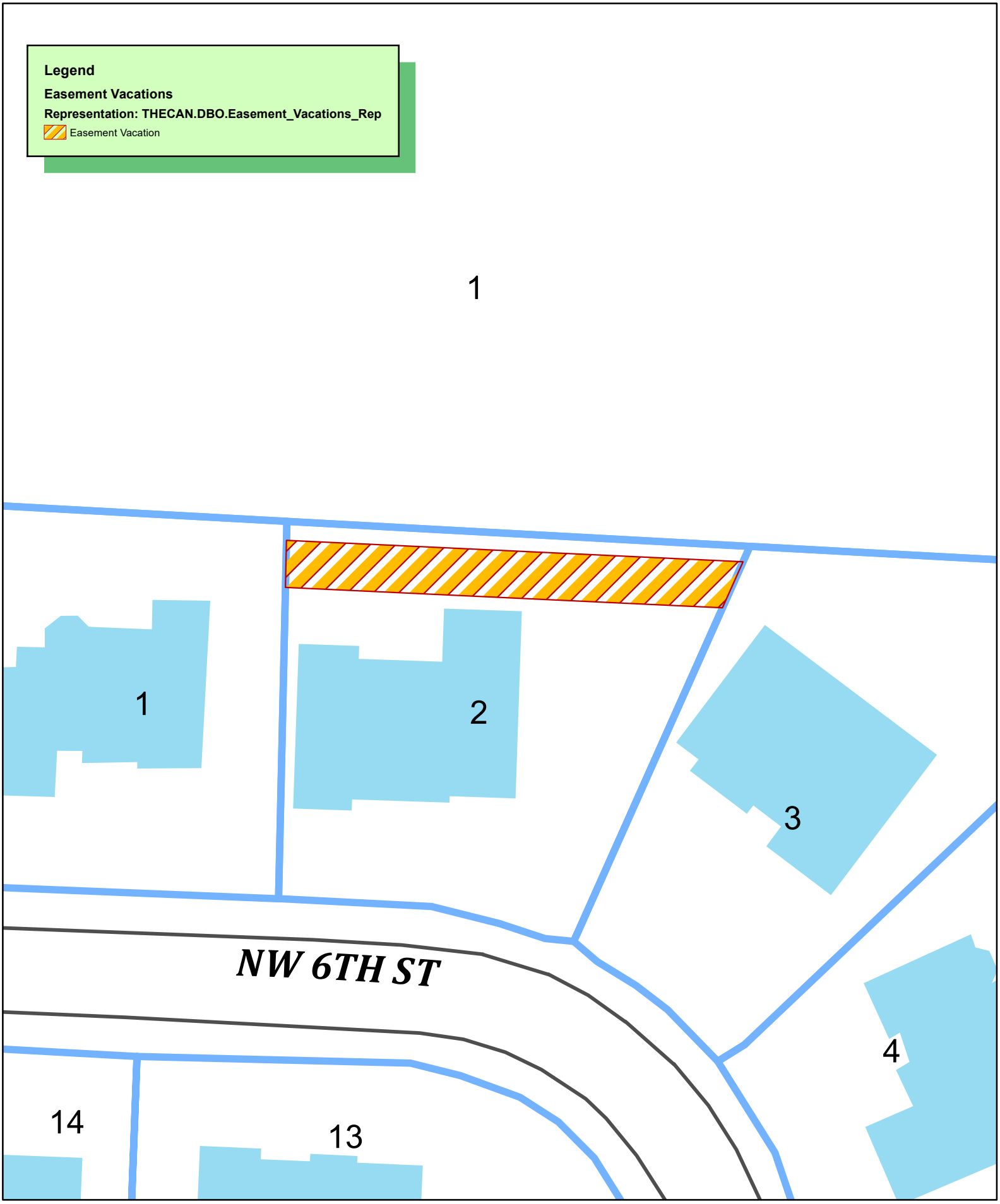
☐ Budget Adjustment	☐ Change Order	☐ Informational	☐ Ordinance	☑ Resolution	☐ Bid Award

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

Resolution setting a public hearing for September 28, 2021 for a Utility/Drainage Easement Vacation requested for 2606 NW 6th Street of Cross Creek PH II (VAC21-0022).

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 = 39 feet

Proposed Easement Vacation
2606 NW 6th Street

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 Erin Lump requesting a utility/drainage easement vacation (VAC21-0022) within the City of Bentonville, Arkansas be vacated, which said utility/drainage easement is described as follows:

The South 15' of an existing 20' Utility and Drainage Easement which lies squarely off the North Side of Lot 2 and shown on the Final Plat of Cross Creek Phase II and filed for record in Plat Book P-1 Page 747 in the Benton County Clerk's Office, Bentonville, Arkansas.

WHEREAS, Ark. Code Ann. Section 14-301-302(c) provides that the City Council shall by resolution fix a day for the hearing of the petition and shall direct the City Clerk and Recorder to give notice of the meeting, by publication, once per week for two (2) consecutive weeks in some newspaper published in and having general circulation in Bentonville, Benton County, Arkansas.

NOW, THEREFORE, BE IT RESOLVED, by the City of Bentonville, Arkansas, that the petition to close the above described utility/drainage easement is set for a hearing on September 28, 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	**09/14/22021**
Department	**ENGINEERING**
Submitted by	**TRACY BILLINGS**
Phone	**(479) 696-0229**

Item Type: (*Check Applicable Item Type)*

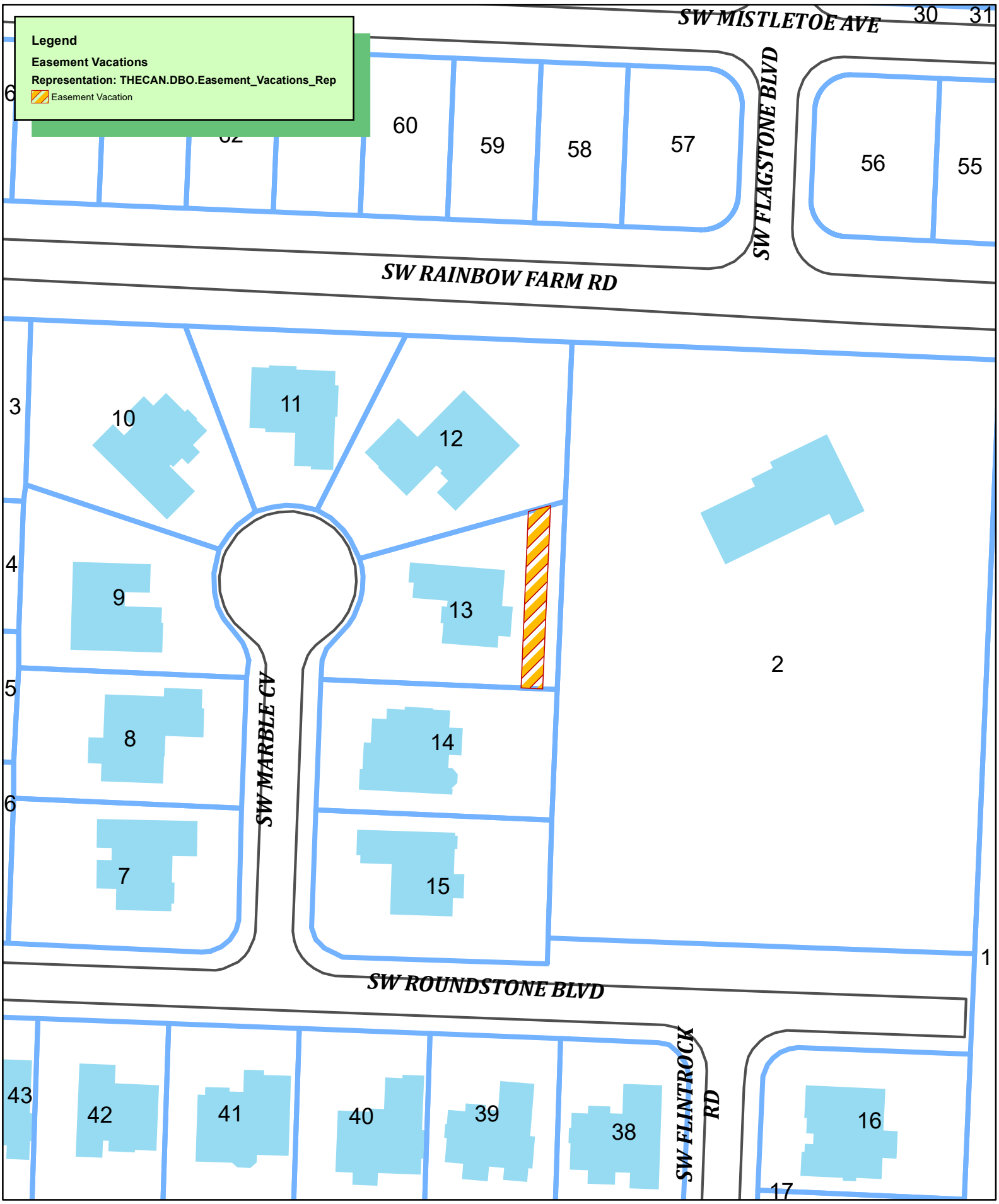
☐ Budget Adjustment	☐ Change Order	☐ Informational	☐ Ordinance	☑ Resolution	☐ Bid Award

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

Resolution setting a public hearing for September 28, 2021 for a Utility Easement Vacation requested for 4503 SW Marble Cove of Cornerstone Ridge Phase 4 (VAC21-0023).

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 = 83 feet

VAC 21-0023
Proposed Easement Vacation
4503 SW Marcle Cv

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 Rachel Daniel requesting a utility easement vacation (VAC21-0023) within the City of Bentonville, Arkansas be vacated, which said utility easement is described as follows:

The West 15' of an existing 25' Utility Easement which lies squarely off the East Side of Lot 13 and shown on the final plat of Cornerstone Ridge Subdivision Phase 4 and filed for record in Plat Book Page 2006 Page 344 in Benton County Clerk's Office, Bentonville, Arkansas.

WHEREAS, Ark. Code Ann. Section 14-301-302(c) provides that the City Council shall by resolution fix a day for the hearing of the petition and shall direct the City Clerk and Recorder to give notice of the meeting, by publication, once per week for two (2) consecutive weeks in some newspaper published in and having general circulation in Bentonville, Benton County, Arkansas.

NOW, THEREFORE, BE IT RESOLVED, by the City of Bentonville, Arkansas, that the petition to close the above described utility easement is set for a hearing on September 28, 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	**9/14/2021**
Department	**Police Department**
Submitted by	**Jon Simpson**
Phone	**(479) 271-3172**

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 Crafton Tull & Associates for the master plan and engineering of the law enforcement training facility. The cost of this agreement including all reimbursable expenses as described in the fees and schedule, not to exceed $71,000.00. Additionally, the cost includes all services for this project all the way through construction and closeout. This firm was selected following the City's standard SOQ selection process for procurement of professional services in accordance with state law. (Attachment)

Estimated Cost	**$71,000.00**
Is this Item Budgeted?	☐ Yes ☑ No

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

This item is part of the law enforcement training facility approved by the 2021 bond extension.

PROFESSIONAL SERVICES AGREEMENT

PROJECT NAME: POLICE TRAINING FACILITY ("PROJECT")

THIS AGREEMENT ("AGREEMENT") is made in Benton County, Arkansas, by and between the City of Bentonville, Arkansas, hereinafter referred to as "CITY", and CRAFTON, TULL & ASSOCIATES, INC., hereinafter referred to as "ENGINEER" (collectively, the "PARTIES").

The PARTIES have caused this AGREEMENT to be effective this ____day of _____, 20___ ("EFFECTIVE DATE").

RECITALS:

A. WHEREAS, the CITY has a need to perform capital improvement projects for the City of Bentonville, Arkansas; and

B. WHEREAS, The CITY has selected the ENGINEER and negotiated this AGREEMENT using the procedures as set forth in Ark. Code Ann. § 19-11-800; and

C. WHEREAS, the CITY wishes to contract for Professional Services; and

D. WHEREAS, The ENGINEER has the skill, experience, ability, background, certifications and knowledge to provide these services; and

E. WHEREAS, The ENGINEER wishes to perform such professional services under this AGREEMENT with the CITY.

NOW, THEREFORE, in consideration of the terms in this AGREEMENT, the CITY and ENGINEER agree to the following:

ARTICLE I - PROJECT DESCRIPTION

The PROJECT shall be as described in APPENDIX A. "Project Description", attached hereto and incorporated herein by reference.

ARTICLE II - SCOPE OF SERVICE

Upon issuance of a written Notice to Proceed by the CITY, ENGINEER agrees to provide the CITY the necessary professional services related to the PROJECT, as set forth in APPENDIX B, "Scope of Services" ("SCOPE"), attached hereto and incorporated herein by reference.

ARTICLE III - STANDARD OF CARE

ENGINEER shall at all times material hereto adhere to the generally accepted standard of care typically exhibited by similarly situated professionals performing similar scope(s) of service on projects of like size, scope, nature, cost, schedule, and complexity, at the same time and in the same general regional locale ("Standard of Care").

ARTICLE IV - ADDITIONAL SERVICES

A. Any service outside of the work described herein or included by reference hereto must be pre-approved by the CITY and executed as an AMENDMENT to this AGREEMENT by the Parties prior to any such work being completed; any such AMENDMENT shall be in accordance with the CITY'S purchasing laws and guidelines and may require approval from the Bentonville City Council.

B. ENGINEER shall make no claims for additional services or changes in the services until an AMENDMENT has been fully executed by the Parties.

ARTICLE V - SCHEDULE OF FEES, SERVICES AND PAYMENT

A. The term of this AGREEMENT shall commence on the EFFECTIVE DATE and shall proceed in accordance with APPENDIX C, "Schedule of Fees and Services, Key Milestones, and Durations for Major Tasks", attached hereto and incorporated herein by reference.

B. The cost of this AGREEMENT shall be in accordance with APPENDIX C.

C. CITY agrees to pay ENGINEER for all services authorized by inclusion in this AGREEMENT which have been properly performed by ENGINEER in accordance with this AGREEMENT.

D. All fees paid to ENGINEER shall be based on invoices submitted by ENGINEER for work performed under this AGREEMENT, less any previous payments. ENGINEER shall submit invoices for services related to this AGREEMENT on a monthly basis.

E. CITY reserves the right to delay, without penalty, any partial payment when, in the opinion of the CITY, ENGINEER has not made satisfactory progress on the Project based on the SCOPE. If CITY objects to any portion of an invoice, the CITY shall notify ENGINEER and shall pay all other portions of the invoice which are not in dispute. In the event of dispute, CITY and ENGINEER shall immediately make every effort to settle the disputed portion of the invoice.

F. In the event that the CITY becomes credibly informed that any representations of ENGINEER provided in its invoicing are wholly or partially inaccurate, CITY may withhold payment of sums then, or in the future, otherwise due to ENGINEER until the inaccuracy and the cause thereof is corrected to the CITY's reasonable satisfaction.

G. If the CITY fails to make any payment, not in dispute, due to ENGINEER within thirty (30) days after receipt of an invoice, then the amount due to the ENGINEER will increase at the lesser of one percent (1 %) per month or the maximum amount allowed by law after the 30th day. In addition, ENGINEER may, after giving seven (7) days' written notice to CITY, suspend its services and any deliverables until ENGINEER has been paid in full for all amounts outstanding more than thirty (30) days.

ARTICLE VI - INSURANCE

A. ENGINEER shall during the term hereof maintain in full force and effect the following insurance:

1. A comprehensive general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the ENGINEER's performance of services pursuant to this AGREEMENT with a combined single limit of not less than $1,000,000.00 per occurrence and $2,000,000 in the aggregate for injury to persons (including death), and for property damage;

2. A policy of automobile liability insurance covering any vehicles owned and/or operated by ENGINEER, its officers, agents, and employees, and used in the performance of this AGREEMENT with policy limits of not less than $1,000,000.00 combined single limit and aggregate for bodily injury and property damage;

3. Statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of ENGINEER's employees involved in the provision of services under this AGREEMENT with policy limit of not less than $1,000,000.00; and

4. Professional Liability/Errors and Omissions coverage covering negligent acts, errors and omissions in the performance of professional services with policy limit of not less than $1,000,000.00.

B. All insurance and certificate(s) of insurance shall contain the following provisions:

1. Include CITY as additional insured as to all applicable coverage with the exception of Workers Compensation Insurance and Professional Liability/Errors and Omissions coverage; and

2. provide for at least thirty (30) days prior written notice to CITY for cancellation or non-renewal of the insurance;

3. provide for a waiver of subrogation against CITY for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance, except for Professional Liability/Errors and Omissions coverage.

C. ENGINEER shall provide 30 day written notice to CITY of any material change of or to the insurance required herein.

D. All insurance companies providing the required insurance shall be authorized to transact business in Arkansas and rated at least "A" by AM Best or other equivalent rating service. A certificate of insurance evidencing the required insurance and all endorsements required by this Agreement shall be submitted prior to commencement of services.

E. In the event that additional or greater insurance requirements are warranted, these requirements shall be included as an Appendix, which will be attached hereto and incorporated by reference.

ARTICLE VII - RIGHT OF ACCESS

A. CITY will obtain and/or furnish right-of-access for ENGINEER to perform any required studies, surveys, tests or other necessary investigations in relation to the PROJECT.

B. ENGINEER will take reasonable precautions to minimize damage to the personal or real property in the performance of such surveys, tests, studies and investigations.

C. CITY recognizes that ENGINEER's operations and use of equipment may unavoidably alter existing conditions or affect the environment at the PROJECT site. The cost of repairing such damage shall be the responsibility of ENGINEER, at no additional cost to the CITY. In the event that ENGINEER fails to correct such damages, CITY is entitled to utilize CITY forces or other labor to repair the damage; any costs incurred by CITY for such work shall be deducted from the monies due to ENGINEER.

ARTICLE VIII - RECORDS AND RETENTION

A. All surveys, studies, proposals, applications, drawings, plans, specifications and other documents, including those in electronic form, prepared by ENGINEER and its ENGINEERs, subcontractors, agents, representatives, and/or employees in connection with this AGREEMENT ("PROJECT DOCUMENTS") are intended for the use and benefit of CITY. ENGINEER and its ENGINEERs, subcontractors, agents, representatives, and/or employees shall be deemed the authors of their respective part of the PROJECT DOCUMENTS. Notwithstanding anything to the contrary, CITY shall own, have, and retain all rights, title and interest in and to all PROJECT DOCUMENTS, whether in draft form or final form, which are produced at CITY's request or otherwise produced from ENGINEER's performance of the work described herein for CITY. The CITY's ownership of PROJECT DOCUMENTS shall not apply to ENGINEER's proprietary standard details that were developed by the ENGINEER prior to the commencement of this PROJECT.

B. CITY shall have full authority to reuse, reproduce, publish, disclose and distribute PROJECT DOCUMENTS, as needed, according to Arkansas State Law.

C. ENGINEER shall, upon completion of the services and full payment for the ENGINEER'S services by the CITY, or earlier termination and appropriate compensation as provided by this AGREEMENT, provide the CITY with all PROJECT DOCUMENTS prepared by ENGINEER pursuant to this AGREEMENT in formats requested by the CITY.

D. All instruments of service (including plans, specifications, drawings, reports, designs, computations, computer programs, estimates, surveys, other data or work items, etc.) prepared under this AGREEMENT shall be submitted for approval to the CITY. All instruments of service shall be professionally sealed in accordance to applicable laws or at CITY's request.

E. Acceptance and approval of the PROJECT DOCUMENTS by the CITY shall not constitute nor be deemed a release of the responsibility and liability of ENGINEER, its employees, associates, agents and ENGINEERs for the accuracy or competency of their designs, working drawings and specifications, or other documents and work; nor shall such approval be deemed to be an assumption of such responsibility by the CITY for any defect in the designs, working drawings and specifications, or other documents prepared by ENGINEER, its employees, contractor, agents and ENGINEERs.

F. ENGINEER will retain the PROJECT DOCUMENTS for a period of three years following project completion. During this three year period, any requests for document recovery and reproduction will be assessed a fee in accordance with ENGINEER's FEES.

ARTICLE IX - SAFETY

A. CITY agrees to inform ENGINEER of any applicable site safety procedures and regulations known to CITY as well as any special safety concerns or dangerous conditions at the site of which the CITY is aware, which ENGINEER shall communicate to its employees. ENGINEER and its employees shall adhere to such procedures and regulations once notice has been given by the CITY.

B. Unless specifically provided in the SCOPE, ENGINEER shall not have any responsibility for overall job safety at the site. If in the ENGINEER's opinion, its field personnel are unable to access required locations or perform required services in conformance with applicable safety standards, ENGINEER may immediately suspend performance until such safety standards can be attained.

C. ENGINEER agrees to indemnify and hold harmless the CITY for any safety conditions that may arise out of ENGINEER's performance of this AGREEMENT.

ARTICLE X - TERMINATION

A. CITY may suspend or terminate this AGREEMENT for cause or without cause at any time by giving written notice to ENGINEER. In the event suspension or termination is without cause, payment to ENGINEER, in accordance with the terms of this AGREEEMENT, will be made on the basis of services reasonably determined by the CITY to be satisfactorily performed to the date of suspension or termination. Such payment will be due upon delivery of all instruments of service to CITY.

B. Should the CITY require a modification of this AGREEMENT with the ENGINEER, and in the event the CITY and ENGINEER fail to agree upon a modification to this AGREEMENT, the CITY shall have the option of terminating this AGREEMENT and the ENGINEER's services hereunder at no additional cost other than the payment to ENGINEER, in accordance with the terms of this AAGREEMENT, for the services reasonably determined by the CITY to be properly performed by ENGINEER prior to such termination date.

C. If, for whatever adequate funding is not made available by CITY to support or justify continuation of the level of services to be provided by ENGINEER under this AGREEMENT, CITY may terminate or reduce the amount of services to be provided by ENGINEER under this AGREEMENT. In such event, CITY will notify ENGINEER in writing at least thirty (30) days in advance of such termination or reduction of services for lack of funds.

D. In no event shall the CITY pay to ENGINEER fees for termination outside of payment for services reasonably determined by the City to be properly performed prior to termination.

ARTICLE XI - INDEMNIFICATION

A. For purposes of this AGREEMENT, ENGINEER agrees to indemnify, hold harmless the CITY, its officers and employees from any loss, damage, liability or expense, of any nature whatsoever to the extent caused by the negligence, willful misconduct, or other actionable fault of ENGINEER, its affiliates, subsidiaries, employees, agents, assignees, and subcontractors and their respective employees and agents. ENGINEER is not required hereunder to defend the CITY, its officers, appointees, employees, or agents from assertions that they were negligent, nor to indemnify and hold them harmless from liability based on the CITY's negligence

B. Nothing contained herein shall waive any governmental immunity CITY may be entitled to by law.

C. This provision shall survive the termination of this AGREEMENT.

ARTICLE XII - CONTINGENCY CLAUSE

A. The CITY may add a contingency amount to the contract to cover additional services as described in APPENDIX B. Any use of such contingency funds for additional services shall be executed as an AMENDMENT to this AGREEMENT.

B. The Contingency shall in no manner substitute for an official AMENDMENT.

ARTICLE XIII - RELATIONSHIP OF THE PARTIES

It is understood and agreed by and between the parties that the ENGINEER, in satisfying the conditions of this AGREEMENT, is acting independently, and that the CITY assumes no responsibility or liabilities to any third party in connection with ENGINEER's actions. All services to be performed by the ENGINEER pursuant to this AGREEMENT shall be in the capacity of an Independent Contractor, and not as an agent or employee of CITY. The ENGINEER shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this AGREEMENT. There is no intended third party beneficiary to the AGREEMENT and nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

ARTICLE XIV - DISPUTE RESOLUTION

A. CITY and ENGINEER agree that disputes relative to the services will first be addressed by negotiations between the Parties. If direct negotiations fail to resolve the dispute, the Party initiating the claim that is the basis for dispute may take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute, ENGINEER will proceed with the services as per this AGREEMENT as if no dispute existed, and CITY will continue to make payment for ENGINEER's completed services; and provided further that no dispute will be submitted to arbitration without both Parties' express written consent.

ARTICLE XV - OPINIONS OF PROBABLE COST

A. Since the ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over methods of determining prices, or over competitive bidding or market conditions, the ENGINEER's estimates of PROJECT costs and construction costs provided for herein are to be made on the basis of the ENGINEER's experience and qualifications and represent the ENGINEER's judgement in accordance with the "Standard of Care". The ENGINEER cannot and does not guarantee that proposals, bids or actual PROJECT or construction costs will not vary from estimates prepared by the ENGINEER.

B. The CITY understands that the construction cost estimates developed by the ENGINEER do not establish a limit for construction contract amount. If the actual amount of the low construction bid exceeds the construction budget established by the CITY, the ENGINEER will not be required to re-design the PROJECT or any part thereof without additional compensation.

ARTICLE XVI - APPLICABLE LAWS

ENGINEER shall comply with all Federal, State, Local laws, ordinances, resolutions, specifications, regulations and all other laws or regulations relating or applicable to service to be performed under this AGREEMENT. Interpretation of this AGREEMENT and disputes arising out of or related to this AGREEMENT will be subject to and governed by the laws of the State of Arkansas. Jurisdiction and venue for any suit arising out of or related to this AGREEMENT will be in the District Court of Benton County, Arkansas,

ARTICLE XVII - PRECEDENCE

This AGREEMENT shall take precedence over any inconsistent of contradictory provisions contained in any proposal, contract, purchase order, requisition, notice to proceed, or any other like document regarding the PROJECT or ENGINEER's services.

ARTICLE XVIII - SEVERABILITY

A. In the event that one or more provisions contained herein shall, for any reason, be deemed invalid, illegal, void or unenforceable, in whole or in part, the remaining provisions hereof shall remain in full force and effect.

B. In the event that any provision hereof is in conflict with any statutory provision of the State of Arkansas, said provision, which may be in conflict therewith, shall be deemed inoperative, null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provisions; provided, however, that the remaining provisions of this AGREEMENT will be unaffected and will continue to be valid and enforceable.

ARTICLE XIX - SURVIVAL OF OBLIGATIONS

The obligations of the Parties contained in this AGREEMENT, which by their nature survive after the term of the AGREEMENT, shall survive the termination or expiration of this AGREEMENT and continue indefinitely or as otherwise provided by this AGREEMENT.

ARTICLE XIX – ENTIRE AGREEMENT

This AGREEMENT, including all documents and Appendices included by reference herein, constitutes the entire agreement between the PARTIES and supersedes all prior agreements, whether oral or written, covering the same subject matter. This AGREEMENT may not be modified or amended except in writing, mutually agreed upon and accepted by both PARTIES to this AGREEMENT.

The cost of this AGREEMENT including all reimbursable expenses as described in the FEES AND SCHEDULE, **shall not exceed** Seventy One Thousand Dollars and zero cents ($71,000.00), unless otherwise approved by the CITY through an official AMENDMENT agreed and executed by CITY and ENGINEER.

IN WITNESS THEREOF, the CITY and ENGINEER have executed this AGREEMENT, the EFFECTIVE DATE of which is indicated on page 1 of this AGREEMENT.

CITY OF BENTONVILLE	**CRAFTON, TULL & ASSOC., INC.**
CITY	ENGINEER
	[redacted]
BY	
MAYOR	**VICE PRESIDENT**
TITLE	TITLE
	8/11/2021
DATE SIGNED	DATE SIGNED

APPENDIX A
PROJECT DESCRIPTION

BASIC PROJECT INFORMATION:

POLICE TRAINING FACILITY TO INCLUDE A FIRING RANGE WITH STATIONS AT 7, 15, 25, 50, & 100 YARDS. BULLET TRAP AND 3-SIDED RAIN STRUCTURE FOR PROTECTION. SHADE STRUCTURES AT THE 50 YARD & 100 YARD STATIONS. PRE-ENGINEERED METAL BUILDING WITH GRAVEL PARKING AND DRIVE. LED SOLAR LIGHTING FOR THE RANGE AND PARKING AREA.

APPENDIX B
SCOPE OF SERVICES

SERVICES BY THE CITY

- Furnish required information and approvals and perform responsibilities and activities in a timely manner to facilitate orderly progress of the work.
- Provide criteria and information as to the requirements for the PROJECT, including design objectives and constraints, right-of-way, capacity and performance requirements, and any budgetary limitations.
- Furnish copies of design and construction standards that the CITY will require to be included in the drawings and specifications.
- Assist the ENGINEER by placing at their disposal all available information pertinent to the PROJECT, including previous reports and other data relative to design or construction of the PROJECT.
- Arrange for access to public and private property as required for the PROJECT.
- Obtain the necessary lands, easements and rights-of-way for the PROJECT.
- Reimburse all plan review, advertising costs, permits and approvals in connection with the PROJECT.
- Pay the ENGINEER is accordance with the terms of the AGREEMENT.

If the CITY observes or otherwise becomes aware of any fault or defect in the PROJECT, the CITY shall give prompt written notice thereof to the ENGINEER.

SERVICES BY THE ENGINEER

- Meet all requirements of the AGREEMENT including any AMENDMENTS.
- Produce all documents and services needed for the PROJECT, including but not limited to:

  Topographical surveys, Right-of-Way Surveys, Utility Surveys and Coordination, Traffic Study, Geotechnical Investigations, Environmental Surveys, Permitting, Major Drainage Study, Conceptual Design Phase (30%), Preliminary Design Phase (60%), Final Design Phase (90%), Public Meetings, Bidding Services, Construction Support Services, Project Management Services, Project Closeout.
- Project Management services for the entire life of the project that align with the Project Management Institute Project Management Book of Knowledge Latest Edition.
- All Design and Construction shall conform to Federal, State and Local regulations.
- Coordinate PROJECT with Franchise Utility Companies to assure adequate space for all facilities and timely relocations.
- Coordinate and Furnish approvals and permits from all Regulatory Agencies having jurisdiction over the PROJECT.
- Provide all services relevant to City of Bentonville Plan Review procedures.
- Create and provide all documents for property acquisitions and assist with any layout or staking required.
- Coordinate and facilitate meetings with CITY and Agencies for plan review, project coordination and right-of-way.
- Subcontracting of services by the ENGINEER shall have prior approval of the CITY.

APPENDIX C

SCHEDULE OF FEES AND SERVICES, KEY MILESTONES, AND DURATIONS FOR MAJOR TASKS

Tasks performed shall be paid for at an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class. Major tasks with estimated fees are shown below. Overruns and underruns associated with each task may offset one another as long as the overall fee is not exceeded.

TASK	**DURATION***	**ESTIMATED FEE**
Topographic & Land Surveying	1 month	$6,000
Tract Split	1 month	$5,000
50% - Preliminary Design	1 month	$15,000
100% - Final Design	2 months	$20,000
Bid Letting / Award	1 month	$5,000
Construction Administration	6 months	$10,000
Geotechnical Services	6 months	$5,000
Structural Design	2 months	$2,500
Electrical Design	1 month	$1,500
Reimbursable Expenses		$1,000
NOT-TO-EXCEED FEE TOTAL		**$71,000**

* Duration does not include review times for government agencies outside of our control.

Items Excluded from above fee schedule that can be added by contract amendment:

- FEMA map revision applications (CLOMR/LOMR)
- Wetland determinations
- Traffic study
- Retaining wall design
- Offsite utility or street extensions

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CLERK TO ENTER INTO AN AGREEMENT WITH CRAFTON, TULL AND ASSOCIATES FOR SERVICES RELATED TO THE LAW ENFORCEMENT TRAINING FACILITY.

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 Crafton, Tull and Associates for services related to the Law Enforcement Training Facility, 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	**9/14/2021**
Department	**Administration/Accounting**
Submitted by	**Jake Harper**
Phone	**479-271-6781**

Item Type: (*Check Applicable Item Type)*

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

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

Request approval for a budget adjustment to increase the newspaper publications budget for both the City Clerk and the Purchasing Department.

Estimated Cost	**$38,910.00**
Is this Item Budgeted?	☐ Yes ☑ No

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

Funded through General Fund Reserves

Budget Adjustment Request

Date of City Council Meeting	**9/14/2021**
Department	**Administration/Accounting**
Submitted by	**Jake Harper**
Phone	**479-271-6781**

Purpose of Budget Adjustment ***(Enter purpose in space below):***

Request approval for a budget adjustment to increase the newspaper publications budget for both the City Clerk and the Purchasing Department. Newspaper publications are a legal requirement of the City. The growth in Bentonville is causing the City Clerks publication budget to need to be increased due to public hearings and other items that require publication. The Purchasing office's budget is needing increased due to the growth but also because of Covid related wording that was required earlier this year that increased costs.

General Ledger Account Information*

Org (Department)	Object	Account Description	Revenue + (-)	Expense + (-)
101010	45410	Legal Notification		$ 20,000.00
101040	45410	Legal Notification		$ 18,910.00
		Totals	$ -	$ 38,910.00
		Net Impact on Fund Balance	$	(38,910.00)

*Final Account Number will be determined by Accounting Department after approval and purchase

Agenda Item Form

Date of City Council Meeting	**9/14/2021**
Department	**Accounting**
Submitted by	**Jake Harper**
Phone	**479-271-6781**

Item Type: (*Check Applicable Item Type)*

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

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

Request approval of a budget adjustment for the 2021 property tax for the Administrative Services Building. Future years will be tax exempt but the 1st year of occupancy is taxable.

Estimated Cost	**$32,868.56**
Is this Item Budgeted?	☐ Yes ☑ No

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

Funded from General Fund Reserves

Budget Adjustment Request

Date of City Council Meeting	**9/14/2021**
Department	**Accounting**
Submitted by	**Jake Harper**
Phone	**479-271-6781**

Purpose of Budget Adjustment ***(Enter purpose in space below):***

Request approval of a budget adjustment for the 2021 property tax for the Administrative Services Building. Future years will be tax exempt but the 1st year of occupancy is taxable. This was excluded from the 2021 Budget due to a miscalculation of the move in date and the property tax period.

General Ledger Account Information*				
Org (Department)	**Object**	**Account Description**	**Revenue + (-)**	**Expense + (-)**
101010	**42830**	**Misc Expense**		**$ 32,868.56**
		Totals	**$ -**	**$ 32,868.56**
		Net Impact on Fund Balance	**$**	**(32,868.56)**

***Final Account Number will be determined by Accounting Department after approval and purchase**

Parcel Number / Owner's Name / Legal Description	School District	Valuation	Millage	Description	Amount	Total Due
01-09525-000	C6		63.70	Real Estate	.00	**CITY EXEMPT**
CITY OF BENTONVILLE						$0.00
Lot DETENTION POND WILLIAMSBURG HEIGHTS-BENTONVILLE 28-20-30 0.45 acres REPLAT P3-810 5/2/01						
01-09591-005	C6		63.70	Real Estate	.00	**CITY EXEMPT**
CITY OF BENTONVILLE						$0.00
SW I ST Lot STREETS JARNAGAN ADD-BENTONVILLE 01-19-31 1.49 acres REPLAT 8/24/11 2011-372						
01-09591-006	C6		63.70	Real Estate	.00	**CITY EXEMPT**
CITY OF BENTONVILLE						$0.00
SW I ST Lot STREETS JARNAGAN ADD-BENTONVILLE 01-19-31 1.01 acres REPLAT 8/24/11 2011-372						
01-09594-000	C6		63.70	Real Estate	.00	**CITY EXEMPT**
CITY OF BENTONVILLE						$0.00
SE 22ND ST Lot STREETS PT TRACT A WERTS ADD-BENTONVILLE 06-19-30 0.6 acres LESS & EXCEPT 2003/25014 ARK STATE HWY						
01-09667-000	C6	515,990	63.70	Real Estate	32,868.56	
CITY OF BENTONVILLE						$32,868.56
1000 SW 14TH ST Lot PT 3 WESTPARK SQUARE-BENTONVILLE 36-20-31 1.57 acres PLAT 5/21/01 P3-867 & 6/21/2001 P3-942 LESS & EXCEPT: A PART OF LOT 3 OF WEST PARK SQUARE SUBDIVISION TO THE CITY OF BENTONVILLE, ARKANSAS, BEING A REPLAT OF MAHAN SUBDIVISION, ALSO BEING A PART OF THE SE1/4 OF THE SE1/4 OF SECTION 36, T-20-N, R-31-W, BENTON COUNTY, ARKANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: STARTING AT A REBAR CAP #1227 BEING USED AS NW CORNER OF LOT 3 OF WESTPARK SQUARE; THENCE S 02*40'11"						
01-09681-000	C6		63.70	Real Estate	.00	**CITY EXEMPT**
CITY OF BENTONVILLE						$0.00
Lot DTN WESTPARK SQUARE-BENTONVILLE 36-20-31 1.08 acres PLAT 5/21/01 P3-867 & 6/21/2001 P3-942						

Agenda Item Form

Date of City Council Meeting	**9/14/2021**
Department	**Purchasing**
Submitted by	**Gladys Shoemake**
Phone	**(479) 271-3115**

Item Type: (*Check Applicable Item Type)*

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

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

Request for approval of a resolution to declare various items as surplus, to be sold via public online auction. See attached list for more detail on the items to be declared as surplus and sold.

Estimated Cost	**$0**
Is this Item Budgeted?	☐ Yes ☑ No

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

No cost to the City

MEMORANDUM

PURCHASING DEPARTMENT

FROM: Gladys Shoemake, Purchasing Manager

TO: Mayor Orman, City Council

DATE: September 1, 2021

SUBJECT: 2021 Surplus: List 1

The City's last surplus auction was held in 2019. Due to the COVID-19 Pandemic, a live surplus auction was not conducted in 2020.

The Purchasing Department has been considering and discussing selling surplus online for the last two years, mainly due to the potential for higher auction revenue and lessening the burden of hosting a live auction.

The original plan for the 2021 auction was to hold another live auction when the COVID-19 numbers declined; with a goal to begin exploring online sales after that auction/after the backlog of items was removed. Unfortunately, there has been a significant spike in these numbers over the last couple of months. While a surplus auction and the removal of surplus is very important, we do not feel it is necessary to hold a live auction when there are other options.

While we feel that selling surplus online will be successful, we will begin selling slowly to ensure proper execution and success both in staff efficiency and City surplus revenue.

After extensive research, we will be using GovDeals for our initial online sales and future sales if successful. GovDeals is a dedicated government surplus online auction platform; they also hold the Arkansas State Contract for online auction services (Contract # 4600038189). Multiple Arkansas governmental entities have utilized GovDeals for their online surplus sale needs, including the State of Arkansas, City of Fayetteville, City of Little Rock, City of North Little Rock and Arkansas Game & Fish.

While we do have a backlog of smaller items (desks, office supplies, chairs, small equipment etc.), we believe the most economically urgent surplus items to sell are the Department's surplus vehicles and heavy equipment (capital items) to avoid deterioration from lack of use. Additionally, we are working to be creative with ways of advertising surplus items when sold through an online auction, to ensure local citizens are aware of the opportunity to purchase these items; currently, all online surplus sales will be published in the newspaper for two consecutive Sundays prior to online bidding being open.

Please let me know if you have any questions.

Thank you,

Gladys Shoemake

(479) 271-3115

gshoemake@bentonvillear.com

2021 SURPLUS LIST: VEHICLES & HEAVY EQUIPMENT (LIST 1)

Department	Description of Item(s)	Year	Make	Model	VIN/SN
Electric	Digger Derrick	2008	International	DM47TR	0508DV3587
Electric	Chipper	2009	Altec	N/A	5WDS6151X95200725
Electric	Bucket Truck (Big Bucket)	2009	International	AM604330-SBA-4X2	0609DM2564
Compost	Truck	2005	Dodge	Dakota	107HE22K855296658
Street	Automatic transmission, 4x4, V10 Engine, 10' Flat bed with electric over hydraulic hoist, snow plow and hydraulic spreader box	2001	Ford	F-450	1FDXF47SX1ED49517
Street	Automatic transmission, Single axle, Pro Patch 6 ton capacity hopper	2001	GMC/Pro Patch	C8500	1GDM7HIC21J514184
Street	Automatic transmission, Tandem Axle, 12 Yard dump body	2002	Freightliner		1FVHBXAK82HJ71397
Street	Automatic transmission, V8 Engine, 4x4, Crew Cab	2004	Ford	F-250	1FTNW21L24E
Street	Automatic transmission, V8 Engine, 4x4, Regular Cab, Flatbed	2006	Chevy	Silverado 3500	1GBJK34U76E217039
Street	Automatic transmission, 8 Yard dump body	2007	FOrd	F-750	3FRXF76T77V507182
Street	V10 Engine, 10' Flat bed with electric over hydraulic hoist, snow plow and hydraulic spreader box	2007	Ford	F-450	1FDXF47Y97EB00543
Street	V10 Engine, 10' Flat bed with electric over hydraulic hoist, snow plow and hydraulic spreader box	2009	Ford	F-450	1FDAF47Y79EB11937
Water	Compact Tractor	2004	New Holland	16LA	G523031
Fire	Car	2008	Chevrolet	Impala	2G1WS553X81268020
Fire	Car	2008	Chevrolet	Impala	2G1WS553481269793

RESOLUTION NO. _____

A RESOLUTION DECLARING CERTAIN PROPERTY BELONGING TO THE CITY OF BENTONVILLE, ARKANSAS AS SURPLUS PROPERTY.

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

Section 1: That certain property of the City of Bentonville, as more particularly described in the attached Exhibit "A", is hereby declared to be surplus and the Mayor or her designee is authorized to dispose of such property by online auction or in another appropriate manner as set forth in section 3.04 of the Bentonville Municipal Code.

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	**9/14/2021**
Department	**Library**
Submitted by	**Hadi Dudley**
Phone	**479-271-3194**

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 the city clerk to enter into an agreement with the Bentonville Library Foundation to purchase the historic Train Depot and associated structures/properties in an amount not to exceed $10.00. Located at 416 South Main Street, Benton County tax parcel ## 01-04895-000, the property is comprised of the adjacent Caboose Park structure/park, the main building and adjoined north parking area.

Estimated Cost	**$3,010.00**
Is this Item Budgeted?	☐ Yes ☑ No

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

Basic facility/grounds maintenance expenditures and utilities will be the City of Bentonville's responsibility. The cost is estimated at $3,010 for this year, with an estimated annual impact of $16,500. These costs will be funded through regular budget methods. See attached memo for more details.

Bentonville Public Library

Memorandum

TO: Bentonville City Council, Mayor Stephanie Orman
FROM: Hadi Dudley, Library Director
CC: Camille Thompson, Staff Attorney
SUBJECT: A Resolution to Purchase certain property from the Bentonville Library Foundation
DATE: September 1, 2021

Bentonville Public Library (BPL) seeks City Council approval authorizing the mayor and the city clerk to execute an offer and acceptance agreement for the City of Bentonville (City) to purchase the historic Train Depot and associated structures/properties from the Bentonville Library Foundation (BLF) in an amount not to exceed $10.00.

- **Address**: 416 South Main Street
- **General description**: adjacent Caboose Park structure/park, the main depot building and adjoined north parking area
- **Benton County tax parcel**: ## 01-04895-000
- **Legal description**: TRACT 1, DEPOT ADDITION, BEING A REPLAT OF LOTS 13 AND 16 OF SMART'S ADDITION TO THE CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS, AS SHOWN IN PLAT RECORD BOOK "6" AT PAGE 221.

Despite the age of the building, it appears to be in good condition and has been well maintained. The City will be responsible for ongoing property maintenance for the Train Depot including mowing and maintaining grounds and landscaping, real estate taxes if applicable, building insurance, building repairs and maintenance, and city utilities.

The library's OM estimated costs for this year is $3,010 with an estimated annual budget impact of $16,500; efforts to minimize costs are a priority.

- BPL's FY2022 operating budget includes $9,000 for standard services
    - Includes property insurance, pest control and grounds maintenance
    - Includes $2,500 line item for general facility repairs that may be encountered
- City utilities are estimated at $7,500 per year.

Should maintenance expenses for the remainder of this year exceed BPL's FY2021 operating budget, a budget adjustment will be presented to City Council at a later date.

According to a recent inspection, building code compliance is easily achieved when used as an office space. When the facility opens to the public in the future, it should be classified as assembly occupancy and a couple of requirements related to ADA accessibility and exiting will be addressed. If the City of Bentonville is responsible for funding those ADA modifications, a budget adjustment will be presented to City Council at a later date.

Subject to approval by the City Council, the City will enter into a Memorandum of Understanding (MOU) and lease agreement with the Bentonville History Museum for the use of the Train Depot for the organization's mission; a key consideration for the MOU and lease agreement is the museum's charitable purpose that promotes the history of the City of Bentonville.

The City will also commit to execution of a Deed overlay/preservation easement on property protecting and preserving the historic character of the Train Depot structure for the future which will remain in place in perpetuity regardless of future ownership or use.

The Bentonville Library Foundation considers the Train Station property an extraordinary asset that offers a unique opportunity with positive potential to significantly benefit our community. The Foundation's Board of Directors put a lot of consideration in the best use of the historic property to honor the community's interest in preserving the Train Station and unanimously approved conveying the property to the City of Bentonville on May 26, 2021.

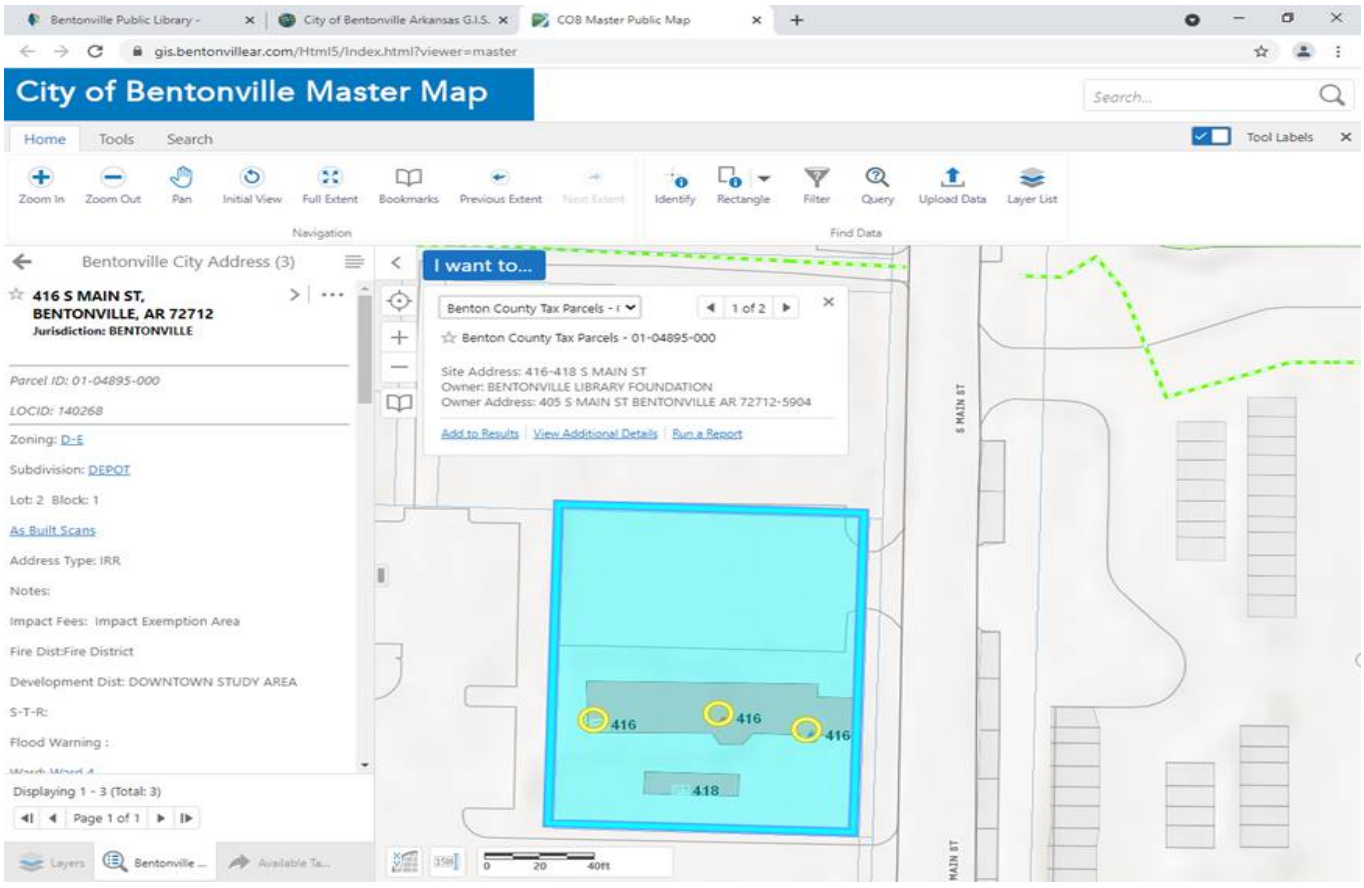
This action is in alignment with how BLF has recently conveyed other properties to the City supporting public use and preservation. BPL is extremely grateful to the Bentonville Library Foundation, for its past, ongoing and future contributions to our community's public library and the City of Bentonville.

If you have any questions, please contact me at 479-271-3194 or hdudley@bentonvillear.com.

Hadi S. Dudley, Library Director
Bentonville Public Library

Attachment: Offer and Acceptance Agreement with Deed Packet

Illustration



OFFER AND ACCEPTANCE

This Offer and Acceptance ("**Agreement**") is entered into by and between the **CITY OF BENTONVILLE, ARKANSAS**, as "**Buyer**", and the **BENTONVILLE LIBRARY FOUNDATION**, as "**Seller**". The parties hereby agree that the Seller shall sell and Buyer shall buy the following property upon the following terms and conditions. The parties acknowledge that they are entering into this Agreement pursuant to that certain Memorandum of Understanding, dated _____, 2021, by and between the parties (the "**MOU**").

1. DESCRIPTION:

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

TRACT 1, DEPOT ADDITION, BEING A REPLAT OF LOTS 13 AND 16 OF SMART'S ADDITION TO THE CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS, AS SHOWN IN PLAT RECORD BOOK "6" AT PAGE 221.

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

416 South Main Street, Bentonville, Arkansas; identified as Parcel Number 01-04895-000 by the Benton County Assessor.

2. PURCHASE PRICE: $10.00 cash on Closing and other good and valuable consideration, the sufficiency of which is hereby acknowledged.

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

unreasonable to correct any such objections. If Seller is unsuccessful in removing such objection(s) within said time, Buyer shall have the option of (i) extending such time period, (ii) accepting the title as it then is, or (iii) rescinding this Agreement and thereupon Buyer and Seller shall be released, as to one another, of all further obligations and all damages arising under this Agreement.

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

4. BUYER'S REQUIREMENTS: Buyer shall undertake to remove the conditions to Closing contained in this Agreement in a timely manner. Seller agrees to cooperate fully with Buyer with respect to Buyer's efforts to obtain all relevant information pertaining to the Property and the permitted uses of it. In the event such conditions cannot reasonably be removed Buyer may terminate this Agreement. In the event Buyer does not notify Seller in the manner set forth in paragraph 10(a) of the failure of a condition or Buyer's decision to terminate within ten (10) days of the Council Approval Date (the "**Buyer's Inspection Period**" or the "**Inspection Period**"), all of Buyer's conditions shall be deemed satisfied.

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

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

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

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

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

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

9. PROVISIONS WITH RESPECT TO CLOSING:

a) Closing Date. The consummation of the transaction contemplated by this Agreement ("**Closing**") shall take place at such place as designated by Seller on or before December 31, 2021, or at such earlier date as agreed mutually, unless extended by other provisions hereof.

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

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

c) Buyer's Obligations at Closing. Subject to the terms, conditions and provisions hereof, and concurrently with the performance by Seller of its obligations set forth above, Buyer shall deliver to Seller cashier's check or other immediate local funds in the amount set forth in Section 2 of this Agreement. Additionally, at Closing, Buyer will execute and deliver the following:

(i) that certain Historic Preservation Easement in favor of the State of Arkansas in the form attached as Exhibit 1 to the MOU.
(ii) that certain Lease Agreement for the Property by and between Buyer and The Bentonville History Museum, Inc. in the form attached as Exhibit 3 to the MOU.

d) Closing Costs. Buyer shall pay all costs and expenses in connection with the Closing, including the following:

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

e) Proration of Taxes. Taxes for the year of the Closing shall be prorated to the date of Closing. If the Closing shall occur before the tax rate is fixed for the then current year, the

apportionment of taxes shall be upon the basis of the tax rate of the preceding year applied to the latest assessed valuation.

10. OTHER CONTRACTUAL PROVISION:

a) Notices. Any notice to be given or to be served upon any party hereto, in connection with this Agreement, must be in writing, and may be given by certified mail and shall be deemed to have been given and received when a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States Mail; and if given otherwise than by certified mail, it shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Such notices shall be given to the parties hereto at the addresses stated above. Any party hereto may, at any time by giving five (5) days' written notice to the other party hereto, designate any other address in substitution of the foregoing address to which such notice shall be given and other parties to whom copies of all notices hereunder shall be sent.

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

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

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

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

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

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

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

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

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

l) City Council and Library Foundation Board Approval. This Agreement is conditioned upon approval from the Bentonville City Council and the Board of the Bentonville Library Foundation, the last date of which to occur being the **Fourteenth of September, 2021**. After approval, each party shall present to the other a duly adopted, approved and attested resolution or other appropriate evidence of approval.

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

Witnesses: "**Seller**" (**BENTONVILLE LIBRARY FOUNDATION**) by:

_____
By:

Attest:

_____ Date: _____
By:

"**Buyer**" (**CITY OF BENTONVILLE, ARKANSAS**) by:

_____
Mayor

Attest:

_____ Date: _____
City Clerk

MINUTES OF THE SPECIAL MEETING
OF THE DIRECTORS OF
BENTONVILLE LIBRARY FOUNDATION

The Special meeting of the Directors of the Bentonville Library Foundation, an Arkansas non-profit corporation (Corporation), was held at 5:30 PM on May 26, 2021 via Zoom communication pursuant to the Bylaws of the Corporation. Fourteen members were present and voted with Christie King recusing.

Conditional Approval of Offer & Acceptance with the City of Bentonville

The floor was opened for discussion about conditional approval of a proposed Offer & Acceptance Agreement and/or related transaction documents between City of Bentonville as the purchaser and Corporation as the Seller of one piece of real property ("Property") further described as:

Tract 1, Depot Addition, being a replat of Lots 13 and 16 of Smart's Addition, to the City of Bentonville, Benton County, Arkansas as shown in Plat Record Book "6" at page 221.

Subject to easements, rights-of-way, and protective covenants of record, if any.
Subject to all prior mineral reservations and oil and gas leases.

BE IT FURTHER RESOLVED, that the Corporation will quitclaim the Property with the restriction that it must be used as a historical museum and conditioned upon the receipt of certain grant funds. The Foundation will work with the City of Bentonville, Walton Enterprises and/or Walton Family Foundation to negotiate a mutually agreeable Offer & Acceptance as well as any necessary supporting documentation to complete the transaction.

With no further business to conduct, the meeting was adjourned upon motion made and seconded and passed by unanimous vote.

[redacted]

Howard Kerr
President

[redacted]

Secretary

L202007079 2/7/2020 11:23:03 AM
Recorded - Benton County, AR
Brenda DeShields,Circuit Clerk

QUITCLAIM DEED

KNOW ALL PERSONS BY THESE PRESENTS:

The undersigned, ELVIS MOODY, acting as President on behalf of **THE TRAIN STATION**, (a.k.a. Train Station, Inc.) an Arkansas nonprofit corporation ("GRANTOR"), for ten and no/100 dollars ($10.00) and other valuable consideration, in hand paid by the **BENTONVILLE LIBRARY FOUNDATION**, an Arkansas nonprofit corporation ("GRANTEE"), the receipt of which is hereby acknowledged, hereby grant, bargain, sell and convey unto the GRANTEE and unto the GRANTEE'S successors and assigns forever, all of the GRANTOR'S interest, specifically releasing any conditions, covenants, and restrictions, the following lands lying in **Benton County, Arkansas** ("Property"):

> Tract 1, Depot Addition, being a replat of Lots 13 and 16 of Smart's Addition, to the City of Bentonville, Benton County, Arkansas as shown in Plat Record Book "6" at page 221.

TO HAVE AND TO HOLD the same unto the GRANTEE, and unto the GRANTEE'S successors and assigns forever, together with all appurtenances thereunto belonging.

The GRANTOR previously conveyed the Property to the GRANTEE subject to specific conditions, covenants and restrictions, including a restriction to sell the Property in a Special Warranty Deed filed in Book 2005 on Page 54506 in the records of the Circuit Clerk of Benton County, Arkansas. The GRANTOR now specifically releases all such conditions, covenants and restrictions and purports to transfer a full fee simple interest to the GRANTEE.

I certify under penalty of false swearing that the legally correct amount of documentary stamps have been placed on this instrument. Exempt or no consideration paid if none shown.

Name of GRANTEE: Bentonville Library Foundation

Address: [redacted]

Signature:

User Name: JILL
CERTIFICATE OF RECORD
STATE OF ARKANSAS, COUNTY OF BENTON
I hereby certify that this instrument was
Filed and Recorded in the Official Records
L2020007079 2/7/2020 11:23:03 AM
Brenda DeShields,Circuit Clerk
BENTON CO, AR FEE $20.00

Dated the 5th day of February, 2020.

GRANTOR:
THE TRAIN STATION
(a.k.a. Train Station, Inc.)

[redacted]
ELVIS MOODY, President

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)
COUNTY OF BENTON)

On this the 5th day of February, 2020, before me, the undersigned, a Notary Public (or before any officer within this State or without the State now qualified under existing law to take acknowledgments), appeared the within named ELVIS MOODY acting as President of The Train Station (a.k.a. Train Station, Inc.), to me personally well known (or satisfactorily proven to be such persons), who stated and acknowledged that they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I hereunto set my hand and official seal this 5th day of February, 2020.

My Commission Expires:

NOTARY PUBLIC ARKANSAS
ESSABIA ANDERSON
No. 12403152
WASHINGTON COUNTY
Commission Expires 1-9-2025

L202005227 1/29/2020 1:22:20 PM
Recorded - Benton County, AR
Brenda DeShields,Circuit Clerk

RELEASE OF DEED RESTRICTION

KNOW ALL MEN BY THESE PRESENTS, that Burlington Northern Railroad Company (predecessor in interest to **BNSF RAILWAY COMPANY**), conveyed to **BENTONVILLE SENIOR CITIZENS CENTER, Inc.** certain lands and improvements more particularly described in deed recorded October 20, 1983 in Book 609, Page 51, records of Benton County, Arkansas, described as follows:

Lots 13 and 16, Block 1, Smart's Addition to the City of Bentonville, Benton County, Arkansas, according to the recorded plat thereof; and also,

That certain building approximately 87 feet by 24 feet in area known as the depot building of the Burlington Northern Railroad Company situate upon said Lot 16, Block 1, Smart's Addition to the City of Bentonville.

WHEREAS, said deed contains the following deed restriction:

"to be devoted exclusively to public purposes, FOREVER."

NOW THEREFORE, in consideration of the sum of Ten and No/100 Dollars ($10.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, **BNSF RAILWAY COMPANY** does hereby release the restriction.

TO HAVE AND TO HOLD the Property unto the said Grantee, its successors and assigns.

User Name: JILL
CERTIFICATE OF RECORD
STATE OF ARKANSAS, COUNTY OF BENTON
I hereby certify that this instrument was
Filed and Recorded in the Official Records
I.202005227 1/29/2020 1:22:20 PM
Brenda DeShields,Circuit Clerk
BENTON CO, AR FEE $20.00

IN WITNESS WHEREOF, the said Grantor has caused these presents to be signed by its authorized representative, attested by its Assistant Secretary, and its corporate seal to be affixed hereto this 16th day of January, 2020.

BNSF RAILWAY COMPANY,
a Delaware corporation

By: [redacted]
Blaine Bilderback

Its: Director Real Estate

BNSF RAILWAY COMPANY CORPORATE SEAL DELAWARE

ATTEST:

By: [redacted]
Joyia E. Simmons

Its: Assistant Secretary

STATE OF TEXAS §
§ ss
COUNTY OF TARRANT §

On this day, before me personally appeared Blaine Bilderback and Joyia E. Simmons, to me personally well known, who acknowledged that they were Director Real Estate and Assistant Secretary, respectively, of **BNSF RAILWAY COMPANY**, a Delaware corporation, and that they, as such officers, being authorized so to do, had executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by themselves as such officers.

WITNESS my hand and official seal this 16th day of January, 2020.

[redacted]
Notary Public

NOTARY PUBLIC STATE OF TEXAS
CATHY T BENTON
Notary ID #5532257
My Commission Expires
February 22, 2023

My commission expires: Feb 22, 2023

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND THE CITY CLERK TO ENTER AN AGREEMENT WITH THE BENTONVILLE LIBRARY FOUNDATION FOR THE PURCHASE OF THE TRAIN DEPOT.

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

Section 1: That the Mayor and City Clerk be and are hereby authorized to enter into an agreement with the Bentonville Library Foundation for the purchase of **TRACT 1, DEPOT ADDITION, BEING A REPLAT OF LOTS 13 AND 16 OF SMART'S ADDITION TO THE CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS, AS SHOWN IN PLAT RECORD BOOK "6" AT PAGE 221**, Benton County tax parcel ## 01-04895-000, in an amount not to exceed $10.00 as set forth in the attached Offer and Acceptance agreement.

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	**9/14/2021**
Department	**Library**
Submitted by	**Hadi Dudley**
Phone	**479-271-3194**

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 the City Clerk to enter into a Memorandum of Understanding (MOU) with the Bentonville Library Foundation and Bentonville History Museum to work together to promote and sustain the well-being and preservation of the Train Depot.

Estimated Cost	**$0.00**
Is this Item Budgeted?	☐ Yes ☑ No

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

Basic facility/grounds maintenance will be the City of Bentonville's responsibility. See attached memo for more details.

Bentonville Public Library

Memorandum

TO: Bentonville City Council, Mayor Stephanie Orman
FROM: Hadi Dudley, Library Director
CC: Camille Thompson, Staff Attorney
SUBJECT: A Resolution to enter into a MOU to promote and sustain preservation of Train Depot
DATE: September 1, 2021

Bentonville Public Library (BPL) seeks City Council approval authorizing the mayor and the city clerk to enter into a Memorandum of Understanding (MOU) with the Bentonville Library Foundation (BLF) and Bentonville History Museum (BHM) to work together to promote and sustain the well-being and preservation of the Train Depot and associated properties.

The City of Bentonville is responsible for ongoing property maintenance for the Train Depot including mowing and maintaining grounds and landscaping, real estate taxes if applicable, building insurance, building repairs and maintenance, and city utilities. The annual impact is estimated at $16,500; efforts to minimize costs are a priority.

Despite the age of the building, it appears to be in good condition and has been well maintained. According to a recent inspection, building code compliance is easily achieved when used as an office space. When the facility opens to the public in the future, it should be classified as assembly occupancy and a couple of requirements related to ADA accessibility and exiting will be addressed. If the City of Bentonville is responsible for modifications, a budget adjustment will be presented to City Council at a later date.

Attached as an exhibit to the MOU, the City will enter into a lease agreement with the Bentonville History Museum for the use of the Train Depot for the organization's mission; a key consideration for the lease agreement is the museum's charitable purpose that promotes the history of the City of Bentonville.

The Bentonville History Museum is a 501(c)(3) organization that aims to preserve the past for the future through collection, display, and education; the programming plan will implement open hours for the public to access resources and/or exhibits in the future.

If you have any questions, please contact me at 479-271-3194 or hdudley@bentonvillear.com.

Hadi S. Dudley, Library Director
Bentonville Public Library

Attachments:
Memorandum of Understanding
Exhibit 1: State Historic Preservation Easement Packet
Exhibit 2: Offer and Acceptance Agreement
Exhibit 3: Lease Agreement

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "**MOU**" or "**Memorandum**"), is entered into on _____ (the "**Effective Date**"), by and between the **CITY OF BENTONVILLE** ("**COB**") located at 1000 SW 14th, Bentonville, AR 72712, and the **BENTONVILLE LIBRARY FOUNDATION**, an Arkansas nonprofit corporation ("**BLF**"), located at 405 S Main Street, Bentonville, AR 72712, and **THE BENTONVILLE HISTORICAL MUSEUM, INC.**, DBA "BENTONVILLE HISTORY MUSEUM", an Arkansas nonprofit corporation ("**Museum**"), located at 104 East Central Avenue, Bentonville, Arkansas 72712 (each of COB, BLF, and Museum are a "**Party**" and collectively, the "**Parties**").

1. MISSION The agreement on which the Parties are intending to collaborate, has the following intended mission in mind:

BLF will transfer ownership of that certain Bentonville Train Depot and the adjacent Caboose structure/park, the main building, and adjoined north parking area, identified as Parcel Number 01-04895-000 by the Benton County Assessor (collectively, the "**Property**") to COB. BLF and COB will work together to ensure a smooth transfer of ownership and protect the Property.

Within six (6) months of the transfer of the Property from BLF to COB, COB will execute and deliver for recording a Historic Preservation Easement to the State of Arkansas encumbering the Property with a historic preservation in the form attached hereto as Exhibit 1 (the "**Historic Preservation Easement**"). COB, its tenants, successors and assigns, will use the Property in accordance with the terms and conditions of the Historic Preservation Easement and will in perpetuity refrain from actions that are incompatible with the preservation of the property, including demolition.

2. PURPOSE AND SCOPE The Parties intend for this Memorandum to provide the cornerstone and structure for any and all future contracts being considered by the Parties and which may be related to the Property.

3. OBJECTIVES The Parties shall endeavor to work together to develop and establish policies and procedures that will promote and sustain the well-being and preservation of the Property, and intend to maintain services, agreements, and upkeep that meets or exceeds all business and industry standards.

4. RESPONSIBILITIES AND OBLIGATIONS OF THE PARTIES Any Party may decide not to proceed with the agreement contemplated herein for any reason or no reason until BLF conveys the Property to COB pursuant to the terms and conditions of the attached Offer and Acceptance to be executed simultaneously herewith by BLF and COB, a copy of which is attached hereto as Exhibit 2 ("**Offer**"). Notwithstanding the preceding sentence of this paragraph, the provisions under the heading Governing Law are agreed to be fully binding on, and enforceable, against the Parties.

Each Party is to uphold and successfully fulfill the following responsibilities assigned to each Party:

I. BLF will deed the Property to COB in accordance with the terms of the Offer, attached hereto.
II. Immediately upon closing under the Offer, COB will lease the Property to the Museum upon the terms and conditions contained in the Lease Agreement attached hereto as Exhibit 3 (the "**Lease**").
III. Immediately upon closing under the Offer and even after expiration of the Lease, COB will maintain the Property in compliance with the Historic Preservation Easement and specifically in good order and repair including, but not limited to, the following: mowing and maintaining grounds and landscaping, real estate taxes if applicable, building insurance, building repairs and maintenance, and all city-owned utilities.
IV. Museum will have access to the Property after closing under the Offer, pending executed agreement terms with COB.
V. Museum will commit to a programming plan that implements open hours to the public for access to resources and/or exhibits of the organization with the target date of January, 2022 for opening. Museum will partner with the Bentonville Public Library on programming as well as organizational communication.
VI. Museum will maintain its status as a 501(c)(3) organization and comply with all laws and regulations applicable to its operations. Museum will report to COB on an annual basis.

5. LEGAL COMPLIANCE The Parties acknowledge and understand that they must be able to fulfill their responsibilities under this Memorandum in accordance with the provisions of the law and regulations that govern their activities. Nothing in this Memorandum is intended to negate or otherwise render ineffective any such provisions or operating procedures. The Parties assume full responsibility for their performance under the terms of this Memorandum.

If at any time any Party is unable to perform their duties or responsibilities under this Memorandum consistent with such Party's statutory and regulatory mandates, the affected Party shall immediately provide written notice to the other Parties to establish a date for resolution of the matter.

6. LIMITATION OF LIABILITY No rights or limitation of rights shall arise or be assumed between the Parties as a result of the terms of this Memorandum.

7. NOTICE Any notice or communication required or permitted under this Memorandum shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set forth in the opening paragraph or to such address as one may have furnished to the other in writing.

8. GOVERNING LAW This Memorandum shall be governed by and construed in accordance with the laws of the State of Arkansas.

9. AUTHORIZATION AND EXECUTION The signing of this Memorandum does not constitute a formal undertaking, and as such it simply intends that the signatories shall strive to reach, to the best for their abilities, the goals and objectives stated in this Memorandum.

This Memorandum shall be signed by each party and shall be effective as of the date first written above.

By:

_____ _____
City of Bentonville, Mayor, Stephanie Orman Date

Attest:

_____ _____
City of Bentonville, City Clerk Date

_____ _____
Bentonville Library Foundation, Date

_____ _____
The Bentonville History Museum, Inc., Date

Exhibit 1

ARKANSAS HISTORIC
PRESERVATION PROGRAM

Preservation Easements

(Conservation Easements)

What is a preservation easement?

A preservation easement is a voluntary legal agreement through which a property owner grants rights to approve future development of or changes to a historic property to a qualified organization whose mission includes historic preservation. Once recorded, the easement restrictions "run with the land" in perpetuity, thus binding not only the owner who grants the easement but all future owners as well. In Arkansas, the primary recipient of these easements is the Arkansas Historic Preservation Program (AHPP).

Why do people donate easements?

An easement is a particularly useful historic preservation tool that may originate for a number of reasons. A preservation easement allows a property owner to sell or otherwise plan for a property's disposition while ensuring that the historic character of the property will be preserved. The Arkansas Historic Preservation Program requires the donation of easements on all properties for which it gives a grant of over $10,000. In addition, an owner who donates an historic preservation easement may be eligible for one or more forms of tax benefits. If certain criteria are met, the owner may be eligible for a Federal income tax deduction for the value of the easement, and Federal estate taxes also may be reduced. Since the rules are complex, property owners interested in the potential tax benefits of an easement should consult with a tax specialist familiar with the topic.

What kinds of changes are reviewed?

A preservation easement gives AHPP the legal authority and responsibility to enforce its terms. Donation of an easement does not mean that a building is "frozen in time." However, owners are prohibited from demolishing the historic building(s) and from making changes that are inconsistent with the historic character of the property. Proposed alterations to the property should be planned in partnership with AHPP. Most easements apply only to the exterior of a building and/or property, and future alterations to the interior do not require approval from AHPP, as long as the alterations do not affect the building's exterior appearance or structural integrity. AHPP monitors the condition of all properties on which it holds easements at least annually.

12) Complete the easement document in a word processing format (not by hand) according to the attached instructions. A draft submission is required prior to execution (signing) of the document. Assemble all parts of the document and return either by email as a scanned digital package or in hard copy (an email is preferred) at least two weeks prior to the State Review Board meeting at which the easement will be approved. A copy of the appraisal and the declarations page of the property insurance must be submitted to AHPP with the draft easement as well.

ARKANSAS HISTORIC PRESERVATION PROGRAM

Easement Information (Charitable Deduction Donations):

As a prerequisite for donation of a preservation easement, the following steps must be taken:

1) If the property is not individually listed in the National Register of Historic Places, the National Park Service will need to certify the property as historic. To achieve this, a Part 1 National Park Service form should be completed and submitted to AHPP. At least 60 days should be figured into your schedule to verify that the National Park Service will certify the structure as historic. AHPP will provide you with a copy of the form and how to complete it.
2) You should acquire a copy of the deed to the property, if you do not already have a copy. If the deed is a Warranty Deed, only a copy of the deed is necessary. If the property was acquired through a Quitclaim or similar Deed, it will be necessary to pursue an action to "quiet title" in court prior to the easement donation.
3) If the property is mortgaged, you will need to contact your mortgagor to arrange for subordination of the mortgage to the easement.
4) You will need to acquire a qualifying appraisal of the easement value, as required by the IRS. Please note that, per IRS regulations, the appraisal must be dated within 60 days of the recording of the executed easement if a charitable tax deduction is taken for the appraised value of the easement.
5) AHPP must be added to your property insurance as an additional insured.
6) You must acquire a title insurance commitment for the easement payable to AHPP. The actual policy of title insurance should be provided to AHPP after the easement is executed and recorded.
7) If there is another encumbrance, such as a lien or prior easement, on the property, please contact AHPP to discuss the situation so that we can find an appropriate solution.
8) If the area on which an easement is donated will be less than the area covered by the deed to the property, a certified survey must be conducted and recorded with the Recorder of Deeds of the county in which the property is located. Please contact AHPP to determine the area the easement will cover..
9) If the property is owned by a corporation or other legal organization, a resolution by the board of directors, trustees, or other body must be made to authorize the execution of the easement.
10) Take clear photographs showing each (entire) facade of the building and any surrounding property that is included in the parcel to be covered by the easement and assemble these into a word or other document. This document should be in color and based on clear scans of the photos, not actual photographic prints. Buildings that are freestanding on their parcel should ideally be photographed from eight points, one straight on from each façade and one facing each corner of the building capturing views of two facades. Each photograph should be labelled with the position in which the photographer was standing when the photograph was taken relative to the facades, the direction in which the photograph was taken, and a description of what the photograph covers. For example, a photograph might be labelled "Photograph of the south elevation of the Smith House, standing south, facing north." If a large number of photographs will be taken, or if the grounds of the property that will be covered in the easement are extensive, it may be advantageous to include a key map locating the photo locations. Please consult with AHPP in this case.

11) Complete the easement document in a word processing format (not by hand) according to the attached instructions. A draft submission is required prior to execution (signing) of the document. Assemble all parts of the document and return either by email as a scanned digital package or in hard copy (an email is preferred) at least two weeks prior to the State Review Board meeting at which the easement will be approved. A copy of the appraisal and the declarations page of the property insurance must be submitted to AHPP with the draft easement as well.
12) The easement donation must be formally approved by AHPP's State Review Board. The State Review Board meets three times annually, in April, August, and December. An application for State Review Board authorization of the easement must be submitted before the SRB board meeting.

Resource Number: _____
(AHPP use only)

Name of Property: _____

Physical Address: _____

_____

HISTORIC PRESERVATION EASEMENT

This preservation and conservation easement, made the ____ day of _____, 20____, by and between _____ ("Grantor") and THE STATE OF ARKANSAS, ACTING BY AND THROUGH THE ARKANSAS HISTORIC PRESERVATION PROGRAM, AN AGENCY OF THE DIVISION OF ARKANSAS HERITAGE. ("Grantee").

WITNESSETH:

WHEREAS, the Grantee is a qualifying recipient of qualified conservation contributions under 26 U.S.C. Section 170, being part of the Internal Revenue Code, as amended from time to time (hereinafter the "Code");

WHEREAS, the Grantee is authorized to accept conservation easements for all purposes set forth in Ark. Code Ann. § 15-20-401 (the "Act") to retain and protect property having significant architectural, archeological, historical, or cultural aspects;

WHEREAS, the Grantor is owner in fee simple of certain real property in ____ County, Arkansas (hereinafter the "Premises"), said Premises including ___structure(s) commonly known as_____, (hereinafter the "Buildings"), and is more particularly described below;

WHEREAS, the Premises or Buildings was listed in the National Register of Historic Places on_____and is warranted by Grantor to be a certified historic structure;

WHEREAS, the Grantor and Grantee recognize the historical, cultural, architectural or archaeological value and significance of the Premises, and have the common purpose of conserving and preserving the aforesaid value and significance of the Premises;

WHEREAS, the grant of a preservation and conservation easement by Grantor to Grantee on the real property referred to herein will assist in preserving and maintaining the Premises its architectural, archaeological, historical and cultural features;

WHEREAS, the grant of a preservation and conservation easement by Grantor to Grantee on the Premises will assist in preserving and maintaining the aforesaid value and significance of the Premises both to Grantor and Grantee;

WHEREAS, to that end, Grantor desires to grant to Grantee, and Grantee desires to accept, a conservation easement on the premises;

NOW, THEREFORE, in consideration of Ten Dollars ($10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, Grantor does hereby irrevocably grant, bargain, sell and convey unto the Grantee, TO HAVE AND TO HOLD the same unto Grantee, an easement in gross in perpetuity (which easement is more particularly described below and will hereafter be referred to as the "Easement") in and to that certain real property and the exterior surfaces of the Buildings located thereon, owned by the Grantor, and more particularly described as:

[LEGAL PROPERTY DESCRIPTION]

The Easement, to be of the nature and character hereinafter further expressed, shall constitute a binding servitude upon said Premises of the Grantor, and to that end Grantor covenants on behalf of itself, its heirs, personal administrators, executors, successors and assigns, with Grantee, its successors and assigns, including that such covenants shall run as a binding servitude, in perpetuity, upon the Premises, each of the following covenants and stipulations, which contribute to the public purpose in that they aid significantly in the preservation of the Buildings and surrounding land area, and which help maintain and assure the present and future integrity of the Buildings:

1. Description of Facades. In order to make more certain the full extent of Grantor's obligations and the restrictions on the Premises and the Buildings, and in order to document the external nature of the Buildings as of the date hereof, attached hereto as Exhibit "A" and incorporated herein by this reference are a set of photographs depicting the exterior surfaces of the Buildings and surrounding property and an affidavit specifying certain technical and locational information relative to said photographs satisfactory to Grantee, attached hereto as Exhibit "B". It is stipulated by the between Grantor and Grantee that the external nature of the Buildings as shown in Exhibit "A" is deemed to be the external nature of the Buildings as of the date hereof and as of the date this instrument is first recorded in the real estate records of the county wherein the Premises is located. The external nature of the Building(s) as shown in Exhibit "A" is hereinafter referred to as the "Facades."

2. GRANTOR'S COVENANTS. In furtherance of the easement herein granted, Grantor undertakes, of itself, to do (and to refrain from doing as the case may be) upon the Premises each of the following, which contribute to the public purpose of significantly protecting and preserving the Premises:

(a) Grantor shall not demolish, remove or raze the Buildings or the Facades except as provided in Paragraphs 6 and 7.

(b) Without the prior express written permission and approval of the Grantee (which shall be granted or withheld solely in the discretion of Grantee), signed by a duly authorized representative thereof, it being understood and agreed by Grantor that such authorization may not be obtained orally, by estoppel or waiver, or in any other manner other than as expressly set forth above (the "Approval"), Grantor shall not undertake any of the following actions:

(i) increase or decrease the height of the Facades or the Buildings;

(ii) adversely affect the structural soundness of the Facades;

(iii) make any changes in the Facades including the alteration, partial removal, construction, remodeling or other physical or structural change including any change in surfacing, with respect to the appearance or construction of the Facades, with the exception of ordinary maintenance pursuant to Paragraph 2(c) below;

(iv) erect anything on the Premises or on the Facades which would prohibit them from being visible from street level, except for a temporary structure during any period of approved alteration or restoration;

(v) permit any significant reconstruction, repair, repainting or refinishing of the Facades that alters their state from the existing condition. This subsection (V) shall not include ordinary maintenance pursuant to Paragraph 2(c) below; and

(vi) erect, construct or move anything on the Premises that would encroach on the open land area surrounding the Buildings and interfere with a view of the Facades or be incompatible with the historic or architectural character of the Buildings or the Facades.

(c) Grantor agrees at all times to maintain the Buildings in a good and sound state of repair and to maintain the Facades and the structural soundness and safety of the Buildings and to undertake the minimum maintenance program attached as Exhibit "C" so as to prevent deterioration of the Facades. Subject to the casualty provisions of Paragraphs 5, 6 and 7, this obligation to maintain shall require replacement, rebuilding, repair and reconstruction whenever necessary to have the external nature of the Buildings at all times appear to be and actually be the same as the Facades.

(d) No buildings or structures, including satellite receiving dishes, camping accommodations or mobile homes not presently on the Premises shall be erected or placed on the Premises hereafter, except for temporary structures required for the maintenance or rehabilitation of the property, such as construction trailers, without the express written consent of Grantee.

(e) No signs, billboards, awnings or advertisements shall be displayed or placed on the Premises or Buildings; provided, however, that Grantee may, with an Approval, erect such signs or awnings as are compatible with the preservation and conservation purposes of this Easement and appropriate to identify the Premises and Buildings and any activities on the Premises or in the Buildings.

(f) There shall be no removal, destruction or cutting down of large trees or landscaping integral to the preservation and conservation purposes of this Easement; provided, however, that Grantor may, with an Approval, undertake such landscaping of the Premises as is compatible with the preservation and conservation purposes of this Easement and which may involve removal or alteration of present landscaping, including trees, shrubs or other vegetation.

(g) No dumping of ashes, trash, rubbish or any other unsightly or offensive materials shall be permitted on the Premises.

(h) The Premises shall be used only for purposes consistent with the preservation and conservation purposes of this Easement.

(i) After the date the Easement is recorded, the Premises (or any part thereof or interest therein) shall not be subdivided, re-platted, or subjected to change in allowed land uses including without limitation action to change the allowed land uses or land use classification and the Premises shall not be leased, mortgaged, sold, devised or conveyed (including without limitation conveyance of an easement or restrictive covenant) except as a unit.

(j) No utility transmission lines, except those reasonably necessary for the existing Buildings, may be created on the Premises, subject to utility easements recorded as of the date this Easement is recorded.

3. (a) Public View. Grantor agrees not to obstruct the substantial and regular opportunity of the public to view the exterior architectural features of any building, structure or improvements of the Premises, including the Buildings, from adjacent publicly accessible areas such as public streets.

(b) Public Access. Grantor shall make the Premises accessible to the public on a minimum of two (2) days per year from 10:00 a.m. to 4:00 p.m. and at other times by appointment, to permit persons affiliated with educational organizations, professional architectural associations and historical societies to study the Premises and the Buildings. Any such public admission may be subject to restrictions having an Approval as reasonably designed for the protection and maintenance of the Premises and the Buildings. Grantee, on request of the Grantor, shall furnish such guides and/or guardians as may reasonably be necessary or desirable

for such restrictions. Such admission may also be subject to a reasonable fee, if any, having an Approval. The Grantee may make photographs, drawings or other representations documenting the significant historical, cultural or architectural character and features of the property and distribute them to magazines, newsletters or other publicly available publications, or use them to further its stated purposes.

4. Standards for Review. In exercising any authority created by the Easement to inspect the Premises, the Buildings or the Facades; to review any construction, alteration, repair or maintenance; or to review casualty damage or to reconstruct or approve reconstruction of the Buildings following casualty damage, Grantee shall apply the Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings; issued and as may be amended from time to time by the Secretary of the United States Department of the Interior (hereinafter the "Standards") and state or local standards considered appropriate by Grantee for review of work affecting historically or architecturally significant structures or for construction of new structures within historically, architecturally or culturally significant areas. Grantor agrees to abide by the Standards in performing all ordinary repair and maintenance work and the minimum maintenance program described in paragraph 2(c) and contained in Exhibit "C". In the event the Standards are abandoned or materially altered or otherwise become, in the sole judgment and discretion of the Grantee, inappropriate for the purposes set forth above, the Grantee may apply reasonable alternative standards and notify Grantor of the substituted standards.

5. Casualty Damage or Destruction. In the event that the Premises or any part thereof shall be damaged or destroyed by casualty, the Grantor shall notify the Grantee in writing within one (1) day of the damage or destruction, such notification including what, if any, emergency work has already been completed. For purposes of this instrument, the term "casualty" is defined as such sudden damage or loss as would qualify for a loss deduction pursuant to Section 165(c)(3) of the Code (construed without regard to legal status, trade or business of the Grantor or any applicable dollar limitation). No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Property and to protect public safety, shall be undertaken by Grantor without an Approval. Within four (4) weeks of the date of damage or destruction, the Grantor shall submit to the Grantee a written report prepared by a qualified restoration architect and/or an engineer, if required, acceptable to the Grantor and the Grantee which shall include the following:

(a) An assessment of the nature and extent of the damage;

(b) A determination of the feasibility of the restoration of the Facades and reconstruction of damaged or destroyed portions of the Premises; and

(c) A report of all work necessary to return the Premises to the condition existing at the time this Easement was recorded or to the condition to which it may have been altered only where alterations are done, pursuant to an Approval as set forth in paragraph 2 of the Easement (the "Prior Condition"). If, in the opinion of the Grantee, after reviewing such report, the purpose and intent of the Easement will be served by restoration and reconstruction of the Premises to the Prior Condition, the Grantor shall, within eighteen (18) months after the date of

such change or destruction, complete the restoration and construction of the Premises in accordance with plans and specifications having an Approval up to at least the total of the casualty insurance proceeds as may be necessary to restore the appearance of the Facades to the Prior Condition, and additional cost of work not performed or monies advanced (Grantee having no obligation to advance funds) by Grantee shall constitute a lien on the Premises until repaid by Grantor.

6. Grantee's Remedies Following Casualty Damage. The foregoing not withstanding, in the event of damage resulting from casualty, as defined at paragraph 5, which is of such magnitude and extent as to defeat the purposes of this Easement, as determined by Grantee acting with sole discretion, then:

(a) Grantee may elect to reconstruct the Building using insurance proceeds, donations or other funds received by Grantor or Grantee on account of such casualty, but otherwise at its own expense (such expense of Grantee to constitute a lien on the Premises until repaid in full); or

(b) Grantee may elect to choose any salvageable portion of the Facades and remove them from the Premises, extinguish the Easement pursuant to paragraph 26, and this Easement shall thereupon be of no further force and effect, and Grantee shall execute and deliver to Grantor acknowledged evidence of such fact suitable for recording in the land records of the county wherein the Premises is located, and Grantor shall deliver to Grantee a good and sufficient Bill of Sale for such salvaged portions of the Facade.

7. Review After Casualty Loss. If, in the opinion of the Grantee, restoration and reconstruction would not serve the purpose and intent of the Easement, then the Grantor shall continue to comply with the provisions of the Easement and seek an Approval altering demolishing, removing or razing the Buildings and constructing new improvements on the Premises.

8. GRANTEE'S COVENANTS. The Grantee covenants that:

(a) Grantee is and will remain a qualified organization for purposes of Section 170(h) of the Code. In the event that the Grantee's status as a qualified organization is successfully challenged, then the Grantee shall promptly select another qualified organization and transfer all of its rights and obligations under the Easement to it, which shall be the sole and exclusive remedy of Grantor.

(b) In the event that the Grantee shall at any time in the future become the fee simple owner of the Premises, Grantee for itself, its successors and assigns, covenants and agrees, in the event of a subsequent conveyance of the same to another, to create a new preservation and conservation easement either to retain such easement in itself or to convey such easement to a similar unit of federal, state or local government or local, state or national organization whose purposes, inter alia, are to promote preservation or conservation of historical, cultural or architectural resources, and which is a qualified organization under Section 170(h)(3)

of the Code.

(c) Grantee may, at its discretion and without prior notice to Grantor, convey, assign or transfer this Easement to a unit of federal, state or local government or to a similar local, state or national organization whose purposes, inter alia, are to promote preservation or conservation of historical, cultural or architectural resources, and which at the time of the conveyance, assignment or transfer, is a qualified organization under Section 17(h)(3) of the Code, provided that any such conveyance, assignment or transfer requires that the preservation and conservation purposes for which the Easement was granted will continue to be carried out.

9. Inspection. Grantor hereby agrees that representatives of Grantee shall be permitted at all reasonable times to inspect the Premises, including the Facades and the Buildings. Grantor agrees that representatives of Grantee shall be permitted to enter and inspect the interior of the Buildings to determine compliance with this Easement and maintenance of structural soundness and safety; inspection of the interior will not, in the absence of evidence of deterioration, take place more often than annually, and may involve reasonable testing of interior structural condition. Inspection of the interior will be made at a time mutually agreed upon by Grantor and Grantee, and Grantor covenants not to unreasonably withhold its consent in determining a date and time for such inspection.

10. Grantee's Remedies. Grantee has the following legal remedies to correct any violation of any covenant, stipulation or restriction herein, in addition to any remedies now or hereafter provided by law:

(a) Grantee may, following thirty (30) days written notice to Grantor, institute suit to enjoin such violation by ex parte, temporary, preliminary and permanent injunction, including prohibitory and mandatory injunctive relief, and to require the restoration of the Premises to the condition and appearance required by this Easement.

(b) Representatives of the Grantee may, following reasonable notice to Grantor, enter upon the Premises, correct any such violation, and hold Grantor, its heirs, personal administrators, executors, successors and assigns responsible for the cost thereof.

(i) Such cost until repaid shall constitute a lien on the Premises.

(ii) Grantee shall exercise reasonable care in selecting independent contractors if it chooses to retain such contractors to correct any such violations, including making reasonable inquiry as to whether any such contractor is properly licensed and has adequate liability insurance and worker's compensation coverage.

(c) Grantee shall also have available all other legal and equitable remedies to enforce Grantor's obligations hereunder.

(d) In the event Grantor is found to have violated any of its obligations, Grantor shall reimburse Grantee for any costs or expenses incurred in connection therewith,

including all reasonable court costs and attorneys', architectural, engineering and expert witness fees.

(e) Exercise by Grantee of one remedy hereunder shall not have the affect of waiving or limiting any other remedy, and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time.

11. Notice from Government Authorities. Grantor shall deliver to Grantee copies of any notice, demand, letter or bill received by Grantor from any government authority within five (5) days of receipt by Grantor. Upon request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with such notice, demand, letter to bill, where compliance is required by law.

12. Notice of Proposed Sale. Grantor shall promptly notify Grantee in writing of any proposed sale of the Premises and provide the opportunity for Grantee to explain the terms of the Easement to potential new owners prior to sale closing.

13. Runs with the Land. The obligations imposed by this Easement shall be effective in perpetuity and shall be deemed to run as a binding servitude with the Premises. This Easement shall extend to and be binding upon Grantor and Grantee, their respective successors in interest and all persons hereafter claiming under or through Grantor and Grantee, and the words "Grantor" and "Grantee" when used herein shall include all such persons. Anything contained herein to the contrary notwithstanding, a person shall have no obligation pursuant to this instrument where such person shall cease to have any interest in the Premises by reason by a bona fide transfer, solely except for violations in existence at the time of transfer, for which Grantor and all successors to Grantor shall be jointly and severally responsible, except that Grantee may seek enforcement against any person deemed responsible without necessity of joining all such responsible persons.

14. Title Insurance Recording. Grantee shall do and perform all acts necessary to prompt recording of this instrument in the real estate records of the county wherein the Premises is located, and Grantor shall pay for the expense of recording. In addition, Grantor shall pay for and furnish to Grantee a policy of title insurance (Attachment "1"), in an amount equal to the value attributable to this Easement, to be determined by the Qualified Appraisal required by paragraph 25 of this Easement, or if such Qualified Appraisal is not required by paragraph 25, then an appraisal in form satisfactory to Grantee, from an insurer acceptable to Grantee, insuring enforceability, validity and priority of this Easement, and reflecting no liens, charges or encumbrances on the Premises other than those described in paragraph 15. Provide proof of ownership as Attachment "2."

15. Existing Liens. Except for those matters shown in Exhibit "D" hereto, Grantor warrants to Grantee that no lien or encumbrance exists on the Premises as of the date hereof. Grantor shall immediately cause to be satisfied or released any lien or claim of lien that may hereafter come to exist against the Premises which may have priority over any of the rights, title

or interest of Grantee in the Premises.

16. Subordination of Mortgages. Grantor warrants and represents to Grantee that all mortgages, liens, charges and encumbrances (solely except for ad valorem and other county or municipal taxes) and other rights in the Premises held by all persons or entities other than Grantee (the "Lienholder(s)") are subject and subordinate at all times to the rights of the Grantee pursuant to this Easement. Grantor has provided a copy of the Easement to all Lienholders, and the agreement of each of the Lienholder to subordinate all of their interest in the Premises to the Easement is attached as Attachment 4. The following provisions apply to all Lienholders now existing or hereafter claiming an interest in the Premises:

(a) If a Lienholder has the right to receive the proceeds of condemnation proceedings arising from any exercise of the power of eminent domain as to all or any part of the Premises or the right to receive insurance proceeds as a result of any casualty, hazard or accident occurring to or about the Premises, the Lienholder shall have a prior claim to the insurance and condemnation proceeds and shall be entitled to same in preference to Grantee until the debt owed to such Lienholder is paid off and discharged, notwithstanding that the interest of the Lienholder is subordinate to the Easement.

(b) If a Lienholder has received an assignment of the leases, rents and profits of the Premises as security or additional security for a loan, then the Lienholder shall have a prior claim to the leases, rents and profits of the Premises and shall be entitled to receive same in preference to Grantee until the debt owed to such Lienholder is paid off, notwithstanding that the interest of the Lienholder is subordinate to the Easement.

(c) Until a Lienholder or purchaser at foreclosure obtains ownership of the Premises, the Lienholder or purchaser shall have no obligation, debt or liability under the Easement.

(d) Before exercising any right or remedy due to breach of the Easement except the right to enjoin a violation hereof, Grantee shall give all Lienholder of record written notice describing the default, and the Mortgages shall have sixty (60) days thereafter to cure or cause a cure of the default.

(e) Nothing contained in the above paragraphs or in the Easement shall be construed to give any Mortgage the right to extinguish this Easement by taking title to the Premises by foreclosure or otherwise.

17. Plaques. Grantee agrees that Grantor may provide and maintain a plaque on the Facades or the Buildings, which plaque shall not exceed 18 by 24 inches in size, giving notice of the significance of the Buildings or the Premises and the existence of this Easement.

18. Indemnification; Immunity. The Grantor hereby agrees to pay, protect, indemnify, hold harmless and defend at its own cost and expense, the Grantee, its agents, directors and employees or independent contractors from and against any and all claims, liabilities, expenses,

costs, damages, losses and expenses (including reasonable attorneys' fees and disbursements hereafter incurred) arising out of or in any way relating to the administration, performed in good faith, of this Easement, including but not limited to the granting or denial of consents hereunder, the reporting on or advising as to any condition on the Premises, and the execution of work on the Premises. In the event that the Grantor is required to indemnify the Grantee pursuant to the terms of the Easement, the amount of such indemnify, until discharged, shall constitute a lien on the Premises. In addition, Grantor (and all other persons or entities claiming rights hereunder) acknowledges and agrees that nothing contained in this Easement, or otherwise, shall defeat, affect or act to waive the sovereign and governmental immunity enjoyed and inuring in favor of Grantee.

19. Taxes. Grantor shall pay immediately, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer service charges and other charges which may become a lien on the Premises. Grantee is hereby authorized, but in no event required or expected, to make or advance, upon three (3) days prior written notice to Grantor, in the place of Grantor, any payment relating to taxes, assessments, water rates, sewer rentals and other governmental or municipality charge, fine, imposition or lien asserted against the Premises and may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or assessment or into the validity of such tax, assessment, sale or forfeiture. Such payment, if made by Grantee, shall become lien on the Premises of the same priority as the item if not paid would have had.

20. Insurance. The Grantor shall keep the premises insured by an insurance company having a size of Class XIV or better and having a rating of "A+" or better by Best's Insurance Reports for the full replacement value, if such policy is available, and, if not, for the full appraised value, against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death and property damage of a type and in such amounts as would, in the opinion of Grantee, normally be carried on a property such as the Premises protected by a preservation and conservation easement. Such insurance shall include Grantee's interest and name Grantee as an additional insured and shall provide for at least thirty (30) days notice to Grantee before cancellation and that the act or omission of one insured will not invalidate the policy as to the other insured party. Furthermore, the Grantor shall deliver to the Grantee certificates evidencing the aforesaid insurance coverage at the commencement of this grant and copies of new or renewed policies at least ten (10) days prior to the expiration of such policy. The Grantee shall have the right to provide insurance at the Grantor's cost and expense, should the Grantor fail to obtain same. In the event the Grantee obtains such insurance, the cost of such insurance shall be a lien on the Premises until repaid by the Grantor.

21. Liens. Any lien on the Premises created pursuant to any paragraph of the Easement may be enforced by all available means, methods and remedies provided by this Easement and by law.

22. Written Notice. Any notice which either Grantor or Grantee may desire or be required to give to the other party shall be in writing and shall be mailed postage prepaid by first

class mail, or hand delivered; if to Grantor, then at _____, and if to Grantee, then to Arkansas Historic Preservation Program, 1100 North Street, Little Rock, Arkansas 72201, Attention: Conservation Easement Officer. Each party may change its address set forth herein by a notice to such effect to the other party.

23. Evidence of Compliance. Upon request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with any obligation of Grantor contained in this Easement.

24. Stipulated Value of Grantee's Interest. Grantor acknowledges that upon execution and recording of the Easement, Grantee shall be immediately vested with a real property interest in the Premises and that such interest of Grantee shall have a stipulated fair market value, for purposes of allocating net proceeds in an extinguishment pursuant to paragraph 26, equal to the ratio between the fair market value of the Easement and the fair market value of the Premises prior to considering the impact of the Easement (hereinafter the "Easement Percentage") as determined in the Qualified Appraisal provided to the Grantee pursuant to paragraph 25. Upon submission of the Qualified Appraisal, the Grantor and Grantee shall sign an affidavit verifying the Easement Percentage and record it as an amendment to the Easement. In the event Grantor does not claim a charitable gift deduction for purposes of calculating federal income taxes and submit a Qualified Appraisal, the Easement Percentage shall be ___percent (_%).

25. Qualified Appraisal. In the event Grantor claims a federal income tax deduction for donation of a "qualified real property interest" as that term is defined in Section 170(h) of the Internal Revenue Code, Grantor shall provide Grantee with a copy of all appraisals (hereinafter, the "Qualified Appraisal" as that term is defined in P.L. 98-369, 155(a), 98 Stat. 691 (1983), and by reference of the Easement. Upon receipt of the Qualified Appraisal, this fully executed Easement, and any endowment requested hereunder by Grantee (if any), Grantee shall sign any appraisal summary form prepared by the Internal Revenue Service and submitted to the Grantee by Grantor.

26. Extinguishment. Grantor and Grantee hereby recognize that an unexpected change in the conditions surrounding the Premises may make impossible the continued ownership or use of the Premises for the preservation and conservation purposes and necessitate extinguishment of the Easement. Such a change in conditions includes but it not limited to partial or total destruction of the Buildings or the Facades resulting from a casualty of such magnitude that Grantee approves demolition as explained in paragraphs 5,6, and 7, or condemnation or loss of title of all or a portion of the Premises, the Buildings or the Facades. Such an extinguishment must be either the result of a final judicial proceeding or have an Approval. Grantor shall be solely responsible for determining, reporting and paying any taxes, penalties or other sums, in addition to the legal, taxes and other effects of any extinguishment of the Easement.

27. Interpretation and Enforcement. The following provisions shall govern the effectiveness, interpretation and duration of the Easement.

(a) Any rule of strict construction designed to limit the breadth of restrictions

on alienation or use of property shall not apply in the construction or interpretation of this Easement, and this Easement shall be interpreted broadly to affect its preservation and conservation purposes and the transfer of rights and the restrictions on use herein contained as provided in the Act.

(b) This Easement shall extend to and be binding upon Grantor and all persons hereafter claiming under or through Grantor and the word "Grantor" when used herein shall include all such persons, whether or not such persons have signed this Easement or then have an interest in the Premises. Anything contained herein to the contrary notwithstanding, a person shall have no obligation pursuant to this Easement where such person shall cease to have any interest (present, partial, contingent, collateral or future) in the Premises by reason of a bona fide transfer for full value, solely except for violations in existence at the time of transfer, for which Grantor and all successors to Grantor shall be jointly and severally responsible without necessity of joining all such responsible persons. Any right, title or interest herein granted to Grantee also shall be deemed granted to each successor and assign of Grantee and each such following successor and assign thereof, and the word "Grantee" shall include all such successors and assigns.

(c) This Easement is executed in counterparts, each page of which (including exhibits) has been initialed by Grantor and Grantee for purposes of identification. In the event of any disparity between the counterparts produced, the recorded counterpart shall constitute the agreement of the parties.

(d) Except as expressly provided herein, nothing contained in this Easement grants, nor shall be interpreted to grant, to the public any right to enter on the Premises or into the Buildings.

(e) To the extent that Grantor owns or is entitled to development rights which may exist now or at some time hereafter by reason of the fact that under any applicable zoning or similar ordinance the Premises may be developed to use more intensive (in terms of height, bulk or other objective criteria regulated by such ordinances) than the Premises are devoted as of the date hereof, such development rights shall not be exercisable on, above or below the Premises during the term of the Easement, nor shall they be transferred to any adjacent parcel and exercised in a manner that would interfere with the preservation and conservation purposes of the Easement.

(f) For purposes of furthering the preservation of the Premises and Buildings and of furthering the other purposes of this Easement, and to meet changing conditions, Grantor and Grantee are free to amend jointly the terms of this instrument in writing without notice to any party; provided, however, that no such amendment shall limit the perpetual duration or interfere with the preservation and conservation purposes of this Easement. Such amendment shall become effective upon recording among the real estate records of the county where the Premises is located.

(g) The invalidity of any statute providing authority for Grantee to enter into

this Easement or any part of this Easement shall not affect the validity and enforceability of the remaining portions of this Easement according to its terms, it being the intent of the parties to agree and to bind themselves, their successors and their assigns in perpetuity to each term of this Easement whether this Easement be enforceable by reason of a statute, common law or private agreement either in existence now or at any time subsequent hereto.

(h) Nothing contained in this Easement shall be interpreted to authorize or permit Grantor to violate any ordinance or regulation relating to building materials, construction methods or use. In the event of any conflict between any such ordinance or regulation and the terms hereof, Grantor promptly shall notify Grantee of such conflict and shall cooperate with Grantee and the applicable governmental entity to accommodate the purposes of both this instrument and such ordinance or regulation.

(i) This Easement reflects the entire agreement of Grantor and Grantee. Any prior or simultaneous correspondence, undertakings, agreements and representations are null and void upon execution hereof, unless set out in this instrument.

IN WITNESS WHEREOF, on the date first shown above, Grantor has caused this preservation and conservation easement to be executed, sealed and delivered; and Grantee has caused this instrument to be accepted, sealed and executed in its corporate name by its Director and attested by its Secretary.

GRANTOR:

_____
Printed name

_____
Signature

_____
Title

_____
Date

GRANTEE:
STATE OF ARKANSAS Acting by and through the Arkansas Historic Preservation Program

Scott Kaufman
Printed name

_____
Signature

AHPP Agency Director & Deputy State Historic Preservation Officer
Title

_____
Date

GRANTOR Notary Public

STATE OF ARKANSAS)
) ss. ACKNOWLEDGMENT
COUNTY OF _____)

On this _____ day of _____, 20__, before me, a notary public, personally appeared _____, who acknowledged himself/herself to be the _____ of _____, a(n) _____, and that he/she, as such _____, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Notary Public

My commission expires:
(SEAL)

GRANTEE Notary Public

STATE OF ARKANSAS)
) ss. ACKNOWLEDGMENT
COUNTY OF PULASKI)

On this _____ day of _____, 20__, before me, a notary public, personally appeared Scott Kaufman, who acknowledged himself to be the AHPP Agency Director and Deputy State Historic Preservation Officer of the Division of Arkansas Heritage, a state agency, and that he, as such director and Deputy SHPO, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Notary Public

My commission expires:
(SEAL)

EXHIBIT "A"

PHOTOGRAPHS OF PROTECTED PROPERTY

(BASELINE DOCUMENTATION)
(EACH PHOTOGRAPH MUST BE LABELED)

EXHIBIT "B"

VERIFICATION AFFIDAVIT

I verify that I took the photographs of _____
Name of property

on _____. _____
Date Signature

EXHIBIT "C"

MINIMUM MAINTENANCE STANDARDS

The property will be maintained in accordance with the U.S. Secretary of the Interior's Standards for Rehabilitation.

The Secretary of the Interior's Standards for Rehabilitation
http://www.nps.gov/history/hps/tps/tax/rhb/stand.htm
The Standards (Department of Interior regulations, 36 CFR 67) pertain to historic buildings of all materials, construction types, sizes, and occupancy and encompass the exterior and the interior, related landscape features and the building's site and environment as well as attached, adjacent, or related new construction. The Standards are to be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility.

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.

2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.

4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.

5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.

6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.

7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.

9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Signature _____ Date _____

EXHIBIT "D"

AFFIDAVIT OF EXISTING LIENS OR ENCUMBRANCES

☐ There are no liens or encumbrances on this property.

☐ There are liens or encumbrances on this property.
[Please complete the Subordination Agreement]

_____ _____
Signature Date

ATTACHMENT "1"

[TITLE INSURANCE]

ATTACHMENT "2"

[LEGAL TITLE OR DEED TO PROPERTY]

ATTACHMENT "3"

[AUTHORIZATION TO CONVEY EASEMENT]

-If necessary-
Usually only included for AHPP Grant recipients

(QUORUM COURT RESOLUTION, BOARD OF TRUSTEES LETTER, CITY COUNCIL, ETC.)

ATTACHMENT "4"

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT, made this day, by and between the State of Arkansas, acting by and through the Arkansas Historic Preservation Program, with principal offices at 1100 North Street, Little Rock, Arkansas 72201 ("Grantee") and_____ with an address at _____ ("Lender").

WITNESSETH:

WHEREAS, by Easement dated_____,_____, being recorded in the real estate records of _____ County, Arkansas on _____, 20___ [as Instrument No.] [at Book____, Page____] (hereinafter referred to as the "Easement"), and _____, his wife (collectively, the "Grantor"), granted to Grantee a historic preservation easement covering certain premises located in _____ County, Arkansas (the "Property"), a more particular description of which Property appears in Exhibit 1", attached hereto and by this reference made a part hereof; and

WHEREAS, the Property is encumbered by a mortgage recorded in the real estate records of _____ County, Arkansas on _____, _____, [as Instrument No._____] [at Book____, Page___,], (the "Mortgage") in favor of Lender and securing indebtedness in the approximate amount of _____($_____); and

WHEREAS, Grantee and Lender desire hereby to establish certain rights, safeguards, obligations and priorities with respect to their respective interests by means of the following Subordination, Non-Disturbance and Attornment Agreement;

NOW THEREFORE, for and in consideration of the premises and the mutual covenants and promises herein contained, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Grantee and Lender agree as follows:

1. The Mortgage, the rights of Lender thereunder, and all advances made or to be made thereunder, to the full extent of the principal sum and interest thereon from time to time secured thereby, and to any renewal, substitution, extension, modification and replacement thereof, including any increase in the indebtedness secured thereby or any supplements thereto, are and shall be subject and subordinate to the Easement and the rights of Grantee thereunder, and to all of the terms, conditions and provisions thereof. In the event that Lender or any other person acquires any title to the Property pursuant to the exercise of any remedy provided for in the Mortgage or by reason of the acceptance of a deed in lieu of foreclosure (the Lender, any other such person and their participants, successors and assigns being collectively referred to as the "Purchaser"), Grantee covenants and agrees to attorn to and recognize and be bound to Purchaser as the new owner of the Property, but the Easement shall continue in full force and effect as a granted to Grantee by Purchaser, and, notwithstanding anything to the contrary herein or in the Mortgage, the provisions of the Easement will continue to run with the land unaffected

by the conveyance to Purchaser.

2. Lender agrees that so long as the Easement is of record:

a. the rights of Grantee in and to the Property shall not be terminated or disturbed by any steps or proceedings taken by Lender in the exercise of any of its right under the Mortgage or the indebtedness secured thereby;

b. the easement shall not be terminated or affected by said exercise of any remedy provided for in the Mortgage, and Lender hereby covenants that any sale by it of the Property pursuant to the exercise of any rights and remedies under the Mortgage or otherwise, shall be made subject to the Easement and the rights of Grantee thereunder.

3. In no event shall Lender or any other Purchaser be liable for any act or omission of Grantor or any prior owner.

4. The agreements herein contained shall be binding upon and shall inure to the benefit of the parties hereto, their respective participants, successors, and assigns, and, without limiting such, the agreements of Lender shall specifically be binding upon any Purchaser of the Property at foreclosure or other sale taken pursuant to the Mortgage.

5. This Agreement may not be modified other than by an agreement in writing signed by the parties hereto or their respective successors.

6. This Agreement may be signed in counterparts.

7. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remaining terms and provisions hereof shall not be affected thereby, but each term and provision hereof shall be valid and enforceable to the fullest extent permitted by law.

8. This Agreement shall be governed by Arkansas law.

IN WITNESS WHEREOF, on the date first shown above, Grantor has caused this preservation and conservation easement to be executed, sealed and delivered; and Grantee has caused this instrument to be accepted, sealed and executed in its corporate name by its Director and attested by its Secretary.

GRANTOR:

_____
Printed name

_____
Signature

_____
Title

_____
Date

LENDER:

_____
Printed name

_____
Signature

_____
Title

_____
Date:

GRANTEE: THE STATE OF ARKANSAS,
acting by and through the Arkansas Historic Preservation Program

Scott Kaufman_____
Printed name

_____
Signature

AHPP Agency Director & Deputy State Historic Preservation Officer
Title

_____
Date

GRANTOR Notary Public

STATE OF ARKANSAS)
) ss. ACKNOWLEDGMENT
COUNTY OF _____)

On this _____ day of _____, 20__, before me, a notary public, personally appeared _____, who acknowledged himself/herself to be the _____ of _____, a(n) _____, and that he/she, as such _____, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Notary Public

My commission expires:
(SEAL)

LENDER Notary Public

STATE OF ARKANSAS)
) ss. ACKNOWLEDGMENT
COUNTY OF _____)

On this _____ day of _____, 20__, before me, a notary public, personally appeared _____, who acknowledged himself/herself to be the _____ of _____, a(n) _____, and that he/she, as such _____, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Notary Public

My commission expires:
(SEAL)

GRANTEE (AHPP) Notary Public

STATE OF ARKANSAS)
) ss. ACKNOWLEDGMENT
COUNTY OF PULASKI)

On this _____ day of _____, 20__, before me, a notary public, personally appeared Scott Kaufman, who acknowledged himself to be the AHPP Agency Director & Deputy State Historic Preservation Officer of the Division of Arkansas Heritage (DAH), a state agency, and that he, as such director and Deputy SHPO, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Notary Public

My commission expires:

(SEAL)

ARKANSAS HISTORIC
PRESERVATION PROGRAM

Conservation Easement Checklist—Charitable Donations

Historic Property Name: _____
Address of Property: _____
City, State, Zip Code: _____
Resource Number: _____

	Yes	No
1) Application Form	___	___
2) Part 1 NPS Form (if in HD)	___	___
3) Real Estate Appraisal	___	___
4) Completed Easement Agreement	___	___
5) Exhibit A: Photographs	___	___
6) Exhibit B: Verification of photographer	___	___
7) Exhibit C: Sec. of Interior's Standards	___	___
8) Exhibit D: Liens and Encumbrances	___	___
9) Attachment 1: Title Insurance Commitment	___	___
10) Attachment 2: Deed (and Survey, if applicable)	___	___
11) Attachment 3: Auth to Convey (organizations)	___	___
12) Attachment 4: Subordination Agreement (if needed)	___	___

ARKANSAS HISTORIC PRESERVATION PROGRAM

Note: DO NOT COMPLETE THE ITEMS HIGHLIGHTED IN BLUE FOR SUBMISSION OF THE DRAFT EASEMENT. THESE ITEMS SHOULD BE COMPLETED FOR FINAL EXECUTION OF THE DOCUMENT AFTER THE DRAFT IS REVIEWED BY AHPP.

Instructions for Completing the Conservation Easement Document (CHARITABLE DONORS)

P.1 a. Fill in the numeric day, month and year that the property owner(s) is/are signing the document.

b. Verify the name of the property owner. The name of the property owner of record should match what is on the Warranty Deed. If there is no Warranty Deed available, for example, if the property was conveyed via Quitclaim Deed, contact Catherine Barrier, Certified Local Government Coordinator, at (501) 324-9186 or at catherine.barrier@arkansas.gov to discuss the situation as soon as possible.

c. Verify the name of the county where the property is located is filled in correctly on the easement.

d. Verify the number of structures on the property that will be included in the easement is filled in correctly on the easement. (example: if there is a house and two barns, ***3*** should be in the blank)

e. Verify the historic name of the property as it is recorded in the National Register of Historic Places is filled in correctly on the easement.

P.2 Fill in the ***EXACT*** wording of the legal description from the Warranty Deed. A copy of the Warranty Deed will need to be attached to P. 21 of the document.

Note: If you have been notified that the building and area to be covered by the easement is only a part of the legal parcel then you will need a survey/plat and legal description covering just that area. Please contact Catherine Barrier, Certified Local Government Coordinator, at catherine.barrier@arkansas.gov or (501) 324-9186 for more information.

P.11 a. Fill in the easement Grantor's (property owner's) ***current*** mailing address.

b. Under number 24, you should fill in the easement percentage from your appraisal report.

P. 14 (Signing of the easement should be completed in the presence of a Notary Public)

a. Fill in the printed name of the property owner(s) of record.

b. Enter the signature of the property owner(s) on the second line

c. If the property is owned by a corporation or other entity, the authorized representative of the organization will need to sign for the organization.

d. Enter the date the document is signed. This date should also be used on Page 1 at the beginning of the document.

P. 15 Certify your ownership interest in the property in the presence of the Notary Public who witnessed the signing of the document and the Notary will complete the certification at the top of the page (marked "Grantor").

P. 16 Attach ***labeled* photographs** of the historic property with the name of the property, where you were standing in relation to the building followed by the direction you were facing when the photograph was taken (e.g., standing south looking northeast), and a brief description of what is shown in the photograph (e.g. south elevation with porch details) encompassing all exterior elevations of the property and any surrounding area that will be included in the easement. Generally, it is best to take at least eight photographs of the building, one of each façade straight on and one of each corner showing two facades.

P. 17 The photographer who took the photos of the property needs to fill out the name of the historic property, the date and their signature.

P. 18 The property owner(s) **must** read the Secretary of Interior's Standards for Rehabilitation and sign and date this page at the bottom. If the property owner(s) have any questions about how to interpret the Standards, please call Catherine Barrier, Certified Government Coordinator, at (501) 324-9186 or send me an email at catherine.barrier @arkansas.gov and I will be happy to assist you.

P. 19 The property owner(s) need to check one of the two boxes as to whether or not the property has a mortgage on it (or other lien or encumbrance). If there is a mortgage on the property, you will need to have the lienholder complete page 23 the "Subordination, Non-Disturbance and Attornment Agreement." If there is another encumbrance on the property, please contact Catherine Barrier at catherine.barrier@arkansas.gov or 501.324.9186. If not, those pages should be removed from the document.

P. 20 Copy of the title insurance commitment for the easement.

P. 21 A copy of the Warranty Deed needs to be attached.

P.22 If the property is owned by a corporation or other entity, the authorization to convey the Conservation Easement needs to be attached.

P. 23 If the property has a mortgage or other lien or encumbrance attached to it, the "Subordination, Non-Disturbance and Attornment Agreement" (or other applicable document as directed by AHPP) needs to be filled out and attached.

P. 25 *Both the property owner(s) and the lending institution need to sign and date the Subordination agreement (if you checked "Yes" on page 19, otherwise discard this section).*

P. 26 *Both the property owner and the Lender will need to verify their ownership interest in the property in the presence of a Notary Public and the Notary will complete the section marked "Grantor" (if applicable as per page 19, otherwise discard).*

You should also submit a copy of the declarations page of your real property insurance policy, the original title insurance commitment, and a copy of the easement appraisal with the draft easement agreement.

A draft copy of the easement, including all attachments, must be submitted to AHPP at least two weeks before the State Review Board meeting at which your easement application will be considered to ensure that everything goes smoothly and your easement can be executed and recorded in a timely manner.

Exhibit 2

OFFER AND ACCEPTANCE

This Offer and Acceptance ("**Agreement**") is entered into by and between the **CITY OF BENTONVILLE, ARKANSAS**, as "**Buyer**", and the **BENTONVILLE LIBRARY FOUNDATION**, as "**Seller**". The parties hereby agree that the Seller shall sell and Buyer shall buy the following property upon the following terms and conditions. The parties acknowledge that they are entering into this Agreement pursuant to that certain Memorandum of Understanding, dated _____, 2021, by and between the parties (the "**MOU**").

1. DESCRIPTION:

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

TRACT 1, DEPOT ADDITION, BEING A REPLAT OF LOTS 13 AND 16 OF SMART'S ADDITION TO THE CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS, AS SHOWN IN PLAT RECORD BOOK "6" AT PAGE 221.

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

416 South Main Street, Bentonville, Arkansas; identified as Parcel Number 01-04895-000 by the Benton County Assessor.

2. PURCHASE PRICE: $10.00 cash on Closing and other good and valuable consideration, the sufficiency of which is hereby acknowledged.

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

unreasonable to correct any such objections. If Seller is unsuccessful in removing such objection(s) within said time, Buyer shall have the option of (i) extending such time period, (ii) accepting the title as it then is, or (iii) rescinding this Agreement and thereupon Buyer and Seller shall be released, as to one another, of all further obligations and all damages arising under this Agreement.

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

4. BUYER'S REQUIREMENTS: Buyer shall undertake to remove the conditions to Closing contained in this Agreement in a timely manner. Seller agrees to cooperate fully with Buyer with respect to Buyer's efforts to obtain all relevant information pertaining to the Property and the permitted uses of it. In the event such conditions cannot reasonably be removed Buyer may terminate this Agreement. In the event Buyer does not notify Seller in the manner set forth in paragraph 10(a) of the failure of a condition or Buyer's decision to terminate within ten (10) days of the Council Approval Date (the "**Buyer's Inspection Period**" or the "**Inspection Period**"), all of Buyer's conditions shall be deemed satisfied.

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

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

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

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

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

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

9. PROVISIONS WITH RESPECT TO CLOSING:

a) Closing Date. The consummation of the transaction contemplated by this Agreement ("**Closing**") shall take place at such place as designated by Seller on or before December 31, 2021, or at such earlier date as agreed mutually, unless extended by other provisions hereof.

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

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

c) Buyer's Obligations at Closing. Subject to the terms, conditions and provisions hereof, and concurrently with the performance by Seller of its obligations set forth above, Buyer shall deliver to Seller cashier's check or other immediate local funds in the amount set forth in Section 2 of this Agreement. Additionally, at Closing, Buyer will execute and deliver the following:

(i) that certain Historic Preservation Easement in favor of the State of Arkansas in the form attached as Exhibit 1 to the MOU.
(ii) that certain Lease Agreement for the Property by and between Buyer and The Bentonville History Museum, Inc. in the form attached as Exhibit 3 to the MOU.

d) Closing Costs. Buyer shall pay all costs and expenses in connection with the Closing, including the following:

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

e) Proration of Taxes. Taxes for the year of the Closing shall be prorated to the date of Closing. If the Closing shall occur before the tax rate is fixed for the then current year, the

apportionment of taxes shall be upon the basis of the tax rate of the preceding year applied to the latest assessed valuation.

10. OTHER CONTRACTUAL PROVISION:

a) Notices. Any notice to be given or to be served upon any party hereto, in connection with this Agreement, must be in writing, and may be given by certified mail and shall be deemed to have been given and received when a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States Mail; and if given otherwise than by certified mail, it shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Such notices shall be given to the parties hereto at the addresses stated above. Any party hereto may, at any time by giving five (5) days' written notice to the other party hereto, designate any other address in substitution of the foregoing address to which such notice shall be given and other parties to whom copies of all notices hereunder shall be sent.

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

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

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

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

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

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

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

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

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

l) City Council and Library Foundation Board Approval. This Agreement is conditioned upon approval from the Bentonville City Council and the Board of the Bentonville Library Foundation, the last date of which to occur being the **Fourteenth of September, 2021**. After approval, each party shall present to the other a duly adopted, approved and attested resolution or other appropriate evidence of approval.

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

Witnesses: "**Seller**" (**BENTONVILLE LIBRARY FOUNDATION**) by:

_____
By:

Attest:

_____ Date: _____
By:

"**Buyer**" (**CITY OF BENTONVILLE, ARKANSAS**) by:

_____
Mayor

Attest:

_____ Date: _____
City Clerk

Exhibit 3

LEASE AGREEMENT

This Lease Agreement ("Lease") is made by and between **CITY OF BENTONVILLE, ARKANSAS**, an Arkansas municipality, the address of which is 1000 SW 14th Street, Bentonville, Arkansas 72712 ("Landlord") and **THE BENTONVILLE HISTORICAL MUSEUM, INC.**, DBA "BENTONVILLE HISTORY MUSEUM", an Arkansas nonprofit corporation having its principal place of business at 104 East Central Avenue, Bentonville, Arkansas 72712 ("Tenant").

WHEREAS, Landlord desires to lease that building commonly known as the Bentonville Train Depot and Caboose (the "Premises"), which is shown on Exhibit A; and

WHEREAS, Landlord desires to lease the Premises to Tenant, and Tenant desires to lease the Premises from Landlord for the term, at the rental and upon the covenants, conditions and provisions herein set forth.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, it is agreed:

1. Term. The Term shall begin on _____, 2021 and shall end on _____, 20____ ("Term" or "Initial Term"). Tenant may extend the Term for _____ (___) additional periods of _____ months each by giving Landlord not less than 90 days prior written notice. Upon expiration of the Term, the Lease shall become month-to-month with either party able to terminate upon giving at least 30 days prior written notice.

2. Rental. Tenant shall pay to Landlord during the Term rent equal to $100.00 per year, payable on or before January 1 of each year. The parties agree that Tenant's charitable purpose that promotes the history of the City of Bentonville is a key consideration for Landlord entering into this Lease and for the rental rate established herein.

3. Use. Tenant shall use the Premises exclusively for the nonprofit purpose of operating a museum with related and ancillary uses such as private events and educational activities. Tenant shall maintain a museum primarily focused on the history of the City of Bentonville, Benton County, and the State of Arkansas throughout this term. Subject to events of force majeure, Landlord agrees that Tenant shall have a one (1) year period beginning at the execution of the lease to plan and execute reasonable renovations necessary to operate the premises as intended for the stated purpose of museum. After one year, in the event renovation efforts have not been completed, this period may be extended up to one (1) additional year at Tenant's request, subject to Landlord's approval, which shall not be unreasonably withheld. Any further extensions must be mutually agreed upon by the parties. Once opened, Tenant shall keep the museum open to the public at least 3 days per week for at least 6 hours per day during the Term (the "Operating Covenant"). If Tenant fails to satisfy the Operating Covenant, Landlord may give Tenant written notice of Landlord's intent to terminate this Lease (the "Pre-Termination Notice"). If Tenant does not reopen to the public in accordance with the Operating Covenant within thirty (30) days after Landlord sends the Pre-Termination Notice, Landlord will have the right to terminate this Lease and neither party shall have any further obligations hereunder.

4. Maintenance.

a. *Landlord's Obligations*. Landlord, at its expense, shall keep and maintain the Premises in good repair and working order. Landlord's maintenance obligations will include, without limitation, maintaining all parking lots, sidewalks, drives and landscaping (including mowing) serving the Premises, and all electrical, plumbing, HVAC and mechanical systems and devices serving the Premises.

b. *Tenant's Obligations*. Tenant will promptly repair at its expense any damages that it causes to the Premises.

5. Taxes. Landlord will pay before delinquent ad valorem taxes on real estate, assessments (both general and special) and other governmental impositions lawfully levied upon or assessed against the Premises, if any. Tenant shall pay all ad valorem and other taxes on its personal property located on the Premises.

6. Utility Charges. Landlord will provide the following utilities to the Premises and shall pay all charges incurred for the use of utility services at the Premises including, electricity, water, sewer, and trash, to be consumed by Tenant in commercially reasonable quantities. If internet and telephone services are required, Tenant shall pay the costs for these services directly to the provider.

7. Insurance.

a. *Tenant's Insurance*. Tenant will, at its expense, maintain in full force and effect at all times during the Term of this Lease: (a) property insurance insuring Tenant's furniture, furnishings, equipment, trade fixtures and other personal property of Tenant in and about the Premises; and (b) commercial general liability insurance with respect to the Premises, with a single limit of liability of $1,000,000 for each occurrence, subject to an aggregate limit of $1,000,000. Each policy of insurance maintained by Tenant will be issued by an insurance company reasonably acceptable to Landlord and provide that such insurance will not be canceled unless ten (10) days prior written notice is given to Landlord. Certificates evidencing the insurance required to be maintained by Tenant shall be delivered to Landlord on or before the first day of this Lease and at least ten (10) days prior to the expiration date of any policy then in effect.

b. *Landlord's Insurance*. Landlord will maintain in full force and effect at all times during the Term of this Lease: (a) property insurance covering the full replacement cost of the real and personal property comprising the Premises (including the leasehold improvements in the Premises, but excluding Tenant's personal property and equipment). Upon written request, Landlord shall provide Tenant with certificates evidencing the insurance required to be maintained by Landlord. The commercial general liability insurance policy will name Tenant as an additional insured. All such policies will provide that such insurance will not be canceled unless ten (10) days prior written notice is given to Tenant.

8. Indemnification. Except to the extent of Landlord's negligence or intentional misconduct, Tenant shall indemnify Landlord against any expense, loss, cost, damage, claim, action or liability paid, suffered or incurred as a result of any breach by Tenant, Tenant's agents, servants, employees, visitors or licensees of any covenant or condition of this Lease, as a result of Tenant's use or occupancy of the Premises, or as a result of the negligence or willful misconduct of Tenant, its agents, servants, employees, customers, contractors, visitors or licensees.

9. Signs. All signage on the exterior of the Premises will be in accordance with the applicable ordinances and subject to Landlord's reasonable approval, not to be unreasonably withheld.

10. Parking. Landlord will provide all parking that is legally required for the permitted use of the Premises.

11. Termination. Upon termination of this Lease, Tenant will return the Premises to Landlord in broom clean condition, reasonable wear and tear excepted. Tenant shall have the right to remove from the Premises all of its personal property, which it has in and upon the Premises, all of said property being expressly reserved and retained by Tenant.

12. Damage by Fire or Other Casualty. If the Premises shall be damaged or destroyed or rendered untenable, in whole or part, by or as the result of fire or other casualty during the Term, Landlord shall immediately commence (and diligently pursue to completion) the repair and restoration of the Premises to as good or better condition than prior to such fire or other casualty and shall diligently pursue the same to complete. Notwithstanding the foregoing, Landlord may elect to terminate this lease if the Premises are so damaged that Landlord elects to terminate the "Covenants" encumbering the Premises pursuant to that certain Quitclaim Deed and Preservation Easement by and between Landlord and Bentonville Library Foundation, an Arkansas nonprofit corporation (the "Vesting Deed"; the term "Covenants" is defined in the Vesting Deed).

13. Condemnation.

a. *Total Taking.* In the event of a taking of all of the Premises as a result of the exercise of the power of eminent domain, Landlord will be entitled to and shall receive the entire condemnation award except that Tenant shall have the right to claim from the condemning authority any compensation that may be separately awarded to Tenant on account of costs, losses or damages incurred by Tenant, including compensation for the value of its leasehold interest. This Lease shall terminate upon the date that title to the Premises passes to the condemning authority.

b. *Partial Taking*. In the event a portion of the Premises is taken by eminent domain and the Covenants are not terminated pursuant to the Vesting Deed, then, in such instant, this Lease shall terminate only as to that portion of the Premises that is taken. Landlord shall immediately undertake to rehabilitate the Premises to the extent practicable and thereafter diligently pursue completion of such rehabilitation. Any condemnation award resulting from such partial taking shall be the property of the Landlord except that Tenant shall have the right to claim from the condemning authority any compensation that may be separately awarded to Tenant on account of costs, losses or damages incurred by Tenant, including compensation for the value of its leasehold interest.

14. Sublease and Assignment. Tenant shall not assign this Lease or sublet the whole or any part of the Premises without prior written consent of Landlord, such consent not to be unreasonably withheld, conditioned or delayed.

15. Hazardous Materials. Tenant will not cause or permit any hazardous materials to be brought upon, kept or used in or about the Premises except in quantities typical of a retail business operation of Tenant's nature.

16. Default.

a. *Events of Default.* The following events shall be an "Event of Default" under this Lease:

i. If Tenant fails to make any payment of rent under this Lease when and as the same shall become due payable and Tenant fails to cure the same within ten (10) days after receiving written notice thereof from Landlord;

ii. If Tenant shall fail to comply with any term, provision or covenant of this Lease, other than the payment of rent, and Tenant fails to cure the same within thirty (30) days after receiving written notice thereof from Landlord; or

iii. If a petition in bankruptcy (whether voluntary or involuntary) is filed by or against Tenant (and an involuntary petition is not challenged within thirty (30) days after Tenant is notified thereof), or if Tenant shall become insolvent, make a transfer in fraud of creditors, or make an assignment for the benefit of creditors.

b. *Remedies on Default*. Upon the occurrence of any Event of Default, Landlord shall have the option to pursue any one or more of the following remedies, without any notice to or demand upon Tenant whatsoever:

i. Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord and if Tenant fails to do so, Landlord may, without prejudice to any other remedy or relief Landlord may have regarding possession of the Premises, enter upon and take possession of the Premises, relet the Premises, and expel or remove Tenant and any other person who may be occupying the Premises, or any part thereof, by force, if necessary, without being liable to prosecution or for any claims for damages; and Tenant agrees to pay to Landlord on demand the amount of any and all reasonable losses, damages or expenses which Landlord may suffer by reason of such termination, whether through inability to relet the Premises on satisfactory terms, or otherwise;

ii. Terminate Tenant's right to possession without terminating the Lease or Tenant's obligation to pay rent hereunder and enter upon and take possession of the Premises and expel or remove Tenant and any other persons who may be occupying the Premises, or any part thereof, by force, if necessary, without being liable to prosecution or for any claim for damages, and relet the Premises, as Tenant's agent, and receive the rent therefor credited on Tenant's behalf; and Tenant agrees to pay Landlord on demand any deficiency that may arise over the Term (or then current renewal period) of this Lease by reason of such reletting; or

iii. Terminate this Lease and accept Tenant's surrender of the Premises.

iv. In no event will Landlord have the right to accelerate the unpaid rent for the remaining Term of this Lease or make demand upon Tenant for the total amount of the unpaid rent due over the Term of this Lease.

c. *Landlord Default*. If there is a default with respect to any of Landlord's covenants, warranties or representations under this Lease, and if the default continues more than fifteen (15) days after Tenant sends notice specifying the default, Tenant may, at its option and without affecting any other remedy under the law, in equity or as provided by this Lease, cure such default and demand from Landlord payment therefor. If the default of Landlord is of such a nature that cure by Tenant is either not practical or not possible and the default continues more than thirty (30) days after Tenant sends notice of default, then Tenant may terminate this Lease without penalty by giving thirty (30) days written notice thereof to Landlord, and Landlord shall reimburse Tenant all costs associated with termination of the Lease and relocation of Tenant's business.

d. *Attorney's Fees*. If on account of any breach or default by Landlord or Tenant of their obligation to any of the parties hereto, under the terms, conditions and covenants of this Lease, it shall become necessary for any of the parties hereto to employ an attorney to enforce or defend any of its rights or remedies hereunder, the prevailing party shall be entitled to any reasonable attorneys' fees incurred.

17. Entry. Landlord shall use best business efforts to notify Tenant seventy-two (72) hours in advance of entry into Premises. In the event Landlord cannot provide seventy-two (72) hours advance notice despite its best efforts (or if an emergency situation shall necessitate such earlier entry), Landlord shall provide Tenant as much notice as reasonably practical.

18. Lien Waiver. Landlord agrees to timely execute commercially reasonable estoppel certificates, subordination, non-disturbance or attornment agreements as Tenant's lender, its assignee or designee, may request, and are reasonably acceptable to Landlord. Tenant may also grant to its lenders or financiers liens

on any furniture, trade fixture, equipment or appliance installed by Tenant that are not permanently affixed to the Premises. Landlord and Tenant agree to execute commercially reasonable lien waivers or other documents to evidence its subordination of any landlord lien reasonably acceptable to Landlord and Tenant's lender. Landlord hereby waives any statutory or other landlord lien rights on the property of Tenant, and Landlord agrees to acknowledge such waiver in writing upon request by Tenant.

19. Alterations. Tenant shall not make any modifications or alternation to the Premises without Landlord's consent, which will not be unreasonably withheld; provided, any modifications must fully comply with the Covenants in the Vesting Deed.

20. Force Majeure. Neither party shall be required to perform any term, condition or covenant in this Lease so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods and any other cause not reasonably within control of a party and which by the exercise of due diligence the party is unable, wholly or in part, to prevent or overcome.

21. Code Compliance. Notwithstanding any provision to the contrary set forth in this Lease, Landlord, at its sole cost and expense, shall be responsible for ensuring that the Premises is maintained in accordance and in compliance with all current and future applicable laws, ordinances, orders, rules, codes and regulations, whether federal, state, county, municipal or of any agency or body having jurisdiction thereover, including, but not limited to compliance with the Americans with Disabilities Act, fire, sanitation and building codes and regulations and the like (collectively referred to in this Section as the "Law"). Landlord and Tenant agree that the provisions of this Section apply to any and all conditions of the Premises, whether latent, hidden, disclosed, or unknown at any time to either Landlord or Tenant. Upon receipt of written notice of non-compliance with the Law, Landlord shall promptly at its sole cost and expense remedy such non-compliance and shall provide Tenant with proof thereof. Landlord warrants that to its knowledge, the Premises is in accord and compliance with all applicable Law, and that Landlord has not received written notice for any violation thereof. Landlord shall indemnify Tenant against any and all damages, claims, judgments, fines, penalties, costs and liabilities, including reasonable attorney's fees, resulting from any breach of this Section by Landlord, its employees, agents, contractors, or any other person or entity for which the Landlord is responsible at law.

22. Quiet Possession. Landlord covenants and warrants that upon performance by Tenant of its obligations hereunder, Landlord will keep and maintain Tenant in exclusive, quiet, peaceable, undisturbed, and uninterrupted possession of the Premises during the Term of this Lease, subject to all matters of record.

23. Holding Over. If Tenant should remain in possession of the Premises after the expiration of the Term, without the execution by Landlord and Tenant of a new lease or an extension or renewal of this Lease, then Tenant shall be deemed to be holding the Premises on a month-to-month basis.

24. Notice. Any notice required or permitted under this Lease shall be deemed sufficiently given or served when received or refused if sent by United States certified mail, return receipt requested, or by nationally recognized overnight carrier, addressed to the address provided in the first paragraph of this Lease. Landlord and Tenant shall each have the right from time to time to change the place notice is to be given under this paragraph by written notice thereof to the other party.

25. Brokers. Landlord and Tenant represent and warrant to the other that they have not dealt with a broker in connection with this Lease, and no broker is entitled to any commission in connection with this Lease.

26. Waiver of Default. No waiver of any default of Landlord or Tenant hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by Landlord or Tenant shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

27. Headings. The headings used in this Lease are for convenience of the parties only and shall not be considered in interpreting the meaning of any provision of this Lease.

28. Governing Law. This Lease shall be governed, construed and interpreted by, through and under the Laws of the State of Arkansas and any disputes shall be adjudicated in courts having jurisdiction within the county where the Premises are located.

29. Severability. If any part of this Lease or any other agreement entered into pursuant hereto is contrary to, prohibited by or deemed invalid under applicable law or regulation, such provision shall be deemed inapplicable and deemed omitted to the extent so contrary, prohibited or invalid but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible.

30. Time Is of the Essence. The parties specifically agree time and prompt performance of all obligations as herein contained are of the essence with regard to all provisions of this Lease.

31. Construction. The parties have participated jointly in the negotiation and drafting of this Lease. In the event an ambiguity or question of intent or interpretation arises, this Lease shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Lease. Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

32. No Oral Agreements. This written agreement may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreement of the parties. There are no unwritten oral agreements between the parties. Any provision of this Lease may be changed, waived or terminated only by written instrument specifically referring to this Lease signed by the party against whom the change, waiver or termination is sought to be enforced. Each of the parties hereto hereby acknowledges no other party, or agent or attorney of any other party, has made any promise, representation or warranty whatsoever, express or implied, not contained herein concerning the subject matter hereof, to induce the other party to execute this Lease or any of the other documents referred to herein and each party hereto acknowledges it has not executed this Lease or such other documents in reliance upon any such promise, representation or warranty not contained herein.

33. Historic Preservation. This Lease is subject to the Covenants established in the Vesting Deed, a copy of which Tenant acknowledges receiving, which substantially restricts construction, alteration and redecorating activities inside and outside the Premises subject to this Lease. Notwithstanding any other provision of this Lease, no such activity shall be undertaken without prior review of such restrictions and strict compliance therewith. Tenant shall not violate the Covenants in connect with its use and occupancy of the Premises. Any failure to comply with such restrictions may, at Landlord's reasonable discretion, be deemed a default under this Lease.

[Signatures on the Following Page]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed this ____ day of _____, 2021.

LANDLORD:

CITY OF BENTONVILLE, ARKANSAS

By: _____

Name: _____

Title: _____

TENANT:

THE BENTONVILLE HISTORICAL MUSEUM, INC.,
an Arkansas nonprofit corporation

By:_____

Name:_____

Title:_____

L202007079 2/7/2020 11:23:03 AM
Recorded - Benton County, AR
Brenda DeShields,Circuit Clerk

Exhibit A

QUITCLAIM DEED

KNOW ALL PERSONS BY THESE PRESENTS:

The undersigned, ELVIS MOODY, acting as President on behalf of **THE TRAIN STATION**, (a.k.a. Train Station, Inc.) an Arkansas nonprofit corporation ("GRANTOR"), for ten and no/100 dollars ($10.00) and other valuable consideration, in hand paid by the **BENTONVILLE LIBRARY FOUNDATION**, an Arkansas nonprofit corporation ("GRANTEE"), the receipt of which is hereby acknowledged, hereby grant, bargain, sell and convey unto the GRANTEE and unto the GRANTEE'S successors and assigns forever, all of the GRANTOR'S interest, specifically releasing any conditions, covenants, and restrictions, the following lands lying in **Benton County, Arkansas** ("Property"):

> Tract 1, Depot Addition, being a replat of Lots 13 and 16 of Smart's Addition, to the City of Bentonville, Benton County, Arkansas as shown in Plat Record Book "6" at page 221.

TO HAVE AND TO HOLD the same unto the GRANTEE, and unto the GRANTEE'S successors and assigns forever, together with all appurtenances thereunto belonging.

The GRANTOR previously conveyed the Property to the GRANTEE subject to specific conditions, covenants and restrictions, including a restriction to sell the Property in a Special Warranty Deed filed in Book 2005 on Page 54506 in the records of the Circuit Clerk of Benton County, Arkansas. The GRANTOR now specifically releases all such conditions, covenants and restrictions and purports to transfer a full fee simple interest to the GRANTEE.

I certify under penalty of false swearing that the legally correct amount of documentary stamps have been placed on this instrument. Exempt or no consideration paid if none shown.

Name of GRANTEE: Bentonville Library Foundation

Address: [redacted]

Signature:

User Name: JILL
CERTIFICATE OF RECORD
STATE OF ARKANSAS, COUNTY OF BENTON
I hereby certify that this instrument was
Filed and Recorded in the Official Records
L202007079 2/7/2020 11:23:03 AM
Brenda DeShields,Circuit Clerk
BENTON CO, AR FEE $20.00

Dated the 5th day of February, 2020.

GRANTOR:
THE TRAIN STATION
(a.k.a. Train Station, Inc.)

[redacted]
ELVIS MOODY, President

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)
COUNTY OF BENTON)

On this the 5th day of February, 2020, before me, the undersigned, a Notary Public (or before any officer within this State or without the State now qualified under existing law to take acknowledgments), appeared the within named ELVIS MOODY acting as President of The Train Station (a.k.a. Train Station, Inc.), to me personally well known (or satisfactorily proven to be such persons), who stated and acknowledged that they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I hereunto set my hand and official seal this 5th day of February, 2020.

My Commission Expires:

NOTARY PUBLIC ARKANSAS
ESSABIA ANDERSON
No. 12403152
WASHINGTON COUNTY
Commission Expires 1-9-2025

L202005227 1/29/2020 1:22:20 PM
Recorded - Benton County, AR
Brenda DeShields,Circuit Clerk

RELEASE OF DEED RESTRICTION

KNOW ALL MEN BY THESE PRESENTS, that Burlington Northern Railroad Company (predecessor in interest to **BNSF RAILWAY COMPANY**), conveyed to **BENTONVILLE SENIOR CITIZENS CENTER, Inc.** certain lands and improvements more particularly described in deed recorded October 20, 1983 in Book 609, Page 51, records of Benton County, Arkansas, described as follows:

Lots 13 and 16, Block 1, Smart's Addition to the City of Bentonville, Benton County, Arkansas, according to the recorded plat thereof; and also,

That certain building approximately 87 feet by 24 feet in area known as the depot building of the Burlington Northern Railroad Company situate upon said Lot 16, Block 1, Smart's Addition to the City of Bentonville.

WHEREAS, said deed contains the following deed restriction:

"to be devoted exclusively to public purposes, FOREVER."

NOW THEREFORE, in consideration of the sum of Ten and No/100 Dollars ($10.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, **BNSF RAILWAY COMPANY** does hereby release the restriction.

TO HAVE AND TO HOLD the Property unto the said Grantee, its successors and assigns.

User Name: JILL
CERTIFICATE OF RECORD
STATE OF ARKANSAS, COUNTY OF BENTON
I hereby certify that this instrument was
Filed and Recorded in the Official Records
I.202005227 1/29/2020 1:22:20 PM
Brenda DeShields,Circuit Clerk
BENTON CO, AR FEE $20.00

IN WITNESS WHEREOF, the said Grantor has caused these presents to be signed by its authorized representative, attested by its Assistant Secretary, and its corporate seal to be affixed hereto this 16th day of January, 2020.

BNSF RAILWAY COMPANY,
a Delaware corporation

By: [redacted]
Blaine Bilderback

Its: Director Real Estate

BNSF RAILWAY COMPANY CORPORATE SEAL DELAWARE

ATTEST:

By: [redacted]
Joyia E. Simmons

Its: Assistant Secretary

STATE OF TEXAS §
§ ss
COUNTY OF TARRANT §

On this day, before me personally appeared Blaine Bilderback and Joyia E. Simmons, to me personally well known, who acknowledged that they were Director Real Estate and Assistant Secretary, respectively, of **BNSF RAILWAY COMPANY**, a Delaware corporation, and that they, as such officers, being authorized so to do, had executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by themselves as such officers.

WITNESS my hand and official seal this 16th day of January, 2020.

[redacted]
Notary Public

NOTARY PUBLIC STATE OF TEXAS
CATHY T BENTON
Notary ID #5532257
My Commission Expires
February 22, 2023

My commission expires: Feb 22, 2023

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND THE CITY CLERK TO ENTER A MEMORANDUM OF UNDERSTANDING WITH THE BENTONVILLE LIBRARY FOUNDATION AND BENTONVILLE HISTORY MUSEUM TO PROMOTE AND SUSTAIN THE WELL-BEING AND PRESERVATION OF THE TRAIN DEPOT.

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

Section 1: That the Mayor and City Clerk be and are hereby authorized to enter into a Memorandum of Understanding (MOU) with the Bentonville Library Foundation and Bentonville History Museum to work together to promote and sustain the well-being and preservation of the Train Depot as set forth in the attached Exhibits 1, 2 and 3.

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	**9/14/2021**
Department	**Library**
Submitted by	**Hadi Dudley**
Phone	**479-271-3194**

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 the City Clerk to enter into an agreement with Meyer, Scherer & Rockcastle, Ltd for the renovation and expansion of Bentonville Public Library with site development. The fee for phase 1 of BPL's project is $874,965.00, with a maximum allowance of $18,000.00 for reimbursable expenses. This firm was selected following the City's standard RFQ solicitation and selection process for procurement of professional services in accordance with state law.

Estimated Cost	**$892,965.00**
Is this Item Budgeted?	☐ Yes ☑ No

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

Bond funds

Bentonville Public Library

Memorandum

TO: Bentonville City Council, Mayor Stephanie Orman
FROM: Hadi Dudley, Library Director
CC: Camille Thompson, Staff Attorney and Jake Harper, Finance Director
SUBJECT: A Resolution contracting with MSR Design for design services of BPL's expansion
DATE: September 1, 2021

Bentonville Public Library (BPL) seeks City Council approval authorizing the mayor and the city clerk to enter into an agreement with Meyer, Scherer & Rockcastle, Ltd (MSR Design) to provide design services for Bentonville Public Library's expansion for a fee of $874,965, plus reimbursable expenses up to $18,000.

The firm was selected following the City's standard RFQ solicitation and selection process for procurement of professional services in accordance with state law. In the evaluation period for RFQ-21-47, committee members rated MSR Design the highest of five submitting firms.

Upon contract execution, MSR Design will collaborate with BPL to lead stakeholder meetings to verify aspirations and programming for the project. MSR Design will also collaborate with the preconstruction manager Flintco. The professional services rendered will include schematic design, design development, construction documents and permitting, as well as planning low voltage systems.

Bentonville Public Library's expansion will enhance its already vital role in our growing city by offering more services, materials and programs in order to meet current and future needs patrons expect from a first-class library. BPL's Needs Assessment study, prepared by MSR Design, revealed our community loves the library and wants more space, new amenities, and unique opportunities to learn, connect, gather, and participate in enriched programming typically found in libraries today.

The assessment recommended a 65,055 SF facility that would be designed and constructed in a single-phased approach for optimized efficiency and economy that maximizes available land. The option included a 26,555 SF addition with 18,390 SF interior renovation, plus additional light renovation and site development. The estimated cost and proposed budget is $15,000,000.

The project will be funded through a public/private partnership with $4,500,000 funded by a City bond extension and $10,500,000 from fundraising efforts through the Library Foundation. The final design will inform amenities, programming, square footages and actual cost, which be determined and fully developed in the forthcoming months.

This agreement is for the design phase only. At the conclusion of the design phase, the agreement allows for an amendment to move to bidding services and construction administration, as well as Furniture, Fixtures and Equipment (FFE) selection / specification and non-code signage design. Acting on the amendment will require additional City Council action.

Funding for design services comes from the 2021 bond election.

If you have any questions regarding this item, please contact me at 479-271-3194 or hdudley@bentonvillear.com.

AIA® Document B101™ – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the fifteenth day of September in the year 2021
(In words, indicate day, month and year.)

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

City of Bentonville, Arkansas
Public Library Department
Administrative Services Building
City Hall
305 SW A Street
Bentonville, AR 72712

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

Meyer, Scherer & Rockcastle, Ltd
510 Marquette Avenue South
Suite 200
Minneapolis, MN 55402

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

Renovation and Expansion of Bentonville Public Library with site development.

The Owner and Architect agree as follows.

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

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

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TABLE OF ARTICLES

1 INITIAL INFORMATION

2 ARCHITECT'S RESPONSIBILITIES

3 SCOPE OF ARCHITECT'S BASIC SERVICES

4 SUPPLEMENTAL AND ADDITIONAL SERVICES

5 OWNER'S RESPONSIBILITIES

6 COST OF THE WORK

7 COPYRIGHTS AND LICENSES

8 CLAIMS AND DISPUTES

9 TERMINATION OR SUSPENSION

10 MISCELLANEOUS PROVISIONS

11 COMPENSATION

12 SPECIAL TERMS AND CONDITIONS

13 SCOPE OF THE AGREEMENT

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:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed. If Owner has a provided a program document, identify it as being an exhibit stating "see Program Document - Exhibit 'x' included in section 13.3)

The project scope is based on information provided in the Needs Assessment Report – Full Option dated 3/05/2021

§ 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.)

Project location: 405 South Main Street, Bentonville, Arkansas
Project anticipated area (square footage): 38,000SF of existing building with approximately 26,500 SF additionwith site improvements; Final SF to be determined

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:
(Provide total and, if known, a line item breakdown.)

Total Estimated Project Budget: $14,965,774 as noted in Needs Assessment Document
Total Estimated Construction Budget: $10,924,989 as noted in Needs Assessment Document

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

.1 Design phase milestone dates, if any:

Project start date: Fall 2021
Schematic Design: 3 months (includes 2-3 weeks for pricing, 1 week for Owner Review)
Design Development: 3 months (includes 2-3 weeks for pricing, 1 week for Owner Review)
Construction Documents: 4 Months (includes 3 weeks for pricing, 1 week for owner review)

.2 Construction commencement date:

unknown at time of agreement - to be determined at PHASE 2 of project

.3 Substantial Completion date or dates:

unknown at time of agreement – to be determined at PHASE 2 of project

(Paragraph Deleted)

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)
CM at risk or Competitive Bid – single bid package.

§ 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.

No goals have been determined at contract execution

(Paragraph Deleted)

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:
(List name, title, address, email address, and telephone information.)

Hadi Dudley, Library Director
Bentonville Public Library
405 South Main Street
Bentonville, AR 72212
hdudley@bentonvillear.com
479-271-3194

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, title, address, email address, and telephone information.)

None

§ 1.1.9 The Owner shall retain the following consultants and contractors:

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(List name, legal status, address, email address, and telephone information.)

.1 Geotechnical Engineer:

(Paragraph Deleted)

(Paragraph Deleted)

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:
(List name, title, address, email address, and telephone information)

Kristilyn Vercruysse
510 Marquette Avenue South, Suite 200
Minneapolis, MN 55402
kristilyn@msrdesign.com
612-616-8148

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:
(List name, legal status, address, email address, and telephone information.)

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

Tatum-Smith-Welcher Engineers, Inc.
3100 S Market Street, Suite 202
Rogers, AR 72758
479-621-6128

.2 Mechanical Engineer:

HP Engineering, Inc.
5214 West Village Parkway, Suite 120
Rogers, AR 72758
479-899-6370

.3 Electrical Engineer / Lighting Design:

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HP Engineering, Inc.
5214 West Village Parkway, Suite 120
Rogers, AR 72758
479-899-6370

.4 Plumbing Engineer:

HP Engineering, Inc.
5214 West Village Parkway, Suite 120
Rogers, AR 72758
479-899-6370
HP Engineering, Inc.
5214 West Village Parkway, Suite 120
Rogers, AR 72758
479-899-6370

.5 Civil Engineer:

Ecological Design Group
216 West Birch Street
Rogers, AR 72756
501-378-0200

.6 Landscape Architect:

TENxTEN Studio
575 SE 9th Street #210
Minneapolis, MN 55414
612-440-8369

.7 Local Architect / Specifications:

Hight Jackson Associates
5201 West Village Parkway, Suite 300
Rogers, AR 72758
479-464-4965

§ 1.1.11.2 Consultants retained under Supplemental Services
Low voltage, Security and Audio Visual Design (see Project Narrative Attachment for more description)

.1 Low Voltage System Design

HP Engineering, Inc
5214 West Village Parkway, Suite 120
Rogers, AR 72758
479-899-6370

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§ 1.1.12 Other Initial Information on which the Agreement is based:
None

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

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

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

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

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

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

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

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§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.5.1 Commercial General Liability with policy limits of not less than one million dollars ($ 1,000,000) for each occurrence and two million dollars ($ 2,000,000) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than one million dollars ($ 1,000,000) 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.

§ 2.5.3 The Architect 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 such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, 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.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than one million dollars ($ 1,000,000) each accident, one million dollars ($ 1,000,000) each employee, and one million dollars ($ 1,000,000) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than two million dollars ($ 2,000,000) per claim and four million dollars ($ 4,000,000) in the aggregate.

§ 2.5.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect 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 Architect'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.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

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

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

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once

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approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction. If the Architect is delayed at any time in the commencement or progress of its work by (1) an act or neglect of the Owner or, an employee of the Owner, or an act of failure to act of the Contractor; or (2) by changes ordered in the Work; or (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions as documented by the National Weather Service, epidemics, pandemics or other causes beyond the Architect's control; or (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that are beyond the Architect's control and that justify delay, then the time for the Architect's performance shall be extended for such reasonable time as the conditions causing the delay exist and for reasonable time to recover and staff the project.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

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

§ 3.2 Schematic Design Phase Services

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

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

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

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

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

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

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

§ 3.2.6 The Architect review the Cost of the Work prepared in accordance with Section 6.3 by Construction Manager hired by Owner.

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

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall review updated estimate of the Cost of the Work prepared in accordance with Section 6.3 by Construction Manager hired by Owner.

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

§ 3.4 Construction Documents Phase Services

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

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

§ 3.4.3 The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall review the estimate for the Cost of the Work prepared in accordance with Section 6.3 by Construction Manager hired by Owner.

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

§ 3.5 Procurement Phase Services (services negotiated in PHASE 2)

§ 3.5.1 General

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

§ 3.5.2 Competitive Bidding (services negotiated in PHASE 2)

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

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

.1 facilitating the distribution of Bidding Documents to prospective bidders;

.2 organizing and conducting a pre-bid conference for prospective bidders;

.3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,

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.4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 Negotiated Proposals

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

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

.1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;

.2 organizing and participating in selection interviews with prospective contractors;

.3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,

.4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 Construction Phase Services (services negotiated in PHASE 2)

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

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

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is

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fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

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

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

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

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

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

§ 3.6.4 Submittals

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

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

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the

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appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

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

§ 3.6.6 Construction Completion

§ 3.6.6.1 The Architect shall:

.1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;

.2 issue Certificates of Substantial Completion;

.3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,

.4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

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

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

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

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

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ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.

Supplemental Services	Responsibility *(Architect, Owner, or not provided)*
§ 4.1.1.1 Programming	Not provided
§ 4.1.1.2 Multiple preliminary designs	2 designs
§ 4.1.1.3 Measured drawings	Not provided
§ 4.1.1.4 Existing facilities surveys	Not provided
§ 4.1.1.5 Site evaluation and planning	Not provided
§ 4.1.1.6 Building Information Model management responsibilities	Not provided
§ 4.1.1.7 Development of Building Information Models for post construction use	Not provided
§ 4.1.1.8 Civil engineering	Architect
§ 4.1.1.9 Landscape design	Architect
§ 4.1.1.10 Architectural interior design	Architect
§ 4.1.1.11 Value analysis	Not provided
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Not provided
§ 4.1.1.13 On-site project representation	Not provided
§ 4.1.1.14 Conformed documents for construction	Not provided
§ 4.1.1.15 As-designed record drawings	Not provided
§ 4.1.1.16 As-constructed record drawings	Not provided
§ 4.1.1.17 Post-occupancy evaluation	Not provided
§ 4.1.1.18 Facility support services	Not provided
§ 4.1.1.19 Tenant-related services	Not provided
§ 4.1.1.20 Architect's coordination of the Owner's consultants	Architect – Library Equipment Vendor
§ 4.1.1.21 Telecommunications/data design	Architect
§ 4.1.1.22 Security evaluation and planning	Not Provided
§ 4.1.1.23 Commissioning	Not provided
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	Not provided
§ 4.1.1.25 Fast-track design services	Not Provided
§ 4.1.1.26 Multiple bid packages	Not provided
§ 4.1.1.27 Historic preservation	Not provided
§ 4.1.1.28 Wayfinding Signage	PHASE 2
§ 4.1.1.29 Other services provided by specialty Consultants	Not provided
§ 4.1.1.30 Other Supplemental Services	Not provided
§ 4.1.1.31 Interior Design Services	Architect

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§ 4.1.1.32 Furniture, Furnishings, and Equipment Design Services	PHASE 2

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

See Project Scope Description in section 13.2

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.

None

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

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

.1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;

.2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;

.3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;

.4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;

.5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;

.6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;

.7 Preparation for, and attendance at, a public presentation, meeting or hearing;

.8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

.9 Evaluation of the qualifications of entities providing bids or proposals;

.10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,

.11 Assistance to the Initial Decision Maker, if other than the Architect

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§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

.1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;

.2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;

.3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;

.4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,

.5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

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

.1 two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor

.2 (TBD in PHASE 2) visits to the site by the Architect during construction P

.3 two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents

.4 one (1) inspections for any portion of the Work to determine final completion.

.5 (TBD in PHASE 2) number of Owner – Architect – Contractor project meetings during construction.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

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

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

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

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

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as

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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.

§ 5.5 The Owner 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.

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1

(Paragraph Deleted)

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

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

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

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

§ 5.11 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

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

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

§ 5.14 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

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

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

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

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

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

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

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

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

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

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§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

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

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

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

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

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

§ 8.2 Mediation

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

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of

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this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box.)

(Paragraph Deleted)

[x] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

If the Owner and Architect 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, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3
(Paragraphs Deleted)

The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

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

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

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

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:
(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Termination Fee:

Ten percent (10%) of remaining unpaid fee

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

5% of Architects total project fee

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction.

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

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

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

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

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable

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access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

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

ARTICLE 11 COMPENSATION

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

.1 Stipulated Sum
(Insert amount)

$874,965 (eight hundred seventy four thousand nine hundred sixty five dollars

(Paragraph Deleted)

(Paragraph Deleted)

.2 Other
(Describe the method of compensation)

$18,000 for reimbursables (eighteen thousand dollars)

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

none

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(basis for, compensation.)

To be negotiated at the time Additional Services are required

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§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus 0 percent (0 %), or as follows:
(Provide basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

Compensation will be added as needed per Supplemental or Additional Service request

§ 11.5 When compensation for Basic Services is based on a stipulated sum the proportion of compensation for each phase of services shall be as follows

Schematic Design Phase	178,352	percent (	20.38	%)
Design Development Phase	253,755	percent (	29.00	%)
Construction Documents Phase	442,858	percent (	50.61	%)
Procurement Phase			PHASE 2	
Construction Phase			PHASE 2	
Total Basic Compensation	$874,965	percent (	100	%)

(Paragraphs Deleted)

(Table Deleted)

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

.1 Transportation and authorized out-of-town travel and subsistence;
.2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
.3 Permitting and other fees required by authorities having jurisdiction over the Project;
.4 Printing, reproductions, plots, and standard form documents;
.5 Postage, handling, and delivery;
.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
.7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
.8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
.9 All taxes levied on professional services and on reimbursable expenses;
.10 Site office expenses;
.11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
.12 Other similar Project-related expenditures.

§ 11.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus 0 percent (0 %) of the expenses incurred.

§ 11.7 Architect's Insurance. If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by

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the Architect for the additional coverages as set forth below:
(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)

§ 11.8 Payments to the Architect

(Paragraphs Deleted)

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

Interest rate to be calculated as three percentage points over the one month LIBOR rate as published in the Wall Street Journal

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

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

ARTICLE 12 SPECIAL TERMS AND CONDITIONS
Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

12.1 Risk Allocation Disclaimer
The Owner and the Architect have discussed their risks, rewards, and benefits for the project and the Architect's total fee for services. The Architect agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Owner, its officers, directors and employees against all damages, liabilities, or costs to the extent caused by the Architect's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the Architect is legally liable. The Owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Architect, its officers, directors, and employees against all damages, liabilities, or costs to the extent caused by the Owner's negligent acts in connection with the Project and the acts of its contractors, subcontractors, or consultants, or anyone for whom the Owner is legally liable. Neither the Owner, nor the Architect, shall be obligated to indemnify the other in any matter whatsoever for the other party's fault.

12.2 Indemnification for Pollution Disclaimer
In consideration of the unavailability of professional liability insurance from services relating to or arising out of or associated in any way with the actual, alleged or threatened discharge, dispersal, release or escape of pollutants or any governmental or regulatory directive or request for testing, monitoring, clean up, removal, containment, treatment, detoxify or neutralize pollutants, it is expressly agreed between the Owner and Architect that the Owner shall indemnify and hold harmless the Architect, its consultants, agents, and employees from and against all claims, including claims of employees of the Owner, any Contractor and Subcontractors, damages, losses and expenses, direct and indirect, or consequential damages, including but not limited to fees and charges of attorneys, court costs, and the costs relating to arbitration fees, and costs relating to government or regulatory directives or requests arising out of or related in any way to "pollution" by any party involved with the project and regardless of whether the claims or damages are based on Contract, tort, including negligence, strict liability, warranty, or otherwise.
"Pollutants" is defined as any solid, liquid, gaseous, or thermal irritant or contaminant, including, but not limited to

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mold, smoke vapor, soot, fumes, acids, alkalis, chemicals, and waste. The Architect will not be asked to evaluate or review any information regarding pollutants.

12.3 Repetitive Stress Disclaimer
It is acknowledged by the Owner that the Architect's scope of services does not include services relating to the selection of office-type equipment, including but not limited to computers, video display terminals, and keyboards, nor relating to the ergonomic effects associated with the use of such equipment. Accordingly, the Owner agrees, notwithstanding any other provision of this Agreement, to the fullest extent permitted by Law, to indemnify and hold harmless the Architect, and its principals, officers, directors, employees, agents, and independent consultants and any of them from all claims, suits, demands, liabilities, losses or costs, including reasonable attorney's fees and defense costs, arising out of the use of office-type equipment, including but not limited to computers, video display terminals, and keyboards, or for those resulting from cumulative trauma disorder, repetitive stress injuries or any adverse ergonomic effects associated with the use of such equipment.

12.4 ADA Disclaimer
The Architect will exercise its best professional effort to interpret the Americans with Disabilities Act (ADA) and the ADA Accessibility Guidelines (ADAAG) in place as of the date of this Agreement. The scope of services provided by the Architect is limited to the requirements of Titles II and III of the ADA. The Architect cannot provide recommendations or advice concerning which ADA requirements or measures may be "readily achievable", nor can the Architect determine the priorities or phasing of selected measures. These issues must be addressed by the Owner with assistance from its financial and legal counsel.

ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

.1 AIA Document B101™–2017, Standard Form Agreement Between Owner and Architect

(Paragraph Deleted)

.2 Exhibits:

(Check the appropriate box for any exhibits incorporated into this Agreement.)

(Paragraph Deleted)

[x] Other Exhibits incorporated into this Agreement:

(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

Project Scope Description which includes additional service description.

(Paragraph Deleted)

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

OWNER (Signature)	**ARCHITECT** (Signature)
	Matthew S. Kruntorad, AIA, Principal, #10100
(Printed name and title)	*(Printed name, title, and license number, if required)*

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Additions and Deletions Report for

AIA® Document B101™ – 2017

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

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PAGE 1

AGREEMENT made as of the fifteenth day of September in the year 2021

...

City of Bentonville, Arkansas
Public Library Department
Administrative Services Building
City Hall
305 SW A Street
Bentonville, AR 72712
Meyer, Scherer & Rockcastle, Ltd
510 Marquette Avenue South
Suite 200
Minneapolis, MN 55402

...

(Name, location and detailed ~~description)~~description.

...

Renovation and Expansion of Bentonville Public Library with site development.

PAGE 2

TABLE OF ARTICLES

...

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be ~~developed.)~~developed. If Owner has a provided a program document, identify it as being an exhibit stating "see Program Document - Exhibit 'x' included in section 13.3)

...

The project scope is based on information provided in the Needs Assessment Report – Full Option dated 3/05/2021

...

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Project location: 405 South Main Street, Bentonville, Arkansas
Project anticipated area (square footage): 38,000SF of existing building with approximately 26,500 SF additionwith site improvements; Final SF to be determined

...

Total Estimated Project Budget: $14,965,774 as noted in Needs Assessment Document
Total Estimated Construction Budget: $10,924,989 as noted in Needs Assessment Document

PAGE 3

Project start date: Fall 2021

...

Schematic Design: 3 months (includes 2-3 weeks for pricing, 1 week for Owner Review)

...

Design Development: 3 months (includes 2-3 weeks for pricing, 1 week for Owner Review)

...

Construction Documents: 4 Months (includes 3 weeks for pricing, 1 week for owner review)

...

unknown at time of agreement - to be determined at PHASE 2 of project

...

unknown at time of agreement – to be determined at PHASE 2 of project

...

~~.4 Other milestone dates:~~

...

CM at risk or Competitive Bid – single bid package.

...

(Identify and describe the Owner's Sustainable Objective for the Project, if ~~any.~~)any.

...

No goals have been determined at contract execution

...

~~§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™ 2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204 2017 is incorporated into this agreement, the Owner~~

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~~and Architect shall incorporate the completed E204–2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.~~

...

(List name, ~~address, and other contact~~ title, address, email address, and telephone information.)

...

Hadi Dudley, Library Director
Bentonville Public Library
405 South Main Street
Bentonville, AR 72212

...

hdudley@bentonvillear.com

...

479-271-3194

...

(List name, ~~address, and other contact~~ title, address, email address, and telephone information.)

...

None

PAGE 4

(List name, legal status, ~~address, and other contact~~ address, email address, and telephone information.)

...

~~.2 Civil Engineer:~~

...

~~.3 Other, if any:~~

...

~~*(List any other consultants and contractors retained by the Owner.)*~~

...

~~*(List name, address, and other contact information.)*~~*(List name, title, address, email address, and telephone information)*

...

Kristilyn Vercruysse
510 Marquette Avenue South, Suite 200

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Minneapolis, MN 55402
kristilyn@msrdesign.com
612-616-8148

...

(List name, legal status, ~~address, and other contact information.)~~address, email address, and telephone information.)

...

Tatum-Smith-Welcher Engineers, Inc.

...

3100 S Market Street, Suite 202

...

Rogers, AR 72758

...

479-621-6128

...

HP Engineering, Inc.

...

5214 West Village Parkway, Suite 120

...

Rogers, AR 72758

...

479-899-6370

...

.3 Electrical ~~Engineer:~~Engineer / Lighting Design:

PAGE 5

HP Engineering, Inc.

...

5214 West Village Parkway, Suite 120

...

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Rogers, AR 72758

...

479-899-6370

...

.4 Plumbing Engineer:

...

HP Engineering, Inc.

...

5214 West Village Parkway, Suite 120

...

Rogers, AR 72758

...

479-899-6370

...

HP Engineering, Inc.

...

5214 West Village Parkway, Suite 120

...

Rogers, AR 72758

...

479-899-6370

...

.5 Civil Engineer:

...

Ecological Design Group

...

216 West Birch Street

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...

Rogers, AR 72756

...

501-378-0200

...

.6 Landscape Architect:

...

TENxTEN Studio

...

575 SE 9th Street #210

...

Minneapolis, MN 55414

...

612-440-8369

...

.7 Local Architect / Specifications:

...

Hight Jackson Associates

...

5201 West Village Parkway, Suite 300

...

Rogers, AR 72758

...

479-464-4965

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User Notes: (3B9ADA3B)

...

§ 1.1.11.2 Consultants retained under Supplemental ~~Services:~~Services

...

Low voltage, Security and Audio Visual Design (see Project Narrative Attachment for more description)

...

.1 Low Voltage System Design

...

HP Engineering, Inc

...

5214 West Village Parkway, Suite 120

...

Rogers, AR 72758

...

479-899-6370

PAGE 6

None

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...

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

...

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

PAGE 7

§ 2.5.1 Commercial General Liability with policy limits of not less than one million dollars ($ 1,000,000) for each occurrence and two million dollars ($ 2,000,000) in the aggregate for bodily injury and property damage.

...

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than one million dollars ($ 1,000,000) 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.

...

§ 2.5.5 Employers' Liability with policy limits not less than one million dollars ($ 1,000,000) each accident, one million dollars ($ 1,000,000) each employee, and one million dollars ($ 1,000,000) policy limit.

...

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than two million dollars ($ 2,000,000) per claim and four million dollars ($ 4,000,000) in the aggregate.

...

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

PAGE 8

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction. If the Architect is delayed at any time in the commencement or progress of its work by (1) an act or neglect of the Owner or, an employee of the Owner, or an act

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of failure to act of the Contractor; or (2) by changes ordered in the Work; or (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions as documented by the National Weather Service, epidemics, pandemics or other causes beyond the Architect's control; or (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that are beyond the Architect's control and that justify delay, then the time for the Architect's performance shall be extended for such reasonable time as the conditions causing the delay exist and for reasonable time to recover and staff the project.

...

§ 3.2.6 The Architect ~~shall submit to the Owner an estimate of~~ review the Cost of the Work prepared in accordance with Section ~~6.3.~~6.3 by Construction Manager hired by Owner.

PAGE 9

§ 3.3.2 The Architect shall ~~update the~~ review updated estimate of the Cost of the Work prepared in accordance with Section ~~6.3.~~6.3 by Construction Manager hired by Owner.

...

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

...

§ 3.4.4 The Architect shall ~~update~~ review the estimate for the Cost of the Work prepared in accordance with Section ~~6.3.~~6.3 by Construction Manager hired by Owner.

...

§ 3.5 Procurement Phase Services (services negotiated in PHASE 2)

...

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

...

§ 3.5.2 Competitive Bidding (services negotiated in PHASE 2)

PAGE 10

§ 3.6 Construction Phase Services (services negotiated in PHASE 2)

PAGE 12

§ 3.6.6 ~~Project~~ Construction Completion

PAGE 13

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(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this ~~Agreement.)~~ Agreement.

PAGE 14

Supplemental Services	**Responsibility** *(Architect, Owner, or not provided)*
§ 4.1.1.1 Programming	Not provided
§ 4.1.1.2 Multiple preliminary designs	2 designs
§ 4.1.1.3 Measured drawings	Not provided
§ 4.1.1.4 Existing facilities surveys	Not provided
§ 4.1.1.5 Site evaluation and planning	Not provided
§ 4.1.1.6 Building Information Model management responsibilities	Not provided
§ 4.1.1.7 Development of Building Information Models for post construction use	Not provided
§ 4.1.1.8 Civil engineering	Architect
§ 4.1.1.9 Landscape design	Architect
§ 4.1.1.10 Architectural interior design	Architect
§ 4.1.1.11 Value analysis	Not provided
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Not provided
§ 4.1.1.13 On-site project representation	Not provided
§ 4.1.1.14 Conformed documents for construction	Not provided
§ 4.1.1.15 As-designed record drawings	Not provided
§ 4.1.1.16 As-constructed record drawings	Not provided
§ 4.1.1.17 Post-occupancy evaluation	Not provided
§ 4.1.1.18 Facility support services	Not provided
§ 4.1.1.19 Tenant-related services	Not provided
§ 4.1.1.20 Architect's coordination of the Owner's consultants	Architect – Library Equipment Vendor
§ 4.1.1.21 Telecommunications/data design	Architect
§ 4.1.1.22 Security evaluation and planning	Not Provided
§ 4.1.1.23 Commissioning	Not provided
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	Not provided
§ 4.1.1.25 Fast-track design services	Not Provided
§ 4.1.1.26 Multiple bid packages	Not provided
§ 4.1.1.27 Historic preservation	Not provided
§ 4.1.1.28 Wayfinding Signage	PHASE 2
§ 4.1.1.29 Other services provided by specialty Consultants	Not provided
§ 4.1.1.30 Other Supplemental Services	Not provided
§ 4.1.1.31 Interior Design Services	Architect
§ 4.1.1.32 Furniture, Furnishings, and Equipment Design Services	PHASE 2

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Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1 Programming	
§ 4.1.1.2 Multiple preliminary designs	
§ 4.1.1.3 Measured drawings	
§ 4.1.1.4 Existing facilities surveys	
§ 4.1.1.5 Site evaluation and planning	
§ 4.1.1.6 Building Information Model management responsibilities	
§ 4.1.1.7 Development of Building Information Models for post-construction use	
§ 4.1.1.8 Civil engineering	
§ 4.1.1.9 Landscape design	
§ 4.1.1.10 Architectural interior design	
§ 4.1.1.11 Value analysis	
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	
§ 4.1.1.13 On-site project representation	
§ 4.1.1.14 Conformed documents for construction	
§ 4.1.1.15 As-designed record drawings	
§ 4.1.1.16 As-constructed record drawings	
§ 4.1.1.17 Post-occupancy evaluation	
§ 4.1.1.18 Facility support services	
§ 4.1.1.19 Tenant-related services	
§ 4.1.1.20 Architect's coordination of the Owner's consultants	
§ 4.1.1.21 Telecommunications/data design	
§ 4.1.1.22 Security evaluation and planning	
§ 4.1.1.23 Commissioning	
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	
§ 4.1.1.25 Fast-track design services	
§ 4.1.1.26 Multiple bid packages	
§ 4.1.1.27 Historic preservation	
§ 4.1.1.28 Furniture, furnishings, and equipment design	
§ 4.1.1.29 Other services provided by specialty Consultants	
§ 4.1.1.30 Other Supplemental Services	

...

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

...

See Project Scope Description in section 13.2

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...

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the ~~exhibit.)~~exhibit.

...

None

PAGE 15

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

...

.1 ~~(~~two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor

...

.2 (TBD in PHASE 2) visits to the site by the Architect during construction P

...

.3 ~~(~~two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents

...

.4 ~~(~~one (1) inspections for any portion of the Work to determine final completion.

...

.5 (TBD in PHASE 2) number of Owner – Architect – Contractor project meetings during construction.

...

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

PAGE 16

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section ~~4.1.1.~~4.1.1

...

~~**§ 5.7** If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™ 2017, Sustainable Projects Exhibit, attached to this Agreement.~~

...

§ ~~5.8~~ 5.7 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts

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between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

...

§ ~~5.9~~ 5.8 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

...

§ ~~5.10~~ 5.9 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

...

§ ~~5.11~~ 5.10 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

...

§ ~~5.12~~ 5.11 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

...

§ ~~5.13~~ 5.12 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

...

§ ~~5.14~~ 5.13 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

...

§ ~~5.15~~ 5.14 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

PAGE 19

~~[ ] Arbitration pursuant to Section 8.3 of this Agreement~~

...

[x] Litigation in a court of competent jurisdiction

...

§ 8.3 ~~Arbitration~~

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...

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

...

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

...

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

...

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

...

~~§ 8.3.4 Consolidation or Joinder~~

...

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

...

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

...

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

...

~~§ 8.4~~ The provisions of this Article 8 shall survive the termination of this Agreement.

PAGE 20

Ten percent (10%) of remaining unpaid fee

...

5% of Architects total project fee

...

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.~~If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.~~

PAGE 21

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, ~~arbitrator's order,~~ or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

...

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

...

$874,965 (eight hundred seventy four thousand nine hundred sixty five dollars

...

~~.2 Percentage Basis~~

...

~~*(Insert percentage value)*~~

...

~~( ) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.~~

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...

~~.3~~ .2 Other

...

$18,000 for reimbursables (eighteen thousand dollars)

...

§ 11.2 For the Architect's Supplemental Services designated in Section ~~4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3,~~ 4.1.1, the Owner shall compensate the Architect as follows:

...

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

...

none

...

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

...

To be negotiated at the time Additional Services are required

PAGE 22

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus 0 percent (0 %), or as follows:

...

~~*(Insert amount of, or*~~ *(Provide basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)*

...

Compensation will be added as needed per Supplemental or Additional Service request

...

§ 11.5 When compensation for Basic Services is based on a stipulated sum ~~or a percentage basis,~~ the proportion of compensation for each phase of services shall be as ~~follows:~~follows

...

Schematic Design Phase	178,352	percent (	20.38	%)
Design Development Phase	253,755	percent (	29.00	%)

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Construction Documents Phase	442,858	percent (	50.61	%)
Procurement Phase			PHASE 2	
Construction Phase			PHASE 2	
Total Basic Compensation	$874,965	percent (	100	%)
~~Schematic Design Phase~~		~~percent (~~		~~%)~~
~~Design Development Phase~~		~~percent (~~		~~%)~~
~~Construction Documents Phase~~		~~percent (~~		~~%)~~
~~Procurement Phase~~		~~percent (~~		~~%)~~
~~Construction Phase~~		~~percent (~~		~~%)~~
~~Total Basic Compensation~~	~~one hundred~~	~~percent (~~	~~100~~	~~%)~~

...

~~§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.~~

...

~~§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.~~

...

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

...

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

...

~~**Employee or Category** **Rate ($0.00)**~~

...

§ ~~11.8~~ 11.6 Compensation for Reimbursable Expenses

...

§ ~~11.8.1~~ 11.6.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

...

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§ ~~11.8.2~~ 11.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus 0 percent (0 %) of the expenses incurred.

PAGE 23

§ ~~11.9~~ 11.7 **Architect's Insurance.** If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

...

§ ~~11.10~~ 11.8 **Payments to the Architect**

...

~~§ 11.10.1 Initial Payments~~

...

~~§ 11.10.1.1 An initial payment of ($) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.~~

...

~~§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of ($) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.~~

...

§ ~~11.10.2~~ 11.8.1 **Progress Payments**

...

§ ~~11.10.2.1~~ 11.8.1.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid sixty (60) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

...

(Insert rate of monthly or annual interest agreed ~~upon.)~~upon.

...

~~%~~ Interest rate to be calculated as three percentage points over the one month LIBOR rate as published in the Wall Street Journal

...

§ ~~11.10.2.2~~ 11.8.1.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

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...

§ ~~11.10.2.3~~ 11.8.1.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

...

12.1 Risk Allocation Disclaimer

The Owner and the Architect have discussed their risks, rewards, and benefits for the project and the Architect's total fee for services. The Architect agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Owner, its officers, directors and employees against all damages, liabilities, or costs to the extent caused by the Architect's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the Architect is legally liable. The Owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Architect, its officers, directors, and employees against all damages, liabilities, or costs to the extent caused by the Owner's negligent acts in connection with the Project and the acts of its contractors, subcontractors, or consultants, or anyone for whom the Owner is legally liable. Neither the Owner, nor the Architect, shall be obligated to indemnify the other in any matter whatsoever for the other party's fault.

12.2 Indemnification for Pollution Disclaimer

In consideration of the unavailability of professional liability insurance from services relating to or arising out of or associated in any way with the actual, alleged or threatened discharge, dispersal, release or escape of pollutants or any governmental or regulatory directive or request for testing, monitoring, clean up, removal, containment, treatment, detoxify or neutralize pollutants, it is expressly agreed between the Owner and Architect that the Owner shall indemnify and hold harmless the Architect, its consultants, agents, and employees from and against all claims, including claims of employees of the Owner, any Contractor and Subcontractors, damages, losses and expenses, direct and indirect, or consequential damages, including but not limited to fees and charges of attorneys, court costs, and the costs relating to arbitration fees, and costs relating to government or regulatory directives or requests arising out of or related in any way to "pollution" by any party involved with the project and regardless of whether the claims or damages are based on Contract, tort, including negligence, strict liability, warranty, or otherwise. "Pollutants" is defined as any solid, liquid, gaseous, or thermal irritant or contaminant, including, but not limited to mold, smoke vapor, soot, fumes, acids, alkalis, chemicals, and waste. The Architect will not be asked to evaluate or review any information regarding pollutants.

12.3 Repetitive Stress Disclaimer

It is acknowledged by the Owner that the Architect's scope of services does not include services relating to the selection of office-type equipment, including but not limited to computers, video display terminals, and keyboards, nor relating to the ergonomic effects associated with the use of such equipment. Accordingly, the Owner agrees, notwithstanding any other provision of this Agreement, to the fullest extent permitted by Law, to indemnify and hold harmless the Architect, and its principals, officers, directors, employees, agents, and independent consultants and any of them from all claims, suits, demands, liabilities, losses or costs, including reasonable attorney's fees and defense costs, arising out of the use of office-type equipment, including but not limited to computers, video display terminals, and keyboards, or for those resulting from cumulative trauma disorder, repetitive stress injuries or any adverse ergonomic effects associated with the use of such equipment.

12.4 ADA Disclaimer

The Architect will exercise its best professional effort to interpret the Americans with Disabilities Act (ADA) and the ADA Accessibility Guidelines (ADAAG) in place as of the date of this Agreement. The scope of services provided by the Architect is limited to the requirements of Titles II and III of the ADA. The Architect cannot provide recommendations or advice concerning which ADA requirements or measures may be "readily achievable", nor can the Architect determine the priorities or phasing of selected measures. These issues must be addressed by the Owner with assistance from its financial and legal counsel.

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~~.2 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.)*~~

...

~~.3~~ .2 Exhibits:

...

~~[ ] AIA Document E204™ 2017, Sustainable Projects Exhibit, dated as indicated below:~~

...

~~(Insert the date of the E204-2017 incorporated into this agreement.)~~

...

[x] Other Exhibits incorporated into this Agreement:

...

Project Scope Description which includes additional service description.

...

~~.4 Other documents:~~

...

~~*(List other documents, if any, forming part of the Agreement.)*~~

PAGE 25

Matthew S. Kruntorad, AIA, Principal, #10100

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Traci Lesneski, 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 19:51:17 CT on 08/23/2021 under Order No. 1123312871 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ - 2017, Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

_____

(Signed)

_____

(Title)

_____

(Dated)

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9/15/2021

MSR Design

Hadi Dudley, Library Director
Bentonville Public Library
405 S. Main Street
Bentonville, AR 72712

Re: Bentonville Public Library Expansion | Project Scope Description

Miss Hadi,

MSR Design is pleased to present you with our proposal for design services related to the Bentonville Public Library Expansion project as outlined in your Request for Qualifications dated May 16, 2021 (RFQ-21-47). It is our understanding that the full scope of work will happen in two contract phases. The work included in those phases are described below. Phase 1 fees and additional services will be provided in this initial proposal and B101 contract. Fees will be given for the Phase 2 scope at time of contract amendment.

Phase 1: (Basic Services)
Schematic Design, Design Development, and Construction Documents.

- Verifying project scope as defined in the Needs Assessment and other owner provided documents.
  - This fee is for the Full Option with estimated Project Budget at $14,965,774 and estimated Construction Cost at $10,924,989.
- Verifying aspirations and programming for the project as defined in the Needs Assessment.
  - MSR to account for 10 stakeholder meetings with meeting minutes to review the Needs Assessment documents. These meeting can be in person if associated with a design trip or kick off meeting. If not, meetings will be held virtually.
- Develop a schematic design (including architectural, interior design, landscape, mechanical, electrical, plumbing, fire protection, civil, and structural) that aligns construction cost, project scope, and project timeline. Explore no more than 2 primary options.
  - Provide pricing documents to CM and review CM estimate.
  - Provide drawings, Material ID list, and narrative.
- Develop Schematic Design into Design Development documents and submit as required for City Review – includes outline specification.
  - Provide pricing documents to CM and review CM estimate. Align budget and project scope.
  - Local Architect to provide quality control review of documents.
- Provide final construction Drawings and Specifications for project (not including FFE or non code required Signage).
  - Provide pricing documents to CM and review CM estimate. Align budget and project scope.
  - Local architect to provide quality control review of documents.
- Project phases included in the proposal are Schematic Design (3 months), Design Development (3 months), and Construction Documentation (4 months).
  - The time above allows 2-3 weeks for CM pricing and 1 week for owner review and price alignment per phase. During this time MSR will pause in documentation to minimize rework.
- Code required signage.
- Preliminary furniture layouts (not including exact selections or specifications)
- Design / Coordinate Low Voltage system for expansion and renovation.
  - Including coordination with COB/BPL IT department and library specialty equipment provider.
  - Includes AV design for meeting spaces and larger gathering rooms.
  - Includes design and documentation of cameras, access control, fire alarm, and burglar alarm.

    - Does not include: specialty equipment for maker / activity zones, phone design or specifications, or selection of specialty library equipment such as AMH, security gates, or laptop vending machines.
- Issuing permit drawings will be under phase 1 – fee does not include building permitting fee. Building permit to be paid for by owner or contactor.
- Assist owner with overall product budget.

To support the Bentonville Public Library Expansion goals and needs, MSR will lead the following efforts:

- Assemble, lead, and manage the design team consultants.
- Provide materials for, and present the project at, Owner established public & community presentations as listed below.
    - (1) City Council Meeting Per Phase (virtual)
    - Kick off meeting + (1) in person design meeting per phase + 2 additional trips as needed (6 trips total with two people per trip). 1 trip for TenXTen for site visit.
    - Bi weekly meetings with Core Decision Makers through design phases. (virtual meetings)
- Work with Owner and Local Architect to obtain land use and building code approval for the project.
- Work with the CM to develop cost estimates at 30%, 60%, 90%.
- Create Revit Model of existing building from Construction Drawings provided by owner.

The following deliverables will be provided as the result of the responsibilities and tasks outlined above:

- SD drawing set and narrative to document project scope and support cost estimate
- DD drawing set and outline specification to document project scope and support cost estimate
- 50% CD drawing set and specification to document project scope and support cost estimate
- 100% Construction Documents & specifications for Permitting and to be used for future bidding process.
- (3) project renderings at DD to support fundraising and external communications

Phase 2: Bidding and Construction Administration (CA), FFE services, and Signage development. This scope of work will be negotiated at the time of contract amendment.

- Signage design beyond code signage (both exterior and interior)
- Review Bids and provide feedback on bidders
- Fixtures, Furniture, and Equipment (FFE) selection and specification.
- Review owner or CM provided Div 0 specification section.
- Review owner or CM provided bidding packages.
- Local Architect to provide CA services with MSR oversite for design intent.
- Reimbursibles for CA.

The following efforts & deliverables are exclusions from this proposal for either phase unless negotiated at a later date. MSR can provide an additional proposal should the project's needs require such efforts:

- Services related to scopes that are yet to be defined
- As-built drawings of existing building conditions
- LBC / LEED / B3 administration and/or documentation or tracking
- Extensive VE efforts related to Owner changes or bidding market
- Fundraising, Marketing, & Community communications renderings – other than mentioned above
- VR (virtual reality) walk throughs
- Experiential design / exhibit design / owner elected arts program
- Construction cost estimates
- Surveys, geotechnical reports, environmental reports or other specialized reports needed
- Operational analysis
- Preparation of Record Documents
- Energy Modeling
- Life cycle analysis

For Phase 1 noted efforts & services:

See B101 AIA contract for Fees associated with Phase 1 work.

MSR proposes the following to cover reimbursable expenses including for Phase 1: (define by project - printing, postage, registrations, airfare, hotel, meals and mileage):

See B101 AIA contract for Fees for reimbursable expenses for Phase 1 work.

This proposal is based upon the following project conditions:

- 11 Month design time – starting Fall 2021
- 1 month for permitting
- 2 months for bidding
- An estimated 14 Month Construction Time – TBD at Phase 2 contract negotiation
- Information provided in Bentonville Public Library Needs Assessment dated 3/05/2021

MSR's payment terms are outlined below:

- All invoices are due 45 days from the date of invoice.
- MSR will assess a finance charge of 5% on any invoices past due.
- MSR reserves the right to stop work/withhold service without recourse due to non-payment of any past due invoice.

We are excited to move into this next phase with Bentonville Public Library and appreciate the opportunity to be a part of this team and community.

Please let me know if you have any questions related to this proposal, and we can establish a time to review together.

Sincerely,



Kristilyn Vercruysse, AIA, Senior Associate
612.616.8148 | kristilyn@msrdesign.com

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND THE CITY CLERK TO ENTER AN AGREEMENT WITH MEYER, SCHERER & ROCKCASTLE, LTD FOR THE RENOVATION AND EXPANSION OF BENTONVILLE PUBLIC LIBRARY.

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

Section 1: That the Mayor and City Clerk be and are hereby authorized to enter into an agreement with Meyer, Scherer & Rockcastle, Ltd for the renovation and expansion of Bentonville Public Library with site development, 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	**9/14/2021**
Department	**Library**
Submitted by	**Hadi Dudley**
Phone	**479-271-3194**

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 the City Clerk to enter into an agreement with Flintco, LLC in the amount of $36,100 to provide preconstruction services for the Bentonville Public Library expansion. This firm was selected in accordance with §14-58-1001 for projects exceeding $2 million dollars.

Estimated Cost	**$36,100.00**
Is this Item Budgeted?	☐ Yes ☑ No

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

Bond funds

Bentonville Public Library

Memorandum

TO: Bentonville City Council, Mayor Stephanie Orman
FROM: Hadi Dudley, Library Director
CC: Camille Thompson, Staff Attorney and Jake Harper, Finance Director
SUBJECT: A Resolution contracting with Flintco for preconstruction services of BPL's expansion
DATE: September 1, 2021

Bentonville Public Library (BPL) seeks City Council approval authorizing the mayor and the city clerk to enter into an agreement with Flintco, LLC to provide preconstruction services for Bentonville Public Library's expansion for an amount not to exceed $36,100.

The firm was selected in accordance with state law for projects exceeding $2 million dollars. In the evaluation process for RFQ-21-48, Flintco's total rating was the highest by committee members in both the initial and final evaluation stages. Assessments were rated on ten firms' statement of qualifications submissions and interviews and proposals of the top-three firms.

Upon contract execution, Flintco will collaborate with the project designer MSR Design and BPL to provide input in finalizing the drawings, cost estimates and associated project services. The professional services rendered will include assistance with construction cost estimating, project constructability analysis, value engineering and other construction efficiency input and analysis.

Bentonville Public Library's expansion will enhance its already vital role in our growing city by offering more services, materials and programs in order to meet current and future needs patrons expect from a first-class library. BPL's recent Needs Assessment study revealed our community loves the library and wants more space, new amenities, and unique opportunities to learn, connect, gather, and participate in enriched programming typically found in libraries today.

The assessment recommended a 65,055 SF facility that would be designed and constructed in a single-phased approach for optimized efficiency and economy that maximizes available land. The option included a 26,555 SF addition with 18,390 SF interior renovation, plus additional light renovation and site development. The estimated cost and proposed budget is $15,000,000.

The project will be funded through a public/private partnership with $4,500,000 funded by the City bond extension and $10,500,000 from fundraising efforts through the Library Foundation. The final design will inform amenities, programming, square footages and actual cost, which be determined and fully developed in the forthcoming months.

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

Funding for preconstruction services comes from the 2021 bond election.

If you have any questions regarding this item, please contact me at 479-271-3194 or hdudley@bentonvillear.com.

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 15th day of September in the year 2021
(In words, indicate day, month, and year.)

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

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

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

Flintco, LLC
184 East Fantinel Blvd
Springdale, AR 72762

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

City of Bentonville – Public Library Expansion Project
405 South Main Street
Bentonville, AR 72712

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

TBD

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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TABLE OF ARTICLES

1 INITIAL INFORMATION

2 GENERAL PROVISIONS

3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

4 OWNER'S RESPONSIBILITIES

5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

7 COST OF THE WORK FOR CONSTRUCTION PHASE

8 DISCOUNTS, REBATES, AND REFUNDS

9 SUBCONTRACTS AND OTHER AGREEMENTS

10 ACCOUNTING RECORDS

11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

12 DISPUTE RESOLUTION

13 TERMINATION OR SUSPENSION

14 MISCELLANEOUS PROVISIONS

15 SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT
EXHIBIT B INSURANCE AND BONDS

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.)

The project scope is based on information provided in the library's Needs Assessment Report – Full Option dated 3/05/2021. Final scope to be determined.

§ 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.)

Project anticipated area (square footage): approximately 26,555 SF addition with 18,390 SF interior renovation and site improvements; final SF to be determined.

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§ 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.)

Project has a proposed, estiamted budget of Ten Million Nine Hundred Twenty Four Thousand Nine Hundred Eighty Nine and 00/100 Dollars ($10,924,989.00).

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

.1 Design phase milestone dates, if any:

•

All Other Dates TBD

.2 Construction commencement date:

TBD

.3 Substantial Completion date or dates:

TBD at Time of GMP

.4 Other milestone dates:

N/A

§ 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.)

N/a

§ 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.)

See 1.1.7

§ 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.)

RFQ-21-48-Construction Manager for Bentonville Public Library Expansion Response Packet

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

Hadi Dudley
Bentonville Public Library
405 South Main Street
Bentonville, AR 72712

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User Notes: (3B9ADA40)

(479) 271-3194
hdudley@bentonvillear.com

§ 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.)

To be determined by Owner at a later date

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

.1 Geotechnical Engineer:

To be determined at a later date

.2 Civil Engineer:

To be determined at a later

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

N/A

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

To be determined at a later

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

Brent Farmer
184 E. Fantinel Blvd
Springdale, AR 72762
(479) 306-6259
bfarmer@flintco.com

§ 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.)

Not applicable

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

Not applicable

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

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None

§ 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.

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§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

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.

§ 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 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. 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.

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§ 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 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. 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.

§ 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.)

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Reference Attached RFQ-21-48 Construction Manager for Bentonville Public Library Expansion

§ 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 all trade construction contracts, including allowances and contingencies described in Section 2.2.4, the General Conditions, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 [Reserved]

§ 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. The Owner and the Construction Manager acknowledge that the contingency is included in the Guaranteed Maximum Price proposal for costs, which have not been taken into precise account in the establishment of the Guaranteed Maximum Price, including, but not limited to those resulting from:

(1) scope gaps between trade contractors;
(2) costs due to subcontractor failure that are not paid under applicable subcontractor default insurance;
(3) excess costs due to major weather events;
(4) damage to the Work not recoverable from another party or insurance policy; or
(5) any other increase in the Cost of the Work due to an unforeseen event or occurrence that is not under the Construction Manager's control.

The Construction Manager's contingency may be applied by the Construction Manager, at its sole discretion, to any item of cost described above or as defined by the Cost of the Work without the necessity of a modification, without constituting a change in the Work, and without resulting in any change in the Guaranteed Maximum Price. The Construction Manager shall advise the Architect and the Owner in writing when applying a part of the Construction Manager's contingency as allowed by the Contract Documents.

§ 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.

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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 agreed to in the Guaranteed Maximum Price Amendment or 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.

§ 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 effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 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.

§ 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 reasonably 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.

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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 required by the Contract Documents or otherwise agreed to in writing by the parties.

§ 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, restrictive covenants, plats, deeds showing current ownership of the real property making up the site, 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

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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.)

A lump sum amount of $36,100, based on an estimated $11M budget. Preconstruction services shall be adjusted at one third of a percent (0.33%) if budget exceeds $11M.

§ 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.)

None

Individual or Position	Rate

§ 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 Twelve Months (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 thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)
Wall Street Journal Prime Rate plus 2%, as published in the printed version of the Wall Street Journal, not to exceed ten percent (10%) per annum.

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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.)

Five percent (5.0%) of the Cost of the Work

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

Five percent (5.0%) of the Cost of the Work

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

To be established with Contract Documents

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceedone hundred percent (100 %) of the current edition of the "AED Green Book" standard rate.

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

Not applicable

§ 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.)

All savings to be returned to the Owner

§ 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.

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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. The Construction Manager shall include in the Guaranteed Maximum Price proposal as part of the Cost of the Work a lump sum amount for General Conditions that shall include all costs of Construction Manager's supervisory and administrative personnel including all associated costs of insurance, taxes, benefits, vehicle allowances, cell phones, radios, telecommunications, computers, software, other miscellaneous office costs, office trailer rental, office utilities, and any other costs required to maintain a construction office at the site. This lump sum amount for General Conditions shall be billed and paid in equal monthly installments commencing with the calendar month next following the date of commencement of construction of the Project through the month of the date of anticipated Substantial Completion. The monthly installment amount may be prorated for part of a calendar month at the commencement of construction. The Construction Manager will provide Owner a General Conditions budget during the Preconstruction Phase.

§ 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.

§ 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. Provided, however, that the wages and salaries for such construction workers while performing construction work as part of a self-perform trade scope of work awarded to the Construction Manager shall be included in the Construction Manager's lump sum price for that scope of work.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel are included in the General Conditions and shall not be charged separately as part of labor

§ 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

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required for the Work, but only for that portion of their time required for the Work are included in the General Conditions and shall not be charged separately as part of labor costs.

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§ 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 (collectively referred to as "Construction Worker Burden"). The Construction Worker Burden shall be at the fixed rate of 49% of wages and salaries included in the Cost of the Work under Sections 7.2.1.

§ 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/Trade Contractors in accordance with the requirements of the subcontracts or trade construction contracts awarded pursuant to the Act and payments due to the Construction Manager for any self-performed portions of the Work.

§ 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. Rates of Construction Manager-owned equipment shall be one hundred percent (100%) of the current edition of the "AED Green Book" standard rate.

§ 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. Costs of document reproductions within the Construction Manager's office at the site, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the Construction Manager's site office are included in the General Conditions and shall not be charged separately as part of temporary facilities costs.

§ 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.

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§ 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 at fixed rates agreed to by the Owner.

§ 7.6.1.1 [Reserved}

§ 7.6.1.2 [Reserved]

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to any portion of 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. If the Construction Manager self-performs any scope of the work as a trade contractor, upon approval by the Owner, the scope of the work will be performed on a lump sum basis, and shall be paid on a percentage of completion basis according to the schedule of values provided by the Construction Manager on Applications for Payment.

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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; and

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

(Paragraph Deleted)

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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.

§ 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 The Construction Manager shall solicit bids for all portions of the Work including portions that the Construction Manager customarily performs with the Construction Manager's own personnel. The Construction Manager shall solicit 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 in accordance with the mandatory provisions of the ActThe 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 [Reserved]

§ 9.2 [Reserved]

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. Upon execution of a mutually acceptable non-disclosure agreement by the Construction Manager, the Owner and the Owner's auditors, 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. The Owner agrees that (i) lump sum amounts for General Conditions, the lump sum amounts for self-perform work, Subcontractor lump subcontract amounts, rates, multipliers and other fixed percentages and amounts it has agreed that the Construction Manager may charge as a Cost of the Work are subject to the Owner's audit rights only for the Owner to confirm that such lump sum amounts, rates, multipliers, percentages or amounts have been charged by the Construction Manager in accordance with the Contract Documents, and (ii) the composition of such rates, multipliers, percentages or amounts is not subject to audit by the Owner or the Owner's auditors.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect and the Owner by the Construction Manager, 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.

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§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 1st day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the 15th day of the same 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 fifteen (15) days after the Architect receive the Application for Payment.

(Paragraph Deleted)

§ 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 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; 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

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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;

.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% of all subcontracted amounts.

§ 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.)

Amounts attributable to fee, general conditions, directly purchased materials, field services, insurance and bonds.

§ 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.)

Not applicable

§ 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.)

Not applicable

§ 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.

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§ 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

.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 15 days after the issuance of the Architect's final Certificate for Payment

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§ 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

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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.)

Wall Street Journal Prime Rate plus 2%, as published in the printed version of the Wall Street Journal, not to exceed ten percent (10%) per annum

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.

§ 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

[ ] Litigation in a court of competent jurisdiction

[X] Other: *(Specify)*

Mediation

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 by Owner 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.

§ 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.

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§ 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 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, purchase orders and rental agreements 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 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

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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 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 both past and future 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 two million ($ 2,000,000) for each occurrence and four million ($ 4,000,000) 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 one million ($ 1,000,000) 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.

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§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than one million ($ 1,000,000) each accident, one million ($ 1,000,000) each employee, and one million ($ 1,000,000) 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 one million ($ 1,000,000) per claim and pne million ($ 1,000,000) 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
Not applicable	

§ 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:

In the event of significant delay or significant price increase of material occurring during the performance of the Work through no fault of the Construction Manager, the Contract Sum and time of performance shall be equitably adjusted by Change Order in accordance with the procedures of the Contract Documents. A change in price of an item of material shall be considered significant when the price of an item increases 5% percent between the date of this Agreement and the date of installation.

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:

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.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

(Paragraphs Deleted)

(Table Deleted)

(Paragraphs Deleted)

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

OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
Stephanie Orman Mayor of Bentonville	Brent Farmer Area Manager, Vice President
(Printed name and title)	*(Printed name and title)*

Init.

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PAGE 1

AGREEMENT made as of the 15th day of September in the year 2021

...

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

...

Flintco, LLC
184 East Fantinel Blvd
Springdale, AR 72762

...

City of Bentonville – Public Library Expansion Project
405 South Main Street
Bentonville, AR 72712

...

(Name, legal status, address, and other ~~information)~~information

TBD

PAGE 2

The project scope is based on information provided in the library's Needs Assessment Report – Full Option dated 3/05/2021. Final scope to be determined.

...

Project anticipated area (square footage): approximately 26,555 SF addition with 18,390 SF interior renovation and site improvements; final SF to be determined.

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PAGE 3

Project has a proposed, estiamted budget of Ten Million Nine Hundred Twenty Four Thousand Nine Hundred Eighty Nine and 00/100 Dollars ($10,924,989.00).

•

...

All Other Dates TBD

...

TBD

...

TBD at Time of GMP

...

N/A

...

N/a

...

See 1.1.7

...

RFQ-21-48-Construction Manager for Bentonville Public Library Expansion Response Packet

...

Hadi Dudley
Bentonville Public Library
405 South Main Street
Bentonville, AR 72712
(479) 271-3194
hdudley@bentonvillear.com

PAGE 4

To be determined by Owner at a later date

...

To be determined at a later date

...

To be determined at a later

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...

N/A

...

To be determined at a later

Brent Farmer
184 E. Fantinel Blvd
Springdale, AR 72762
(479) 306-6259
bfarmer@flintco.com

...

Not applicable

...

Not applicable

PAGE 5

None

PAGE 8

Reference Attached RFQ-21-48 Construction Manager for Bentonville Public Library Expansion

...

§ 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,~~ all trade construction contracts, including allowances and contingencies described in Section 2.2.4, the General Conditions, and the Construction Manager's Fee described in Section 6.1.2.

...

§ 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.~~[Reserved]

...

§ 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. The Owner and the Construction Manager acknowledge that the contingency is included in the Guaranteed Maximum

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Price proposal for costs, which have not been taken into precise account in the establishment of the Guaranteed Maximum Price, including, but not limited to those resulting from:

...

(1) scope gaps between trade contractors;

...

(2) costs due to subcontractor failure that are not paid under applicable subcontractor default insurance;

...

(3) excess costs due to major weather events;

...

(4) damage to the Work not recoverable from another party or insurance policy; or

...

(5) any other increase in the Cost of the Work due to an unforeseen event or occurrence that is not under the Construction Manager's control.

...

The Construction Manager's contingency may be applied by the Construction Manager, at its sole discretion, to any item of cost described above or as defined by the Cost of the Work without the necessity of a modification, without constituting a change in the Work, and without resulting in any change in the Guaranteed Maximum Price. The Construction Manager shall advise the Architect and the Owner in writing when applying a part of the Construction Manager's contingency as allowed by the Contract Documents.

PAGE 9

§ 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 agreed to in the Guaranteed Maximum Price Amendment or the Owner provides prior written authorization for such costs.

...

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 reasonably required by the Owner.

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PAGE 10

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as required by the Contract Documents or otherwise agreed to ~~by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.~~in writing by the parties.

...

§ 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, restrictive covenants, plats, deeds showing current ownership of the real property making up the site, 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.

PAGE 11

A lump sum amount of $36,100, based on an estimated $11M budget. Preconstruction services shall be adjusted at one third of a percent (0.33%) if budget exceeds $11M.

...

None

...

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within Twelve Months (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 ~~(~~ thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

...

Wall Street Journal Prime Rate plus 2%, as published in the printed version of the Wall Street Journal, not to exceed ten percent (10%) per annum.

...

~~%~~

PAGE 12

Five percent (5.0%) of the Cost of the Work

...

Five percent (5.0%) of the Cost of the Work

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...

To be established with Contract Documents

...

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed ~~percent (%) of the standard rental rate paid at the place of the Project.~~one hundred percent (100 %) of the current edition of the "AED Green Book" standard rate.

...

Not applicable

...

All savings to be returned to the Owner

PAGE 13

§ 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. The Construction Manager shall include in the Guaranteed Maximum Price proposal as part of the Cost of the Work a lump sum amount for General Conditions that shall include all costs of Construction Manager's supervisory and administrative personnel including all associated costs of insurance, taxes, benefits, vehicle allowances, cell phones, radios, telecommunications, computers, software, other miscellaneous office costs, office trailer rental, office utilities, and any other costs required to maintain a construction office at the site. This lump sum amount for General Conditions shall be billed and paid in equal monthly installments commencing with the calendar month next following the date of commencement of construction of the Project through the month of the date of anticipated Substantial Completion. The monthly installment amount may be prorated for part of a calendar month at the commencement of construction. The Construction Manager will provide Owner a General Conditions budget during the Preconstruction Phase.

...

§ 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. Provided, however, that the wages and salaries for such construction workers while performing construction work as part of a self-perform trade scope of work awarded to the Construction Manager shall be included in the Construction Manager's lump sum price for that scope of work.

...

§ 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.~~are included in the General Conditions and shall not be charged separately as part of labor

PAGE 14

§ 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.~~Work are included in the General Conditions and shall not be charged separately as part of labor costs.

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...

§ 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~~ pensions (collectively referred to as "Construction Worker Burden"). The Construction Worker Burden shall be at the fixed rate of 49% of wages and salaries included in the Cost of the Work under Sections ~~7.2.1 through 7.2.3.~~7.2.1.

...

Payments made by the Construction Manager to ~~Subcontractors~~ Subcontractors/Trade Contractors in accordance with the requirements of the subcontracts ~~and this Agreement.~~or trade construction contracts awarded pursuant to the Act and payments due to the Construction Manager for any self-performed portions of the Work.

...

§ 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.~~Rates of Construction Manager-owned equipment shall be one hundred percent (100%) of the current edition of the "AED Green Book" standard rate.

...

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies. Costs of document reproductions within the Construction Manager's office at the site, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the Construction Manager's site office are included in the General Conditions and shall not be charged separately as part of temporary facilities costs.

PAGE 15

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this ~~Contract.~~Contract at fixed rates agreed to by the Owner.

...

§ 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.~~[Reserved]

...

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

...

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

...

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval. If the Construction Manager self-performs any scope of the work as a trade contractor, upon approval by the Owner, the scope of the work will be performed on a lump sum basis, and shall be paid on a percentage of completion basis according to the schedule of values provided by the Construction Manager on Applications for Payment.

PAGE 16

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

...

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

...

~~.9 Costs for services incurred during the Preconstruction Phase.~~

...

PAGE 17

§ 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~~ The Construction Manager shall solicit bids for all portions of the Work including portions that the Construction Manager customarily performs with the Construction Manager's own personnel. The Construction Manager shall solicit 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~~ Documents in accordance with the mandatory provisions of the ActThe 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, 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.~~[Reserved]

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...

§ 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.~~[Reserved]

...

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~~ Upon execution of a mutually acceptable non-disclosure agreement by the Construction Manager, the Owner and the Owner's auditors, 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. The Owner agrees that (i) lump sum amounts for General Conditions, the lump sum amounts for self-perform work, Subcontractor lump subcontract amounts, rates, multipliers and other fixed percentages and amounts it has agreed that the Construction Manager may charge as a Cost of the Work are subject to the Owner's audit rights only for the Owner to confirm that such lump sum amounts, rates, multipliers, percentages or amounts have been charged by the Construction Manager in accordance with the Contract Documents, and (ii) the composition of such rates, multipliers, percentages or amounts is not subject to audit by the Owner or the Owner's auditors.

...

§ 11.1.1 Based upon Applications for Payment submitted to the Architect ~~by the Construction Manager, and Certificates for Payment issued by the Architect,~~ and the Owner by the Construction Manager, 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:~~month.

PAGE 18

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 1st day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the 15th day of the same 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.~~fifteen (15) days after the Architect receive the Application for Payment.

...

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

PAGE 19

5% of all subcontracted amounts.

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...

Amounts attributable to fee, general conditions, directly purchased materials, field services, insurance and bonds.

...

Not applicable

...

Not applicable

PAGE 20

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than ~~30~~ 15 days after the issuance of the Architect's final Certificate for ~~Payment, or as follows:~~Payment

...

PAGE 21

~~%~~ Wall Street Journal Prime Rate plus 2%, as published in the printed version of the Wall Street Journal, not to exceed ten percent (10%) per annum

...

§ 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.~~

...

[X] Other: *(Specify)*

...

Mediation

...

§ 13.1.2 In the event of termination of this Agreement by Owner 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.~~

PAGE 23

§ 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 both past and future obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

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...

§ 14.3.1.1 Commercial General Liability with policy limits of not less than two million ($ 2,000,000) for each occurrence and four million ($ 4,000,000) 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 one million ($ 1,000,000) 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.

PAGE 24

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than one million ($ 1,000,000) each accident, one million ($ 1,000,000) each employee, and one million ($ 1,000,000) 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 one million ($ 1,000,000) per claim and pne million ($ 1,000,000) in the aggregate.

...

Not applicable

...

In the event of significant delay or significant price increase of material occurring during the performance of the Work through no fault of the Construction Manager, the Contract Sum and time of performance shall be equitably adjusted by Change Order in accordance with the procedures of the Contract Documents. A change in price of an item of material shall be considered significant when the price of an item increases 5% percent between the date of this Agreement and the date of installation.

PAGE 25

~~.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.)*~~

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...

~~[ ] 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.)~~

...

~~[ ] 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.)*~~

...

Stephanie Orman Mayor of Bentonville

Brent Farmer Area Manager, Vice President

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Brent Farmer, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 09:22:18 ET on 08/20/2021 under Order No. 2513164306 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.

_____

(Signed)

_____

(Title)

_____

(Dated)

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AIA® Document A201® – 2017

General Conditions of the Contract for Construction

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

City of Bentonville – Public Library Expansion Project
405 South Main Street
Bentonville, AR 72712

THE OWNER:
(Name, legal status and address)

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

THE ARCHITECT:
(Name, legal status and address)

TBD

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.

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

TABLE OF ARTICLES

1 GENERAL PROVISIONS

2 OWNER

3 CONTRACTOR

4 ARCHITECT

5 SUBCONTRACTORS

6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

7 CHANGES IN THE WORK

8 TIME

9 PAYMENTS AND COMPLETION

10 PROTECTION OF PERSONS AND PROPERTY

11 INSURANCE AND BONDS

12 UNCOVERING AND CORRECTION OF WORK

Init.
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13 MISCELLANEOUS PROVISIONS

14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES

Init.
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INDEX
(Topics and numbers in bold are Section headings.)

Acceptance of Nonconforming Work
9.6.6, 9.9.3, 12.3
Acceptance of Work
9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3
Access to Work
3.16, 6.2.1, 12.1
Accident Prevention
10
Acts and Omissions
3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,
10.2.8, 13.3.2, 14.1, 15.1.2, 15.2
Addenda
1.1.1
Additional Costs, Claims for
3.7.4, 3.7.5, 10.3.2, 15.1.5
Additional Inspections and Testing
9.4.2, 9.8.3, 12.2.1, 13.4
Additional Time, Claims for
3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, 15.1.6
Administration of the Contract
3.1.3, 4.2, 9.4, 9.5
Advertisement or Invitation to Bid
1.1.1
Aesthetic Effect
4.2.13
Allowances
3.8
Applications for Payment
4.2.5, 7.3.9, 9.2, 9.3, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10
Approvals
2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9,
3.12.10.1, 4.2.7, 9.3.2, 13.4.1
Arbitration
8.3.1, 15.3.2, 15.4
ARCHITECT
4
Architect, Definition of
4.1.1
Architect, Extent of Authority
2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2,
9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1,
13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1
Architect, Limitations of Authority and
Responsibility
2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2,
4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4,
9.4.2, 9.5.4, 9.6.4, 15.1.4, 15.2
Architect's Additional Services and Expenses
2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4
Architect's Administration of the Contract
3.1.3, 3.7.4, 15.2, 9.4.1, 9.5
Architect's Approvals
2.5, 3.1.3, 3.5, 3.10.2, 4.2.7
Architect's Authority to Reject Work
3.5, 4.2.6, 12.1.2, 12.2.1
Architect's Copyright
1.1.7, 1.5
Architect's Decisions
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3,
7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1,
13.4.2, 15.2
Architect's Inspections
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.4
Architect's Instructions
3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2
Architect's Interpretations
4.2.11, 4.2.12
Architect's Project Representative
4.2.10
Architect's Relationship with Contractor
1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,
3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16,
3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,
9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2
Architect's Relationship with Subcontractors
1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3
Architect's Representations
9.4.2, 9.5.1, 9.10.1
Architect's Site Visits
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4
Asbestos
10.3.1
Attorneys' Fees
3.18.1, 9.6.8, 9.10.2, 10.3.3
Award of Separate Contracts
6.1.1, 6.1.2
Award of Subcontracts and Other Contracts for
Portions of the Work
5.2
Basic Definitions
1.1
Bidding Requirements
1.1.1
Binding Dispute Resolution
8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5,
15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1
Bonds, Lien
7.3.4.4, 9.6.8, 9.10.2, 9.10.3
Bonds, Performance, and Payment
7.3.4.4, 9.6.7, 9.10.3, 11.1.2, 11.1.3, 11.5
Building Information Models Use and Reliance
1.8
Building Permit
3.7.1
Capitalization
1.3
Certificate of Substantial Completion
9.8.3, 9.8.4, 9.8.5

Init.
/

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Certificates for Payment
4.2.1, 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4
Certificates of Inspection, Testing or Approval
13.4.4
Certificates of Insurance
9.10.2
Change Orders
1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, 7.2, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2
Change Orders, Definition of
7.2.1
CHANGES IN THE WORK
2.2.2, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.5
Claims, Definition of
15.1.1
Claims, Notice of
1.6.2, 15.1.3
CLAIMS AND DISPUTES
3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, 15, 15.4
Claims and Timely Assertion of Claims
15.4.1
Claims for Additional Cost
3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, 15.1.5
Claims for Additional Time
3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, 15.1.6
Concealed or Unknown Conditions, Claims for
3.7.4
Claims for Damages
3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3, 11.3.2, 14.2.4, 15.1.7
Claims Subject to Arbitration
15.4.1
Cleaning Up
3.15, 6.3
Commencement of the Work, Conditions Relating to
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, 15.1.5
Commencement of the Work, Definition of
8.1.2
Communications
3.9.1, 4.2.4
Completion, Conditions Relating to
3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 14.1.2, 15.1.2
COMPLETION, PAYMENTS AND
9
Completion, Substantial
3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 15.1.2
Compliance with Laws
2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3
Concealed or Unknown Conditions
3.7.4, 4.2.8, 8.3.1, 10.3
Conditions of the Contract
1.1.1, 6.1.1, 6.1.4
Consent, Written
3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2, 15.4.4.2
Consolidation or Joinder
15.4.4
CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
1.1.4, 6
Construction Change Directive, Definition of
7.3.1
Construction Change Directives
1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, 7.3, 9.3.1.1
Construction Schedules, Contractor's
3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2
Contingent Assignment of Subcontracts
5.4, 14.2.2.2
Continuing Contract Performance
15.1.4
Contract, Definition of
1.1.2
CONTRACT, TERMINATION OR SUSPENSION OF THE
5.4.1.1, 5.4.2, 11.5, 14
Contract Administration
3.1.3, 4, 9.4, 9.5
Contract Award and Execution, Conditions Relating to
3.7.1, 3.10, 5.2, 6.1
Contract Documents, Copies Furnished and Use of
1.5.2, 2.3.6, 5.3
Contract Documents, Definition of
1.1.1
Contract Sum
2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4, 9.1, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2, 12.3, 14.2.4, 14.3.2, 15.1.4.2, 15.1.5, 15.2.5
Contract Sum, Definition of
9.1
Contract Time
1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5, 7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1, 8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2, 14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5
Contract Time, Definition of
8.1.1
CONTRACTOR
3
Contractor, Definition of
3.1, 6.1.2
Contractor's Construction and Submittal Schedules
3.10, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2
Contractor's Employees

Init.
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2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.3, 14.1, 14.2.1.1
Contractor's Liability Insurance
11.1
Contractor's Relationship with Separate Contractors and Owner's Forces
3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4
Contractor's Relationship with Subcontractors
1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2, 9.6.7, 9.10.2, 11.2, 11.3, 11.4
Contractor's Relationship with the Architect
1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.4, 15.1.3, 15.2.1
Contractor's Representations
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2
Contractor's Responsibility for Those Performing the Work
3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8
Contractor's Review of Contract Documents
3.2
Contractor's Right to Stop the Work
2.2.2, 9.7
Contractor's Right to Terminate the Contract
14.1
Contractor's Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3
Contractor's Superintendent
3.9, 10.2.6
Contractor's Supervision and Construction Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4
Coordination and Correlation
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1
Copies Furnished of Drawings and Specifications
1.5, 2.3.6, 3.11
Copyrights
1.5, 3.17
Correction of Work
2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, 12.2, 12.3, 15.1.3.1, 15.1.3.2, 15.2.1
Correlation and Intent of the Contract Documents
1.2
Cost, Definition of
7.3.4
Costs
2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.2, 12.1.2, 12.2.1, 12.2.4, 13.4, 14
Cutting and Patching
3.14, 6.2.5
Damage to Construction of Owner or Separate Contractors
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4
Damage to the Work
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4
Damages, Claims for
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2, 11.3, 14.2.4, 15.1.7
Damages for Delay
6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2
Date of Commencement of the Work, Definition of
8.1.2
Date of Substantial Completion, Definition of
8.1.3
Day, Definition of
8.1.4
Decisions of the Architect
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2, 14.2.2, 14.2.4, 15.1, 15.2
Decisions to Withhold Certification
9.4.1, 9.5, 9.7, 14.1.1.3
Defective or Nonconforming Work, Acceptance, Rejection and Correction of
2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1
Definitions
1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1
Delays and Extensions of Time
3.2, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5
Digital Data Use and Transmission
1.7
Disputes
6.3, 7.3.9, 15.1, 15.2
Documents and Samples at the Site
3.11
Drawings, Definition of
1.1.5
Drawings and Specifications, Use and Ownership of
3.11
Effective Date of Insurance
8.2.2
Emergencies
10.4, 14.1.1.2, 15.1.5
Employees, Contractor's
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.3, 14.1, 14.2.1.1
Equipment, Labor, or Materials
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Execution and Progress of the Work
1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4
Extensions of Time
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2, 10.4, 14.3, 15.1.6, 15.2.5

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Failure of Payment
9.5.1.3, 9.7, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2
Faulty Work
(See Defective or Nonconforming Work)
Final Completion and Final Payment
4.2.1, 4.2.9, 9.8.2, 9.10, 12.3, 14.2.4, 14.4.3
Financial Arrangements, Owner's
2.2.1, 13.2.2, 14.1.1.4
GENERAL PROVISIONS
1
Governing Law
13.1
Guarantees (See Warranty)
Hazardous Materials and Substances
10.2.4, 10.3
Identification of Subcontractors and Suppliers
5.2.1
Indemnification
3.17, 3.18, 9.6.8, 9.10.2, 10.3.3, 11.3
Information and Services Required of the Owner
2.1.2, 2.2, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5,
9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2,
14.1.1.4, 14.1.4, 15.1.4
Initial Decision
15.2
Initial Decision Maker, Definition of
1.1.8
Initial Decision Maker, Decisions
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
Initial Decision Maker, Extent of Authority
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
Injury or Damage to Person or Property
10.2.8, 10.4
Inspections
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,
9.9.2, 9.10.1, 12.2.1, 13.4
Instructions to Bidders
1.1.1
Instructions to the Contractor
3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2
Instruments of Service, Definition of
1.1.7
Insurance
6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5,
11
Insurance, Notice of Cancellation or Expiration
11.1.4, 11.2.3
Insurance, Contractor's Liability
11.1
Insurance, Effective Date of
8.2.2, 14.4.2
Insurance, Owner's Liability
11.2
Insurance, Property
10.2.5, 11.2, 11.4, 11.5
Insurance, Stored Materials
9.3.2
INSURANCE AND BONDS
11
Insurance Companies, Consent to Partial Occupancy
9.9.1
Insured loss, Adjustment and Settlement of
11.5
Intent of the Contract Documents
1.2.1, 4.2.7, 4.2.12, 4.2.13
Interest
13.5
Interpretation
1.1.8, 1.2.3, 1.4, 4.1.1, 5.1, 6.1.2, 15.1.1
Interpretations, Written
4.2.11, 4.2.12
Judgment on Final Award
15.4.2
Labor and Materials, Equipment
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1,
10.2.4, 14.2.1.1, 14.2.1.2
Labor Disputes
8.3.1
Laws and Regulations
1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4,
9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8,
15.4
Liens
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8
Limitations, Statutes of
12.2.5, 15.1.2, 15.4.1.1
Limitations of Liability
3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6,
4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3,
11.3, 12.2.5, 13.3.1
Limitations of Time
2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,
5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,
9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15,
15.1.2, 15.1.3, 15.1.5
Materials, Hazardous
10.2.4, 10.3
Materials, Labor, Equipment and
1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2,
10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2
Means, Methods, Techniques, Sequences and
Procedures of Construction
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2
Mechanic's Lien
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8
Mediation
8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, 15.3, 15.4.1,
15.4.1.1
Minor Changes in the Work
1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, 7.4
MISCELLANEOUS PROVISIONS
13

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Modifications, Definition of
1.1.1
Modifications to the Contract
1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2
Mutual Responsibility
6.2
Nonconforming Work, Acceptance of
9.6.6, 9.9.3, 12.3
Nonconforming Work, Rejection and Correction of
2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2
Notice
1.6, 1.6.1, 1.6.2, 2.1.2, 2.2.2., 2.2.3, 2.2.4, 2.5, 3.2.4, 3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4, 8.2.2 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1, 13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5, 15.1.6, 15.4.1
Notice of Cancellation or Expiration of Insurance
11.1.4, 11.2.3
Notice of Claims
1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, 15.1.3, 15.1.5, 15.1.6, 15.2.8, 15.3.2, 15.4.1
Notice of Testing and Inspections
13.4.1, 13.4.2
Observations, Contractor's
3.2, 3.7.4
Occupancy
2.3.1, 9.6.6, 9.8
Orders, Written
1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2, 14.3.1
OWNER
2
Owner, Definition of
2.1.1
Owner, Evidence of Financial Arrangements
2.2, 13.2.2, 14.1.1.4
Owner, Information and Services Required of the
2.1.2, 2.2, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4
Owner's Authority
1.5, 2.1.1, 2.3.32.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4, 15.2.7
Owner's Insurance
11.2
Owner's Relationship with Subcontractors
1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2
Owner's Right to Carry Out the Work
2.5, 14.2.2
Owner's Right to Clean Up
6.3
Owner's Right to Perform Construction and to Award Separate Contracts
6.1
Owner's Right to Stop the Work
2.4
Owner's Right to Suspend the Work
14.3
Owner's Right to Terminate the Contract
14.2, 14.4
Ownership and Use of Drawings, Specifications and Other Instruments of Service
1.1.1, 1.1.6, 1.1.7, 1.5, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12, 5.3
Partial Occupancy or Use
9.6.6, 9.9
Patching, Cutting and
3.14, 6.2.5
Patents
3.17
Payment, Applications for
4.2.5, 7.3.9, 9.2, 9.3, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3
Payment, Certificates for
4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4
Payment, Failure of
9.5.1.3, 9.7, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2
Payment, Final
4.2.1, 4.2.9, 9.10, 12.3, 14.2.4, 14.4.3
Payment Bond, Performance Bond and
7.3.4.4, 9.6.7, 9.10.3, 11.1.2
Payments, Progress
9.3, 9.6, 9.8.5, 9.10.3, 14.2.3, 15.1.4
PAYMENTS AND COMPLETION
9
Payments to Subcontractors
5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2
PCB
10.3.1
Performance Bond and Payment Bond
7.3.4.4, 9.6.7, 9.10.3, 11.1.2
Permits, Fees, Notices and Compliance with Laws
2.3.1, 3.7, 3.13, 7.3.4.4, 10.2.2
PERSONS AND PROPERTY, PROTECTION OF
10
Polychlorinated Biphenyl
10.3.1
Product Data, Definition of
3.12.2
Product Data and Samples, Shop Drawings
3.11, 3.12, 4.2.7
Progress and Completion
4.2.2, 8.2, 9.8, 9.9.1, 14.1.4, 15.1.4
Progress Payments
9.3, 9.6, 9.8.5, 9.10.3, 14.2.3, 15.1.4
Project, Definition of
1.1.4
Project Representatives

Init.
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4.2.10
Property Insurance
10.2.5, 11.2
Proposal Requirements
1.1.1
PROTECTION OF PERSONS AND PROPERTY
10
Regulations and Laws
1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8, 15.4
Rejection of Work
4.2.6, 12.2.1
Releases and Waivers of Liens
9.3.1, 9.10.2
Representations
3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1
Representatives
2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1
Responsibility for Those Performing the Work
3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10
Retainage
9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3
Review of Contract Documents and Field Conditions by Contractor
3.2, 3.12.7, 6.1.3
Review of Contractor's Submittals by Owner and Architect
3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2
Review of Shop Drawings, Product Data and Samples by Contractor
3.12
Rights and Remedies
1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2, 12.2.4, 13.3, 14, 15.4
Royalties, Patents and Copyrights
3.17
Rules and Notices for Arbitration
15.4.1
Safety of Persons and Property
10.2, 10.4
Safety Precautions and Programs
3.3.1, 4.2.2, 4.2.7, 5.3, 10.1, 10.2, 10.4
Samples, Definition of
3.12.3
Samples, Shop Drawings, Product Data and
3.11, 3.12, 4.2.7
Samples at the Site, Documents and
3.11
Schedule of Values
9.2, 9.3.1
Schedules, Construction
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2
Separate Contracts and Contractors
1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2
Separate Contractors, Definition of
6.1.1
Shop Drawings, Definition of
3.12.1
Shop Drawings, Product Data and Samples
3.11, 3.12, 4.2.7
Site, Use of
3.13, 6.1.1, 6.2.1
Site Inspections
3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4
Site Visits, Architect's
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4
Special Inspections and Testing
4.2.6, 12.2.1, 13.4
Specifications, Definition of
1.1.6
Specifications
1.1.1, 1.1.6, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14
Statute of Limitations
15.1.2, 15.4.1.1
Stopping the Work
2.2.2, 2.4, 9.7, 10.3, 14.1
Stored Materials
6.2.1, 9.3.2, 10.2.1.2, 10.2.4
Subcontractor, Definition of
5.1.1
SUBCONTRACTORS
5
Subcontractors, Work by
1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7
Subcontractual Relations
5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1
Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3
Submittal Schedule
3.10.2, 3.12.5, 4.2.7
Subrogation, Waivers of
6.1.1, 11.3
Substances, Hazardous
10.3
Substantial Completion
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 15.1.2
Substantial Completion, Definition of
9.8.1
Substitution of Subcontractors
5.2.3, 5.2.4
Substitution of Architect
2.3.3
Substitutions of Materials
3.4.2, 3.5, 7.3.8
Sub-subcontractor, Definition of
5.1.2
Subsurface Conditions
3.7.4
Successors and Assigns

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13.2
Superintendent
3.9, 10.2.6
Supervision and Construction Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4
Suppliers
1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6, 9.10.5, 14.2.1
Surety
5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2, 15.2.7
Surety, Consent of
9.8.5, 9.10.2, 9.10.3
Surveys
1.1.7, 2.3.4
Suspension by the Owner for Convenience
14.3
Suspension of the Work
3.7.5, 5.4.2, 14.3
Suspension or Termination of the Contract
5.4.1.1, 14
Taxes
3.6, 3.8.2.1, 7.3.4.4
Termination by the Contractor
14.1, 15.1.7
Termination by the Owner for Cause
5.4.1.1, 14.2, 15.1.7
Termination by the Owner for Convenience
14.4
Termination of the Architect
2.3.3
Termination of the Contractor Employment
14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT
14
Tests and Inspections
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 12.2.1, 13.4
TIME
8
Time, Delays and Extensions of
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5
Time Limits
2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15.1.2, 15.1.3, 15.4
Time Limits on Claims
3.7.4, 10.2.8, 15.1.2, 15.1.3
Title to Work
9.3.2, 9.3.3
UNCOVERING AND CORRECTION OF WORK
12
Uncovering of Work
12.1
Unforeseen Conditions, Concealed or Unknown
3.7.4, 8.3.1, 10.3
Unit Prices
7.3.3.2, 9.1.2
Use of Documents
1.1.1, 1.5, 2.3.6, 3.12.6, 5.3
Use of Site
3.13, 6.1.1, 6.2.1
Values, Schedule of
9.2, 9.3.1
Waiver of Claims by the Architect
13.3.2
Waiver of Claims by the Contractor
9.10.5, 13.3.2, 15.1.7
Waiver of Claims by the Owner
9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, 15.1.7
Waiver of Consequential Damages
14.2.4, 15.1.7
Waiver of Liens
9.3, 9.10.2, 9.10.4
Waivers of Subrogation
6.1.1, 11.3
Warranty
3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2, 15.1.2
Weather Delays
8.3, 15.1.6.2
Work, Definition of
1.1.3
Written Consent
1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3, 13.2, 13.3.2, 15.4.4.2
Written Interpretations
4.2.11, 4.2.12
Written Orders
1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

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

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent

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consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

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

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

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

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

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

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

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

§ 1.7 Digital Data Use and Transmission

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

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§ 1.8 Building Information Models Use and Reliance

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

ARTICLE 2 OWNER

§ 2.1 General

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

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

§ 2.2 Evidence of the Owner's Financial Arrangements

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

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

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

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

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements,

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

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

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

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

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

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

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

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

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§ 3.2 Review of Contract Documents and Field Conditions by Contractor

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

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

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

§ 3.4 Labor and Materials

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

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

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

§ 3.5 Warranty

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

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

§ 3.6 Taxes

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

§ 3.7 Permits, Fees, Notices and Compliance with Laws

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

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

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

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

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§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 3.9 Superintendent

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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

§ 3.10 Contractor's Construction and Submittal Schedules

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

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the

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Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

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

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

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

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

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

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

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

§ 3.13 Use of Site

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

§ 3.14 Cutting and Patching

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

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

§ 3.15 Cleaning Up

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

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

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

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

§ 3.18 Indemnification
§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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

ARTICLE 4 ARCHITECT
§ 4.1 General
§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

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

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

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the

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Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

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

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

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

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

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

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

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations

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and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

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

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

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

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

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor,

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prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

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

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

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

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

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

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

§ 6.2 Mutual Responsibility

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work,

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promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

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

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

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

§ 6.3 Owner's Right to Clean Up

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

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

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

§ 7.2 Change Orders

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

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

§ 7.3 Construction Change Directives

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

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

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

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.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
.2 Unit prices stated in the Contract Documents or subsequently agreed upon;
.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
.4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

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

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

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

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

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

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

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

§ 7.4 Minor Changes in the Work

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

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

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.2 Progress and Completion

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

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

§ 8.3 Delays and Extensions of Time

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

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

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

§ 9.2 Schedule of Values

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

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unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

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

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

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

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

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

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

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§ 9.5 Decisions to Withhold Certification

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

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

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

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

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

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

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

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

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

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

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

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

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

§ 9.7 Failure of Payment

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

§ 9.8 Substantial Completion

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

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

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

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

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

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§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.10 Final Completion and Final Payment

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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

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

.1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
.2 failure of the Work to comply with the requirements of the Contract Documents;
.3 terms of special warranties required by the Contract Documents; or
.4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

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

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

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

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

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

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

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

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

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

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

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

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

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ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

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

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

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§ 11.3 Waivers of Subrogation

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

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

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

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

§11.5 Adjustment and Settlement of Insured Loss

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

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to

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

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

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

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

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

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

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

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§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

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

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

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

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

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

§ 13.5 Interest

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

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ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

.2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;

.3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

.4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

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

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;

.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

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

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance,

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the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

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

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

.1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

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

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

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

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§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

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

§ 15.1.7 Waiver of Claims for Consequential Damages

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

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

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

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

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

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

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

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

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

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

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

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

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

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

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

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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

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

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AIA® Document A201® – 2017

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PAGE 1

City of Bentonville – Public Library Expansion Project

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405 South Main Street
Bentonville, AR 72712

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

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TBD

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I, Brent Farmer, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 09:34:07 ET on 08/20/2021 under Order No. 2513164306 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ - 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

_____

(Signed)

_____

(Title)

_____

(Dated)

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RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND THE CITY CLERK TO ENTER AN AGREEMENT WITH FLINTCO, LLC FOR PRECONSTRUCTION SERVICES FOR THE BENTONVILLE PUBLIC LIBRARY EXPANSION.

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

Section 1: That the Mayor and City Clerk be and are hereby authorized to enter into an agreement with Flintco, LLC in the amount of $36,100 to provide preconstruction services for the Bentonville Public Library expansion, 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	**9/14/2021**
Department	**Library**
Submitted by	**Hadi Dudley**
Phone	**479-271-3194**

Item Type: (*Check Applicable Item Type)*

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

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

Approval of a budget adjustment in the amount of $6,000.00 reallocating funds in Bentonville Public Library's part-time salaries to full-time salaries.

Estimated Cost	**$6,000.00**
Is this Item Budgeted?	☑ Yes ☐ No

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

Budget Adjustment Request

Date of City Council Meeting	**9/14/2021**
Department	**Library**
Submitted by	**Hadi Dudley**
Phone	**479-271-3194**

Purpose of Budget Adjustment ***(Enter purpose in space below):***

To reallocate salary funds converting 2.5 part-time positions to 1 full-time position.

General Ledger Account Information*				
Org (Department)	**Object**	**Account Description**	**Revenue + (-)**	**Expense + (-)**
105050	41110	Part Time Salaries/Wages		$ (6,000.00)
105050	41010	Full Time Salaries/Wages		$ 6,000.00
		Totals	$ -	$ -
		Net Impact on Fund Balance	$ -	

***Final Account Number will be determined by Accounting Department after approval and purchase**

Bentonville Public Library

Memorandum

TO: Bentonville City Council, Mayor Stephanie Orman
FROM: Hadi Dudley, Library Director
CC: Ed Wheeler, Human Resources Manager and Jake Harper, Finance Director
SUBJECT: A budget adjustment related to library salaries
DATE: September 2, 2021

Bentonville Public Library (BPL) seeks City Council approval of a budget adjustment of $6,000 reallocating funds from part-time salaries to full-time salaries.

This adjustment will allow BPL to convert 2.5 part-time clerk positions to 1 full-time library specialist position in BPL's adult services department. The part-time positions being converted are currently unfilled.

The reason for this request is excessive turn-over of part-time positions in recent months, making it difficult to cover library operations in BPL's adult services department. Substantial time spent prospecting, hiring and training of staff who tend to turn over at a higher rate is not generating a positive return on our investment of time.

Full-time turnover is minimal at BPL and will alleviate the high volume of part-time turnover, as well as provide more consistency and stronger commitment which will greatly benefit operations.

The salaries and benefits budgets can cover the cost for the remainder of the year due to recent vacancies and the timing of this request. Funding for salaries and benefits will be incorporated in the FY2022 budget. The only estimated additional cost to the 2022 budget is an increase in benefits provided due to the move from Part-time to Full-time.

This request does not add headcount or change the City's pay plan.

If you have any questions regarding this item, please contact me at 479-271-3194 or hdudley@bentonvillear.com.

Agenda Item Form

Date of City Council Meeting	**9/14/2021**
Department	**Parks and Recreation / Transportation**
Submitted by	**David Wright / Dennis Birge**
Phone	**(479) 271.6813**

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 a Real Estate Transaction with Coughlin Nonexempt Marital Trust and Coughlin Generational Trust, in the amount of $200,000 for the purchase of 1.31 acres at the future intersection of SW 28th and SW Bright Road, as well as a 9,300 square foot trail easement along SW Featherston Road.

Estimated Cost	**$200,000.00**
Is this Item Budgeted?	☐ Yes ☑ No

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

Project will be paid for via combination of Parks Impact Fees and Transportation Bond Funds.

Memo

To:	City Council, Mayor Orman
From:	Dennis Birge, Transportation Director
	David Wright, Parks and Recreation Director
Date:	September 1, 2020
Re:	Resolution authorizing real estate transaction for purchase of land for future road, utility, trail and park.

Transportation and Parks and Recreation Staff request City Council approval of a resolution authorizing the purchase of land for the future extension of Bright Road and 28th Street Park. This purchase, valued at the price of $200,000, provides the City the allows adequate Right of Way purchase for future Bright Road extension to SW 28th Street, additional space for utility and drainage easements, land for the trail connection to the future intersection and where it will eventually continue onward north, and an additional easement near SW Featherston that will provide connectivity from the park land all the way to Greenhouse Road.

Please refer to Exhibit 1 for a visual of the property. The parcel number for the purchase property is 01-16700-000 and is 1.31 acres is size. The trail and drainage easement is part of parcel number 01-07933-017 and is approximately 20' x 465', or approximately 9,300 square feet.

As the land is being shared by two departments, the cost of this purchase is also being shared. The Transportation Department needs a total of 15,400 square feet for the roadway and the utility / drainage easement. The remaining portion will go towards the park / trail. Transportation will pay $54,054 from bond funding. Parks and Recreation will pay $145,946 from Parks Impact Fees.

This project design and construction documents are being finalized and is set to begin bidding in September. Our team expects Flintco to deliver a Guaranteed Maximum Price in mid-October. We anticipate a bid award being in front of council shortly after that with construction beginning in early 2022.

If you have any questions regarding this item, please contact David Wright at dwright@bentonvillear.com, or Dennis Birge at dbirge@bentonvillear.com.

Attachments:
Agreement with Coughlin Nonexempt Marital Trust
Exhibit 1 – 1.31 Acre Purchase - Parcel 01-16700-000
Exhibit 2 – 9,300sf easement – Parcel 01-07933-017

OFFER AND ACCEPTANCE

PARTIES: the City of Bentonville, Arkansas, as "Buyer", and COUGHLIN NONEXEMPT MARITAL TRUST & COUGHLIN GENERATIONAL TRUST, CYNTHIA COUGHLIN TRUSTEE, as "Seller", hereby agree that the Seller shall sell and Buyer shall buy the following property upon the following terms and conditions:

1. DESCRIPTION:

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

LOT 4, COUGHLIN ADDITION TO THE CITY OF BENTONVILLE, ARKANSAS, as shown on Plat Record Book 2011 Page 438/439 and filed for record at the Benton County Clerk's Office (PARCEL 01-16700-000) AS SHOWN IN THE ATTACHED EXHIBIT "A"

ADDITIONALLY A TRAIL AND DRAINAGE EASEMENT 20 FEET IN WIDTH RUNNING APPROXIMATELY 465 LINEAR FEET ALONG A PORTION OF THE NORTH SIDE OF PARCEL 01-07933-017 AS SHOWN IN THE ATTACHED EXHIBIT "B".

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

2. PURCHASE PRICE: $ 200,000.00 cash on closing.

3. SURVEY & TITLE COMMITMENT; PERMITTED EXCEPTIONS:

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

have the option of (i) extending such time period, (ii) accepting the title as it then is, or (iii) rescinding this Contract and thereupon Buyer and Seller shall be released, as to one another, of all further obligations and all damages arising under this Contract.

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

4. BUYER'S REQUIREMENTS: Buyer shall undertake to remove the conditions to closing contained in this Contract in a timely manner. Seller agrees to cooperate fully with Buyer with respect to Buyer's efforts to obtain all relevant information pertaining to the Property and the permitted uses of it. In the event such conditions cannot reasonably be removed Buyer may terminate this Contract. In the event Buyer does not notify Seller in the manner set forth in paragraph 10(a) of the failure of a condition or Buyer's decision to terminate within (10) days of the Council Approval Date (the "**Buyer's Inspection Period**" or the "**Inspection Period**"), all of Buyer's conditions shall be deemed satisfied

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

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

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

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

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

8. REPAIR AND MAINTENANCE: Between the Effective Date and the date of Closing, Seller shall maintain the Property in substantially the same condition the Property was in on the

Effective Date. Further, Seller agrees not to enter into, extend, or renew beyond closing any agreement covering any portion of the Property (or real property contiguous to the Property) or which might change the status, condition, or commercial marketability of the Property without the prior written approval of Buyer.

9. PROVISIONS WITH RESPECT TO CLOSING:

a) Closing Date. The consummation of the transaction contemplated by this Agreement ("Closing") shall take place at such place as designated by Seller on or before OCTOBER 22, 2021, or at such earlier date as agreed mutually, unless extended by other provisions hereof.

b) Seller's Obligation at Closing. At Closing, Seller shall furnish good and marketable title and execute, acknowledge, and deliver to Buyer a Special Warranty Deed conveying the Property to Buyer subject to all matters set forth in the Title Commitment and Survey, pursuant to Section 3 herein.

Additionally Seller shall execute a trail and drainage easement for Parcel 01-07933-017 as set forth in Section 1(a).

c) Buyer's Obligations at Closing. Subject to the terms, conditions and provisions hereof, and concurrently with the performance by Seller of its obligations set forth in Section 4 above, Buyer shall deliver to Seller cashier's check or other immediate local funds in the amount set forth in Section 2 of this Agreement.

d) Closing Costs.

e) Buyer shall pay all costs and expenses in connection with the Closing, including the following:

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

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

10. OTHER CONTRACTUAL PROVISION:

a) Notices. Any notice to be given or to be served upon any party hereto, in connection with this Agreement, must be in writing, and may be given by certified mail and shall be deemed to have

been given and received when a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States Mail; and if given otherwise than by certified mail, it shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Such notices shall be given to the parties hereto at the addresses stated above. Any party hereto may, at any time by giving five **(5)** days' written notice to the other party hereto, designate any other address in substitution of the foregoing address to which such notice shall be given and other parties to whom copies of all notices hereunder shall be sent.

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

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

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

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

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

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

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

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

k) Time for Acceptance & Effective Date. If this offer is not executed by both parties hereto on or before **September 16, 2021** , this offer shall thereafter be null and void. The date of the Agreement ("Effective Date") shall be the date when the last one of the Seller and Buyer has signed this offer.

l) City Council Approval. This contract is conditioned upon the City of Bentonville receiving Approval from the Bentonville City Council to acquire this property pursuant to the terms and conditions herein.

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

Witnesses: "Seller" (COUGHLIN NONEXEMPT MARITAL TRUST & COUGHLIN GENERATIONAL TRUST, CYNTHIA COUGHLIN TRUSTEE) by:

[redacted]

Attest:

_____ Date: 8-6-21

By:

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

_____

Mayor

Attest:

_____ Date: _____

City Clerk



E | D | G
Ecological Design Group, Inc
www.ecologicaldg.com
phone: 501 378 0200
LITTLE ROCK | ROGERS | WYNNE

LEGEND

Proposed ROW Boundary

Exsting ROW Boundary

50'
0'
100'

EDG PROJECT NO.	19-066
DATE	2021.04.26

REVISIONS

Number	Date

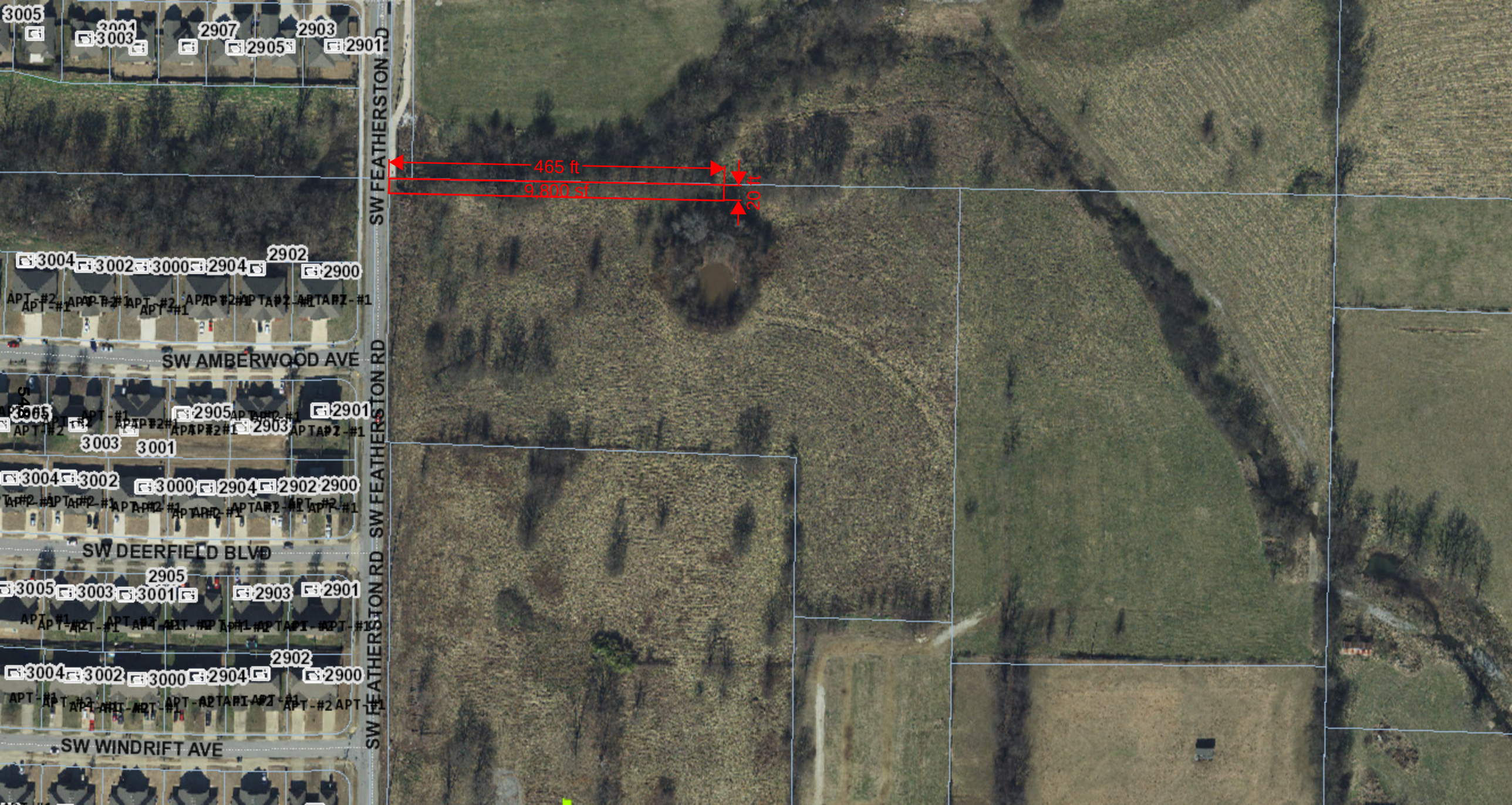
PHASE

TITLE EXHIBIT 1

SHEET NO. 1

BRIGHT ROAD EXTENSION
PROPOSED ROW BOUNDARY

Bentonville, Arkansas


465 ft
9,800 sf
20 ft
SW FEATHERSTON RD
SW AMBERWOOD AVE
SW DEERFIELD BLVD
SW WINDRIFT AVE
3005
3003
2907
2905
2903
2901
3004
3002
3000
2904
2902
2900
3001

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CLERK TO ENTER INTO A REAL ESTATE CONTRACT WITH COUGHLIN NONEXEMPT MARTIAL TRUST AND COUGHLIN GENERATIONAL TRUST.

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

Section 1: That the Mayor and Clerk be and are hereby authorized to enter into a Real Estate Contract with Coughlin Nonexempt Marital Trust and Coughlin Generational Trust, 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	**9/14/2021**
Department	**Parks and Recreation**
Submitted by	**David Wright**
Phone	**(479) 271.6813**

Item Type: (*Check Applicable Item Type)*

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

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

Budget Adjustment recognizing expenses for Real Estate Transaction with Coughlin Nonexempt Marital Trust and Coughlin Generational Trust, in the amount of $145,946.00 for the purchase of 1.31 acres at the future intersection of SW 28th and SW Bright Road, as well as a 11,625 square foot trail easement along SW Featherston Road.

Estimated Cost	**$200,000.00**
Is this Item Budgeted?	☐ Yes ☑ No

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

Project will be paid for via combination of Parks Impact Fees and Transportation Bond Funds.

Budget Adjustment Request

Date of City Council Meeting	**9/14/2021**
Department	**Transportation / Parks and Rec**
Submitted by	**Dennis Birge / David Wright**
Phone	**479.271.6813**

Purpose of Budget Adjustment ***(Enter purpose in space below):***

Budget Adjustment to pay for land for the 28th Street project. Budget Adjustment is for the General Fund portion of the land ($145,946). The remaining portion will be paid from Bonds ($54,054).

General Ledger Account Information*				
Org (Department)	**Object**	**Account Description**	**Revenue + (-)**	**Expense + (-)**
105030	39192	Transfer In - Impact/Capacity	$ 145,946.00	
105030	47110	Land		$ 145,946.00
			$ -	
		Totals	$ 145,946.00	$ 145,946.00
		Net Impact on Fund Balance	$	-

***Final Account Number will be determined by Accounting Department after approval and purchase**