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 of 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.

Committee of the Whole **Monday, October 11, 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 October 11, 2021:**
https://us02web.zoom.us/webinar/register/WN_WBMJ-9SpSOCyEBvdaBJg8w

City Council Meeting **Tuesday, October 12, 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 October 12, 2021:**
https://us02web.zoom.us/webinar/register/WN_nqdaKHJRS9CFM2h_cU27_A

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: September 28, 2021

AGENDA

1. Housing and Development Process. **(Monday Night Only)**

2. Planning:

2a. **Ordinance changing real estate in the City of Bentonville, Arkansas from its present zoning classification of C-1, Neighborhood Commercial to C-2, General Commercial. NW 3rd Street and N Walton Boulevard (Project Number: RZ21-0060).**

(Pages 14-18)

The Planning Commission voted 6-0, recommending approval.

The Future Land Use Map currently depicts this property as General Commercial. 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. 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 C-2, General Commercial zoning districts immediately adjacent to this property and a large natural area that provides a buffer to the RZ-L, Zero Lot Line Residential neighborhood to the west.

2b(1). **Resolution adopting revision to the Future Land Use Map changing real estate from Residential Estate and Agriculture to Low Density Residential. Allen Road (Project Number: RZ21-0061).**

(Pages 19-27)

The Planning Commission voted 6-0, recommending approval.

This request is not consistent with the Future Land Use Plan, however, R-1 is compatible with existing land uses and with the Bentonville Community Plan.

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.

2b(2). **Ordinance changing real estate in the City of Bentonville, Arkansas from its present zoning classification of RE, Residential Estate to R-1, Low Density Single Family Residential. Allen Road (Project Number: RZ21-0061).**

(Pages 19-28)

The Planning Commission voted 6-0, recommending approval.

The Future Land Use Plan currently depicts this property as Open Space and Agricultural. The applicant is requesting a change in the Future Land Use Plan to Low Density Residential. These areas typically include detached single-family

residential properties with a typical density of 3-9 units per acre. While lot size and overall density may vary from one part of the city to another, 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.

2c. **Ordinance changing real estate in the City of Bentonville, Arkansas from its present zoning classification of DE, Downton Commercial to DC, Down-town Core. 306 South Main Street (Project Number: RZ21-0062).**

(Pages 29-33)

The Planning Commission voted 6-0, recommending approval.

The Future Land Use Plan currently depicts this property as Downtown Commercial. These areas include traditional mixed-use developments with a focus on design character and pedestrian access. Ground-floor uses should include activities that capitalize on pedestrian traffic and support street life, such as restaurants, retail, and services that create frequent patron traffic. Upper-floor uses could include offices, services not reliant on ground-floor visibility, and residential units. Parking could be provided in downtown commercial areas, but only where it is not detrimental to the character of the area and is secondary to an active use.

This rezoning request is consistent with the Bentonville Community Plan and the Future Land Use Plan.

2d(1). **Resolution adopting revision to the Future Land Use Map changing General Commercial to Mixed-Use Commercial. 1120 S Walton Boulevard (Project Number: RZ21-0063).**

(Pages 34-42)

The Planning Commission voted 6-0, recommending approval.

While this rezoning request is not consistent with the Future Land Use Plan, there is existing C-3 in the immediate area and this request is a compatible zoning district with the surrounding land uses. Additionally, this request is consistent with the intent of the Bentonville Community Plan.

2d(2). **Ordinance changing real estate in the City of Bentonville, Arkansas from its present zoning classification C-2, General Commercial to C-3, Mixed-Use Commercial. 1120 S Walton Boulevard (Project Number: RZ21-0063).**

(Pages 34-43)

The Planning Commission voted 6-0, recommending approval.

The Future Land Use Plan currently depicts this property as General Commercial. The applicant is requesting a change in the Future Land Use Plan to Mixed-Use Commercial. These areas include uses that provide goods and services to nearby residents. Local retail, day-to-day services, and small offices are appropriate in these areas. Vertical mixed-use developments are encouraged in mixed-use commercial areas, with upper floors including offices, services, or residential uses. Parking may be more prominent in these areas than in Downtown commercial

areas, but should be sited and designed to not be detrimental to the character of the area.

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.

2e(1). **Resolution adopting revision to the Future Land Use Map changing real estate from Low-Density Residential to High-Density Residential. S Vaughn Road & Motley Road (Project Number: RZ21-0064).**

(Pages 44-49)

The Planning Commission voted 5-0, recommending approval.

This rezoning request is not consistent with the Future Land Use Plan, however it is compatible with the property on South Vaugh Road that was recently rezoned to R-3 by the Planning Commission on September 21, 2021.

2e(2). **Ordinance changing real estate in the City of Bentonville, Arkansas from its zoning classification of A-1, Agricultural to R-3, Medium-High Density Multifamily Residential. S Vaughn Road & Motley Road (Project Number: RZ21-0064).**

(Pages 44-51)

The Planning Commission voted 6-0, recommending approval.

The Future Land Use Plan currently depicts this property as Low-Density Residential. 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.

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.

2f. **Ordinance changing real estate in the City of Bentonville, Arkansas from its present zoning classification of R-1, Single-Family Residential & PUD, Planned Unit Development to PUD, Planned Unit Development. E Central Avenue & Katie Court (Project Number: PUD20-0002).**

(Pages 52-111)

The Planning Commission voted 6-0, recommending approval.

An amendment to the previously approved Walmart Campus PUD to add Katie Lynn Courts Subdivision to the area. The area is depicted in the revised PUD plan set as Zone 02NE. The area includes a Childcare Center, housed in buildings L-02 and I-02. The primary materials depicted on the exterior elevations are brick, burnished concrete block, wood, and architectural metal panel.

2g. **Ordinance accepting a lot split Lots 23, 24, 25 & 26 of Faircole Block Addition to the City of Bentonville, Arkansas. SW Glover Street (Project Number: LS21-0065).**

(Pages 114-116)

The Planning Commission voted 5-0, recommending approval.

The property is currently zoned DN-2, Downtown Medium Density Residential. A lot split of all of existing Lots 9 & 19, creating new Lot 23 (+/- 0.16 acres), Lot 24 (+/- 0.16 acres), Lot 25 (+/- 0.14 acres), and Lot 26 (+/-0.17 acres) of Faircole Block Addition. The plat dedicates various easements to serve the new lots and also dedicates a right-of-way along SW Glover Street per the Master Street Plan requirements. Additionally, the plat dedicates a 12' wide shared public access easement between new Lots 25 & 26.

2h. **Ordinance accepting a lot split Lots 11 & 12, Polson's Subdivision, to the City of Bentonville, Arkansas. 203, 207, and 209 SE 7th Street (Project Number: LS21-0043).**

(Pages 117-119)

The Planning Commission voted 5-0, recommending approval.

The property is currently zoned D-E, Downtown Edge. A lot split of all of existing Lots 7 & 8, and part of Lot 2, creating new Lot 11 (+/- 0.33 acres) and Lot 12 (+/- 0.34 acres) of Polson's Subdivision. The plat dedicates various utility and drainage easements to serve the new lots and also dedicates a right-of-way along SE B Street per the Master Street Plan requirements.

2i. **Ordinance accepting a lot split Lots 13 & 14, Osage Hills Subdivision to the City of Bentonville, Arkansas. Ginn Road (Project Number: LS21-0050).**

(Pages 120-122)

The Planning Commission voted 5-0, recommending approval.

A lot split of all of existing Lot 8, creating new Lot 13 (+/- 22.63 acres) and Lot 14 (+/- 12.51 acres) of Osage Hills Subdivision. The plat dedicates right-of-way for a future collector street along the southern lot line of new Lot 14 per the Master Street Plan requirements.

2j. **Ordinance accepting a property line adjustment of Lots 30-32, Block 6, W.A. Burk's Addition to the City of Bentonville, Arkansas. 1111, 1113, & 1115 NE Monroe Street (Project Number: PLA21-0033).**

(Pages 123-125)

The Planning Commission voted 5-0, recommending approval.

A property line adjustment of all of existing Lots 19, 20, 21 and part of existing Lot 22, Block 6, creating new Lot 30 (+/- 0.21 acres), Lot 31 (+/- 0.19 acres), and Lot 32 (+/- 0.19 acres) of W.A. Burk's Addition. The plat dedicates various utility easements to serve the new lots and also dedicates a small portion of right-of-way in the southeast corner of new Lot 30 for NE Monroe Street per the Master Street Plan requirements.

2k. **Ordinance accepting a property line adjustment of Lots 20 & 21, Block 5, Clark's Second Addition to the City of Bentonville, Arkansas. 307 SW E Street (Project Number: PLA21-0034).**

(Pages 126-128)

The Planning Commission voted 5-0, recommending approval.

A lot split of all of existing Lots 13 & 15, Block 5, creating new Lot 20 (+/- 0.21 acres), Lot 21 (+/- 0.47 acres), and Lot 32 (+/- 0.51 acres) of Clark's Second Addition. The plat dedicates various utility easements to serve the new lots. Right-of-way for SW E Street, SW 4th Street, and SW D Street are all in compliance with the current Master Street Plan.

2l. **Ordinance accepting a Final Plat of Aurora Subdivision Phase II, to the City of Bentonville, Arkansas. S Morning Star Road (Project Number: FP21-0005).**

(Pages 129-133)

The planning Commission voted 5-0, recommending approval.

The subdivision consists of 29 total lots. 28 are single-family residential lots and one lot will be utilized as a common lot. The applicant must dedicate all private access easements before this plat can be filed with the county. All non-bondable items and guarantees of improvements must be complete and a final inspection performed and approved before Planning Commission approval.

2m. **Ordinance amending Bentonville Municipal Code Appendix B land development code, sec 1300.04 establishment of a tree and landscape advisory committee.**

(Pages 134-137)

The planning Commission voted 6-0, recommending approval.

3. Re-appointment of Ralph Weber to Position 5 on the Tree and Landscape Advisory Committee. Mr. Weber has been an active member of the committee for six years and his knowledge and experience have been a valuable asset. This will be Mr. Weber's third three-year term that begins January 1, 2022 and will expire on December 31, 2024. The Tree and Landscape Advisory Committee does not have term limits. **(Pages 138-140)**

4. Appointment of Mark Bray to fill the vacant Position 6 on the Tree and Landscape Advisory Committee. Mr. Bray has a master's degree in horticulture and was a county extension agent for Benton County for seven years. This will be Mr. Bray's first three-year term that begins January 1, 2022 and will expire on December 31, 2024. **(Pages 141-145)**

5. Appointment of Stephen Gilbert to fill the newly created Position 7 on the Tree and Landscape Advisory Committee. Mr. Gilbert has a bachelor's degree in landscape architecture and grew up on a Georgia-Pacific forestry compound. This will be Mr. Gilbert's first three-year term that begins January 1, 2022 and will expire on December 31, 2024. **(Pages 146-150)**

6. Utility Board:

6a. Ordinance repealing Ordinance No. 2015-122 as amended, fixing rates for electricity to be furnished by the electric system of the City of Bentonville; pertaining to the other matters relating thereto; and declaring an emergency. Approved by the Utility Board 4-0. **(Pages 151-155)**

6b. Resolution to enter into an agreement with Osmose, Inc. to perform a joint use audit on the Bentonville Electric Utility Dept. system for $57,121.46. This firm was selected following the City's standard RFQ solicitation process for procurement of professional services in accordance with state law. Approved by the Utility Board 4-0. **(Pages 156-166)**

6c. Budget adjustment recognizing payment for services for a joint use audit in the amount of $49,124.45. Approved by the Utility Board 4-0. **(Pages 167-168)**

6d. Presentation of the Agreed Upon Procedures between SWEPCO and the City of Bentonville by BKD, Inc. concerning the February 2021 SWEPCO invoice which was affected by the 2021 winter storm. Presented to the Utility Board on 9/28/21. **(Pages 169-170)**

6e. Ordinance recommended by Staff for City Council approval waiving the requirement of competitive bidding and award contract to Utility Services Co. Inc. in an amount not to exceed $694,480.00 including contingencies for all material and labor to provide full repairs of the 3MG and 6MG water tanks at SW I Street damaged during the winter storm in February. The $25,000.00 deductible will be funded by Water Utilities Reserves. FM Global Insurance has approved coverage of $588,549.00 for identified repairs and will address additional costs presented as contingencies ($105,931.00) as the need arises. Under this agreement, the City's responsibility is $25,000.00. If that needs to increase, it will be brought back to City Council. Utility Board approved this item 4-0 on September 28, 2021. **(Pages 171-181)**

6f. Budget Adjustment recommended by Staff for City Council approval to cover insurance deductible in the amount of $25,000.00 and recognize revenues from FM Global Insurance claim up to $669,480.00 to cover costs associated with Utility Service Co., Inc.'s agreement for material and labor to provide full repairs of the 3MG and 6MG water tanks. Funding the deductible will be from the Water Utility reserves. Utility Board approved 9/28/2021 by a vote of 4-0. **(Pages 182-183)**

6g. Staff recommends City Council approval of Change Order No. 2 and Final Reconciliation of the Nomad Creek Sewer Interceptor project with Brothers Construction recognizing a decrease of $80,527.02 reducing the contract total from $1,680,267.50 to $1,599,740.48. Utility Board approved this item 4-0. **(Pages 184-186)**

7. Public hearing and ordinance vacating a Utility Easement requested for 603 SE Yale Street of College Place Phase 8 (VAC21-0024). **(Pages 187-190)**

8. Resolution setting a public hearing for October 26, 2021 for a Utility Easement Vacation requested for 3405 SE Macy Road of 71 Business Center (VAC21-0027). **(Pages 191-193)**

9. Resolution for City Council approval authorizing the Mayor and City Clerk to enter into a professional services contract with Garver, LLC to perform services for the Municipal Airport. This is a master agreement for airport consulting services. Individual tasks/projects will be handled with separate work orders. Contract term is 3 years eligible for two 1-year extensions. This firm was selected in accordance with Arkansas State Law and FAA AC5100-14E for the selection of professional services for airport projects. **(Pages 194-223)**

10. 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 224-226)**

11. Resolution authorizing the Mayor and City Clerk to enter into a contract with Jackson Brown Palculict (JBP) Architects for their services on the Fire Department Training Facility. Cost of JBP's services is $150,000.00, and paid for out of the Bond. This firm was selected following the City's standard RFQ solicitation process for procurement of professional services in accordance with state law. **(Pages 227-243)**

12. Resolution authorizing the Mayor and City Clerk to enter into a contract with Morrison Shipley for the Civil Engineering Services at the Fire Department Training Facility. Cost of Morrison Shipley's services is $40,500.00 and funded by the Bond. This firm was selected following the City's standard Annual SOQ selection process for professional services in accordance with state law. **(Pages 244-260)**

13. Resolution authorizing the Mayor and City Clerk to enter into an Agreement with Clinard Construction for Pre-Construction and Phase 1 Construction (geotechnical/grading/dirt work) Services for the Fire Training Facility, in the amount of $70,000.00 ($45,000.00 for Pre-Construction Services; $25,000.00 for Phase 1 Construction Services). This firm was selected in accordance with §14-58-1001 for projects exceeding $2 million dollars. **(Pages 261-294)**

14. Budget Adjustment in the amount of $27,435.00 to Banner Fire Equipment Inc. to repair the hydraulic ladder turn table on a 2000 Model fire truck, and transportation to and from Roxana Illinois. **(Pages 295-299)**

15a. Resolution authorizing the surplus of a 2015 Dodge Ram Pickup (VIN 1C6RR7FT0FS680042) that was totaled in a motor vehicle accident. This vehicle will be sold either salvage or online public auction. **(Pages 300-302)**

15b. Budget Adjustment in the amount of $31,061.00 to replace a vehicle in the Building and Fire Safety Division. The vehicle that will be replaced was involved in an accident, and the insurance adjuster totaled the truck. **(Pages 303-305)**

16. Ordinance for a Waiver of Bid to enter into a contract with Ozark Tennis Academy as the Parks and Recreation Department's Tennis Professional for 2022 tennis programing. The initial contract term will be one year, renewable annually for a maximum term of five years. Proposals were requested through a formal Request for Proposals (RFP) process (RFP-21-59). One submission was received in response to the RFP; a Selection Committee evaluated the submission and selected Ozark Tennis Academy as the highest rated submitter based on their proposed programs and offerings to participants and past performance with the City. **(Pages 306-361)**

17. Resolution authorizing the Mayor to enter into an agreement with Active Network LLC to serve as a Point of Sale system and provide registration and membership software management for Bentonville Parks and Recreation. **(Pages 362-397)**

18. Informational Presentation regarding Quilt of Parks Project. **(Pages 398-399)**

19. Resolution authorizing Mayor Orman to enter into an agreement with Black Hills Energy Arkansas, Inc., for a Right of Way Easement for a gas line crossing park property near the Crystal Bridges Trail. **(Pages 400-412)**

City Council Agenda Items

For the City Council Meeting of October 12, 2021
From the October 5, 2021 Planning Commission Meeting

1. **Ordinance changing real estate in the City of Bentonville, Arkansas from its present zoning classification of C-1, Neighborhood Commercial to C-2, General Commercial. NW 3rd Street and N Walton Boulevard (Project Number: RZ21-0060).**

   The Planning Commission voted 6-0, recommending approval.

   The Future Land Use Map currently depicts this property as General Commercial. 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. 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 C-2, General Commercial zoning districts immediately adjacent to this property and a large natural area that provides a buffer to the RZ-L, Zero Lot Line Residential neighborhood to the west.

2a. **Resolution adopting revision to the Future Land Use Map changing real estate from Residential Estate and Agriculture to Low Density Residential. Allen Road (Project Number: RZ21-0061).**

   The Planning Commission voted 6-0, recommending approval.

   This request is not consistent with the Future Land Use Plan, however, R-1 is compatible with existing land uses and with the Bentonville Community Plan.

   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.

2b. **Ordinance changing real estate in the City of Bentonville, Arkansas from its present zoning classification of RE, Residential Estate to R-1, Low Density Single Family Residential. Allen Road (Project Number: RZ21-0061).**

   The Planning Commission voted 6-0, recommending approval.

   The Future Land Use Plan currently depicts this property as Open Space and Agricultural. The applicant is requesting a change in the Future Land Use Plan to Low Density Residential. These areas typically include detached single-family residential properties with a typical density of 3-9 units per acre. While lot size and overall density may vary from one part of the city to another, 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.

3. Ordinance changing real estate in the City of Bentonville, Arkansas from its present zoning classification of DE, Downton Commercial to DC, Down-town Core. 306 South Main Street (Project Number: RZ21-0062).

The Planning Commission voted 6-0, recommending approval.

The Future Land Use Plan currently depicts this property as Downtown Commercial. These areas include traditional mixed-use developments with a focus on design character and pedestrian access. Ground-floor uses should include activities that capitalize on pedestrian traffic and support street life, such as restaurants, retail, and services that create frequent patron traffic. Upper-floor uses could include offices, services not reliant on ground-floor visibility, and residential units. Parking could be provided in downtown commercial areas, but only where it is not detrimental to the character of the area and is secondary to an active use.

This rezoning request is consistent with the Bentonville Community Plan and the Future Land Use Plan.

4a. Resolution adopting revision to the Future Land Use Map changing General Commercial to Mixed-Use Commercial. 1120 S Walton Boulevard (Project Number: RZ21-0063).

The Planning Commission voted 6-0, recommending approval.

While this rezoning request is not consistent with the Future Land Use Plan, there is existing C-3 in the immediate area and this request is a compatible zoning district with the surrounding land uses. Additionally, this request is consistent with the intent of the Bentonville Community Plan.

4b. Ordinance changing real estate in the City of Bentonville, Arkansas from its present zoning classification C-2, General Commercial to C-3, Mixed-Use Commercial. 1120 S Walton Boulevard (Project Number: RZ21-0063).

The Planning Commission voted 6-0, recommending approval.

The Future Land Use Plan currently depicts this property as General Commercial. The applicant is requesting a change in the Future Land Use Plan to Mixed-Use Commercial. These areas include uses that provide goods and services to nearby residents. Local retail, day-to-day services, and small offices are appropriate in these areas. Vertical mixed-use developments are encouraged in mixed-use commercial areas, with upper floors including offices, services, or residential uses. Parking may be more prominent in these areas than in Downtown commercial areas, but should be sited and designed to not be detrimental to the character of the area.

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.

5a. Resolution adopting revision to the Future Land Use Map changing real estate from Low-Density Residential to High- Density Residential. S Vaughn Road & Motley Road (Project Number: RZ21-0064).

The Planning Commission voted 5-0, recommending approval.

This rezoning request is not consistent with the Future Land Use Plan, however it is compatible with the property on South Vaugh Road that was recently rezoned to R-3 by the Planning Commission on September 21, 2021.

5b. Ordinance changing real estate in the City of Bentonville, Arkansas from its zoning classification of A-1, Agricultural to R-3, Medium-High Density Multifamily Residential. S Vaughn Road & Motley Road (Project Number: RZ21-0064).

The Planning Commission voted 6-0, recommending approval.

The Future Land Use Plan currently depicts this property as Low-Density Residential. 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.

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.

6. Ordinance changing real estate in the City of Bentonville, Arkansas from its present zoning classification of R-1, Single-Family Residential & PUD, Planned Unit Development to PUD, Planned Unit Development. E Central Avenue & Katie Court (Project Number: PUD20-0002).

The Planning Commission voted 6-0, recommending approval.

An amendment to the previously approved Walmart Campus PUD to add Katie Lynn Courts Subdivision to the area. The area is depicted in the revised PUD plan set as Zone 02NE. The area includes a Childcare Center, housed in buildings L-02 and I-02. The primary materials depicted on the exterior elevations are brick, burnished concrete block, wood, and architectural metal panel.

7. Ordinance accepting a lot split Lots 23, 24, 25 & 26 of Faircole Block Addition to the City of Bentonville, Arkansas. SW Glover Street (Project Number: LS21-0065).

The Planning Commission voted 5-0, recommending approval.

The property is currently zoned DN-2, Downtown Medium Density Residential. A lot split of all of existing Lots 9 & 19, creating new Lot 23 (+/- 0.16 acres), Lot 24 (+/- 0.16 acres), Lot 25 (+/- 0.14 acres), and Lot 26 (+/-0.17 acres) of Faircole Block Addition. The plat dedicates various easements to serve the new lots and also dedicates a right-of-way along SW Glover Street per the Master Street Plan requirements. Additionally, the plat dedicates a 12' wide shared public access easement between new Lots 25 & 26.

8. Ordinance accepting a lot split Lots 11 & 12, Polson's Subdivision, to the City of Bentonville, Arkansas. 203, 207, and 209 SE 7th Street (Project Number: LS21-0043).

The Planning Commission voted 5-0, recommending approval.

The property is currently zoned D-E, Downtown Edge. A lot split of all of existing Lots 7 & 8, and part of Lot 2, creating new Lot 11 (+/- 0.33 acres) and Lot 12 (+/- 0.34 acres) of Polson's Subdivision. The plat dedicates various utility and drainage easements to serve the new lots and also dedicates a right-of-way along SE B Street per the Master Street Plan requirements.

9. Ordinance accepting a lot split Lots 13 & 14, Osage Hills Subdivision to the City of Bentonville, Arkansas. Ginn Road (Project Number: LS21-0050).

The Planning Commission voted 5-0, recommending approval.

A lot split of all of existing Lot 8, creating new Lot 13 (+/- 22.63 acres) and Lot 14 (+/- 12.51 acres) of Osage Hills Subdivision. The plat dedicates right-of-way for a future collector street along the southern lot line of new Lot 14 per the Master Street Plan requirements.

10. Ordinance accepting a property line adjustment of Lots 30-32, Block 6, W.A. Burk's Addition to the City of Bentonville, Arkansas. 1111, 1113, & 1115 NE Monroe Street (Project Number: PLA21-0033).

The Planning Commission voted 5-0, recommending approval.

A property line adjustment of all of existing Lots 19, 20, 21 and part of existing Lot 22, Block 6, creating new Lot 30 (+/- 0.21 acres), Lot 31 (+/- 0.19 acres), and Lot 32 (+/- 0.19 acres) of W.A. Burk's Addition. The plat dedicates various utility easements to serve the new lots and also dedicates a small portion of right-of-way in the southeast corner of new Lot 30 for NE Monroe Street per the Master Street Plan requirements.

11. Ordinance accepting a property line adjustment of Lots 20 & 21, Block 5, Clark's Second Addition to the City of Bentonville, Arkansas. 307 SW E Street (Project Number: PLA21-0034).

The Planning Commission voted 5-0, recommending approval.

A lot split of all of existing Lots 13 & 15, Block 5, creating new Lot 20 (+/- 0.21 acres), Lot 21 (+/- 0.47 acres), and Lot 32 (+/- 0.51 acres) of Clark's Second Addition. The plat dedicates various utility easements to serve the new lots. Right-of-way for SW E Street, SW 4th Street, and SW D Street are all in compliance with the current Master Street Plan.

12. Ordinance accepting a Final Plat of Aurora Subdivision Phase II, to the City of Bentonville, Arkansas. S Morning Star Road (Project Number: FP21-0005).

The planning Commission voted 5-0, recommending approval.

The subdivision consists of 29 total lots. 28 are single-family residential lots and one lot will be utilized as a common lot. The applicant must dedicate all private access easements before this plat can be filed with the county. All non-bondable items and guarantees of improvements must be complete and a final inspection performed and approved before Planning Commission approval.

13. Ordinance amending Bentonville Municipal Code Appendix B land development code, sec 1300.04 establishment of a tree and landscape advisory committee.

The planning Commission voted 6-0, recommending approval.

Lykins Leasing, LLC

NW 3rd Street and Walton Blvd.

PC Date: 10/5/2021

Reviewer: Jon Stanley, Senior Planner, ASLA, APA

Project Number	RZ21-0060
Applicant / Current Owner	Lykins Leasing, LLC
Site Area	+/-0.98 acres
Current Zoning	C-1, Neighborhood Commercial
Requested Zoning	C-2, General Commercial
Future Land Use Map Designation	General Commercial (C)
Requested Future Land Use Map Designation	General Commercial (C)

https://arcg.is/08HvK8

Location Map



Property Description

This property is located just west of the intersection of North Walton Boulevard and NW 3rd Street and has frontage onto NW 3rd Street. Adjacent zoning districts are C-2, General Commercial to the north and south, C-1, Neighborhood Commercial to the east, and R-ZL, Zero Lot Line Residential to the west.

Relationship to the Bentonville Community Plan

The Future Land Use Map currently depicts this property as General Commercial. 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.

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

Public Comment

At the time of writing this staff report, staff has not received public comment on this item.

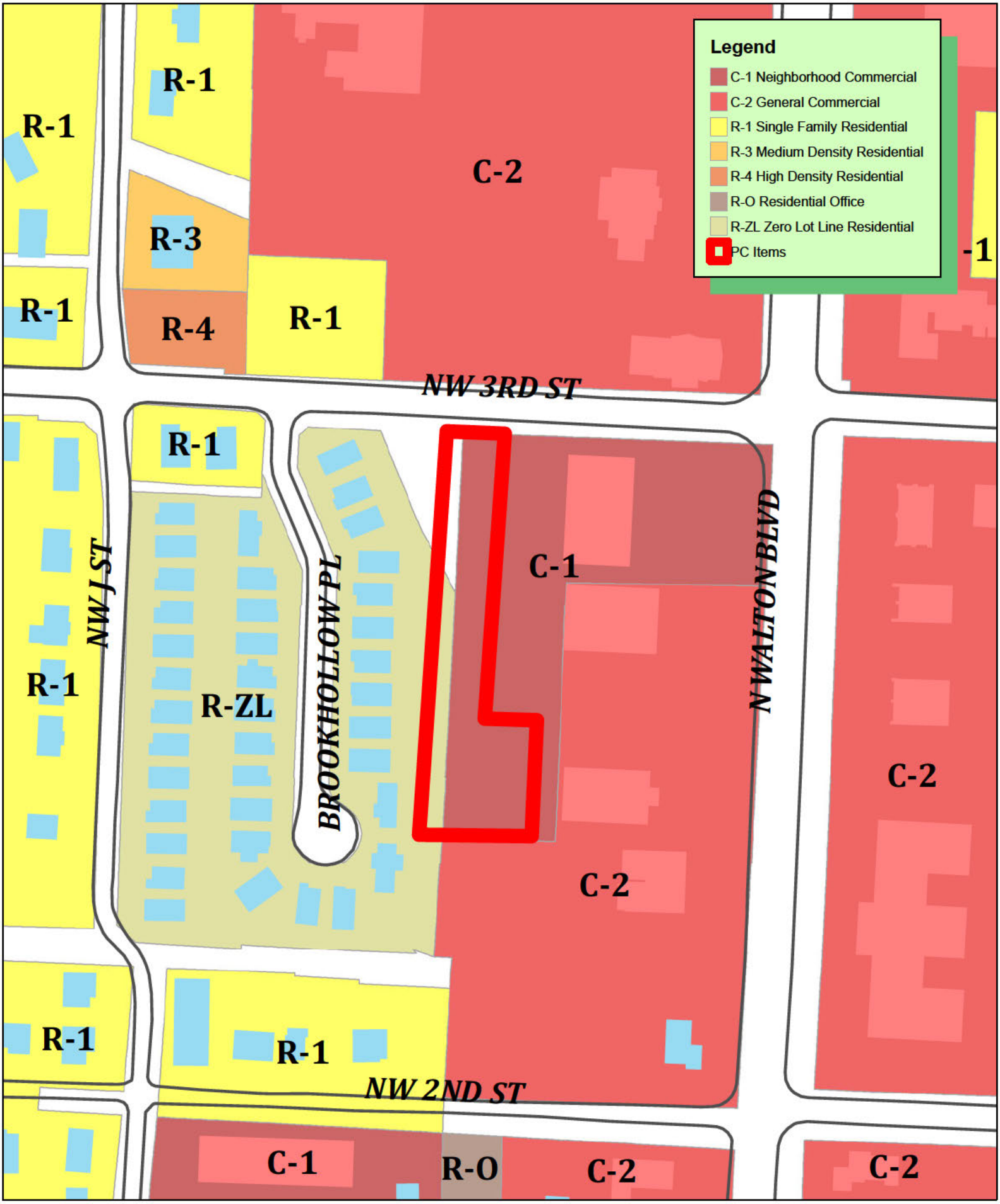
Analysis

The C-2 district represents the least restrictive of the commercial districts and is designed to serve the planning area and highway travelers. This 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 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 C-2, General Commercial zoning districts immediately adjacent to this property and a large natural area that provides a buffer to the RZ-L, Zero Lot Line Residential neighborhood to the west.

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.



1 inch = 146 feet

RZ21-0060
Lykins Leasing LLC.
Rezoning C-1 to C-2

August 27, 2021

Planning Department
City of Bentonville
305 SW A Street
Bentonville, AR 72712

Re: Lot 4 Morrison Acres Rezone Request
Bentonville, AR 72712

We are representing a request by Lykins Leasing LLC to rezone Lot 4 of Morrison Acres located on the south side of NW 3rd Street, parcel 01-05386-002, just west of N Walton Blvd. This property currently vacant. The owner would like to develop the approximate 1-acre lot into a motel type facility. Due to the difficult topography of the property, it is intended, if the rezone is approved, to build the development on the south side of the parcel just west of the Arkansas Daycare Center. There is a major flow path on the west side of the site, and it is desired to keep as much of the trees as possible, which will help with screening to the west as well. Please find below the narrative addressing the required items under the Rezoning Request Checklist.

1. The property is currently zoned C-1, Neighborhood Commercial. The proposed zoning is C-2, General Commercial.
2. The C-2 zoning will allow the construction of a motel type facility.
3. The C-2 zone classification is consistent with the Land Use Map.
4. The property currently has a driveway onto NW 3rd St.
5. Signage is anticipated at NW 3rd St for the development and will meet all city sign ordinances.
6. The appearance of the development is not known at this time, however development will follow the Bentonville Design Standards.
7. There is a 12" water line located on the north side of the property and in the southeast corner of the property. There is an 8" sewer line also located on the west side and south side of the property as well as one 8" sewer line flowing through the middle.

Sincerely,
Morrison Shipley Engineers, Inc

[redacted]

Patrick Foy, P.E.
Project Manager

NOTICE OF INTENT TO REZONE

Lykins Leasing LLC has requested the Bentonville Planning Commission to set a public hearing date to consider rezoning the following property from C-1, Neighborhood Commercial to C-2, General Commercial

The legal description of the property is as follows:
Lot 4 of Morrison Acres

The common description of the property is: Parcel ID: 01-05386-002; NW 3rd Street

Proposed land use: Services - Lodging

The public hearing will be held October 5, 20 21 at 4:00 p.m. It will be held at 305 SW A Street.

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

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

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

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

- [X] I/we have no objections to the rezoning.
- [ ] I/we object to the rezoning because:

Signatu [redacted]

P [redacted]

Physical Address Bentonville, AR

ORDINANCE NO. _____

AN ORDINANCE CHANGING REAL ESTATE IN THE CITY OF BENTONVILLE, ARKANSAS, FROM ITS PRESENT ZONING CLASSIFICATION OF C-1, NEIGHBORHOOD COMMERCIAL TO C-2, GENERAL COMMERCIAL (PROJECT NUMBER: RZ21-0060).

WHEREAS, Lykins Leasing, 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 C-1, Neighborhood Commercial to C-2, General Commercial to be used in accordance with city zoning laws and state laws, which property is described as follows:

Lot 4 of Morrison Acres; and,

WHEREAS, the Planning Commission duly met and considered the application and duly set the petition for public hearing to be held October 5, 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 C-1, Neighborhood Commercial to C-2, General 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 C-1, Neighborhood Commercial to C-2, General Commercial 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

Joseph Courtland and Tabitha Halbrook

Allen Road

PC Date: 10/5/2021

Reviewer: Elizabeth Johnson, Senior Planner, AICP

Project Number	RZ21-0061
Applicant / Current Owner	Joseph Courtland and Tabitha Halbrook
Site Area	+/- 0.77 acres
Current Zoning	R-E, Residential Estate
Requested Zoning	R-1, Low Density Single Family Residential
Future Land Use Map Designation	Agricultural (A) and Open Space (OS)
Requested Future Land Use Map Designation	Low-Density Residential (LDR)

https://arcg.is/08HvK8

Location Map



Property Description

This property is located on Allen Road. The property is surrounded by R-E, Residential Estate to the north and south, A-1, Agricultural to the east, and Centerton to the west.

Relationship to the Bentonville Community Plan

The Future Land Use Plan currently depicts this property as Open Space and Agricultural. The applicant is requesting a change in the Future Land Use Plan to Low Density Residential. These areas typically include detached single-family residential properties with a typical density of 3-9 units per acre. While lot size and overall density may vary from one part of the city to another, 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.

The property is located within Priority Area 3, Edge Growth, as identified in Chapter 4 of the Bentonville Community Plan. This area is focuses on development in areas proximate to existing infrastructure in order to capitalize on municipal investment that has already taken place (pg. 44).

Public Comment

At the time of writing this staff report, staff has not received public comment on this item.

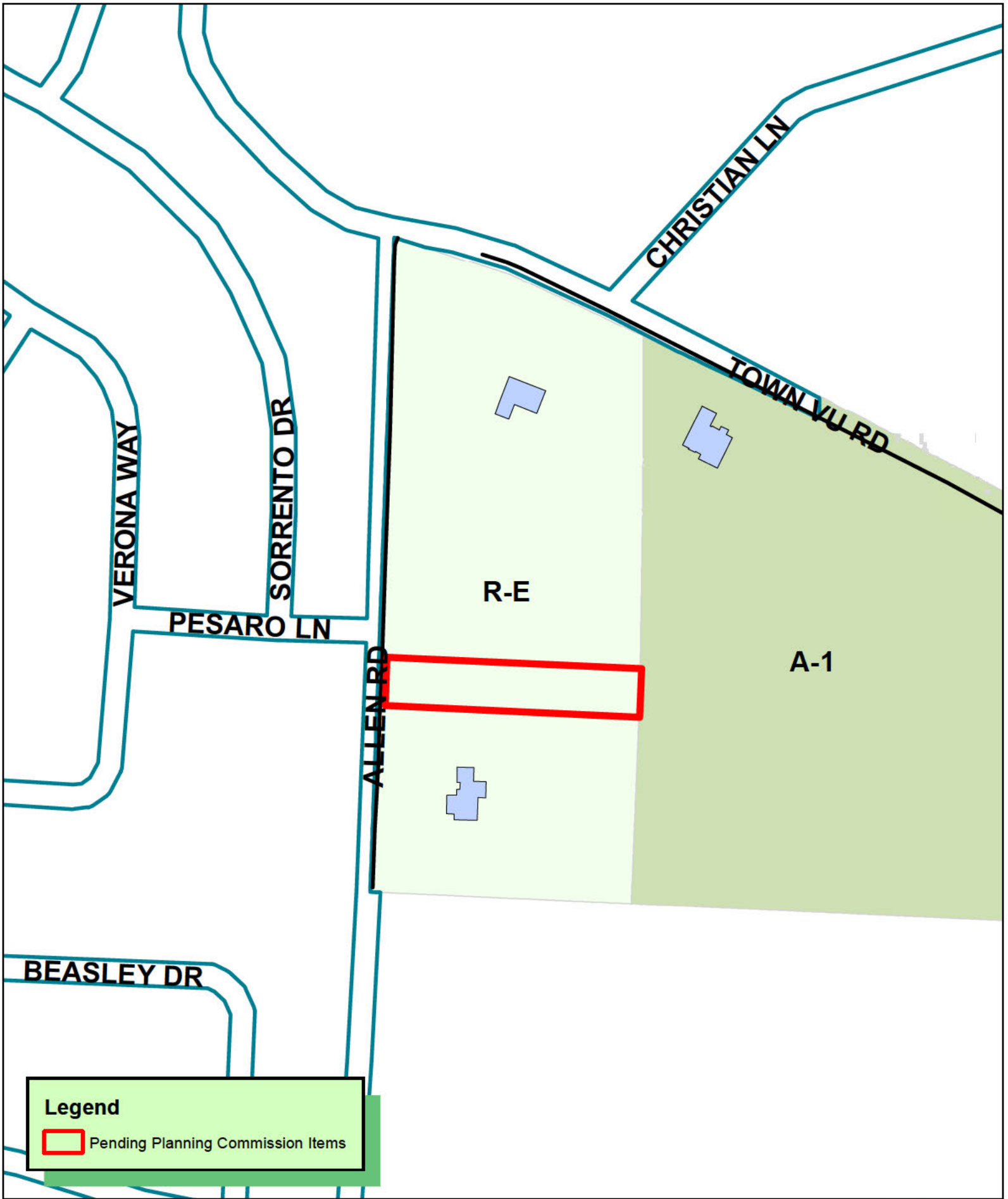
Analysis

The R-1 district is established to provide suitable areas for 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.

This request is not consistent with the Future Land Use Plan, however, R-1 is compatible with existing land uses and with the Bentonville Community Plan.

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.



RZ21-0061
REZONING
SHAW ESTATES
SOUTH 80' OF LOT 2

NARRATIVE

Rezone for a Portion of Parcel #301-08949-000

Current Zone: R-E

Proposed Zone: R-1

Reason: We (Courtland and Tabitha Halbrook) purchased this lot from my (Tabitha's) parents, John T. and Tammie Thames, with the intention of building a house. My parents would like to build a small home beside us, so the intent was to build a main house with a guest house on the 3.33 acres. Because my parents will be paying separately for the guest house and because the bank 1) will not grant a construction loan if another structure is being built on the property and 2) does not recommend having two structures on one lot, we would like to pursue a tract split so that the two projects can be treated separately. We are asking for approval to rezone a small portion before obtaining a survey and submitting paperwork for the tract split.

How property will relate to surrounding properties: This should change nothing about the relation to surrounding properties.

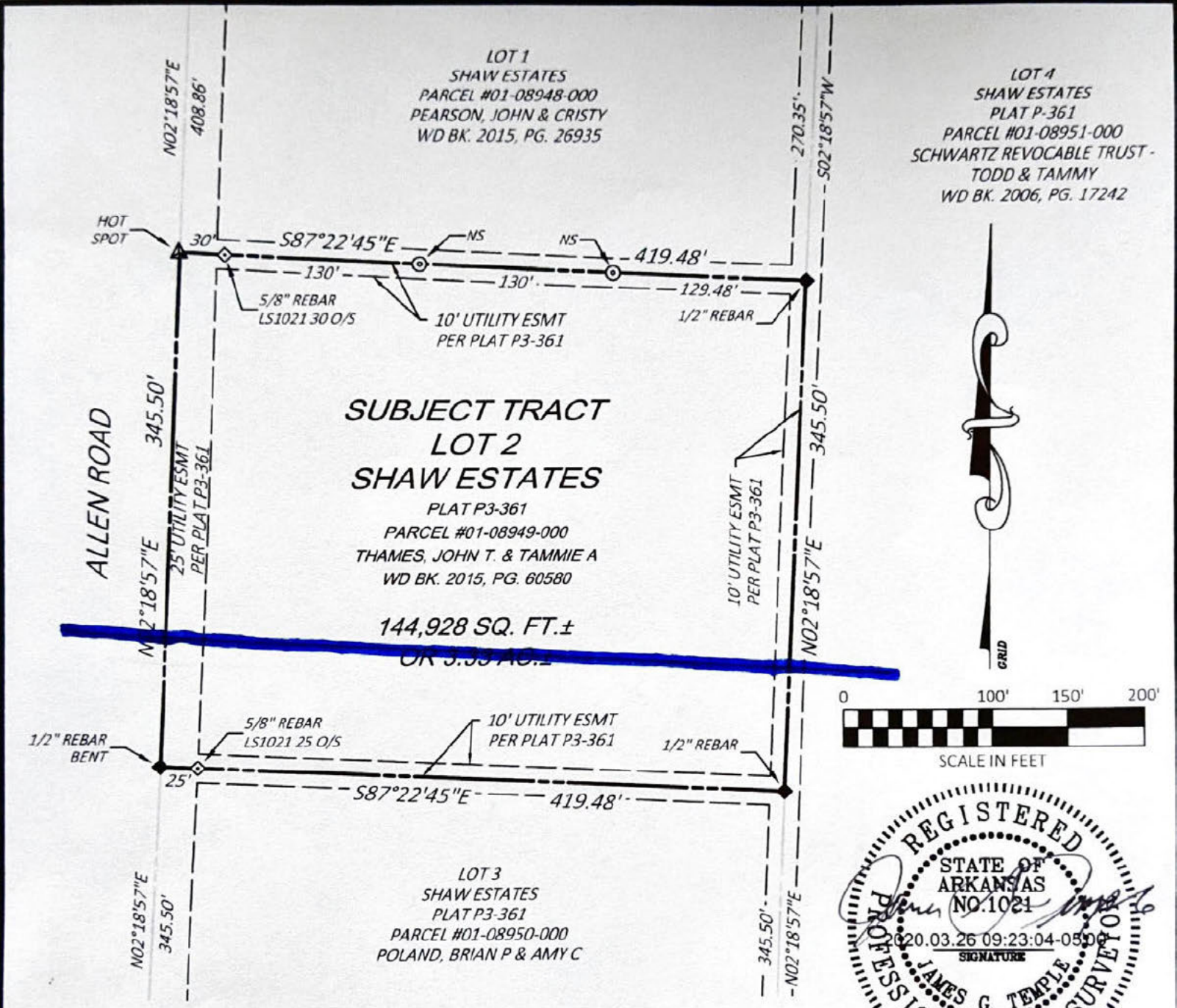
Use: The rezoned portion will be sold back to John T. and Tammie Thames and used to build a small home.

Traffic: A rezone/tract split should not affect traffic.

Signage: No signage.

Appearance: The overall appearance will not change besides what is normal with home construction. There will be no fence built between the smaller and larger portions of the property.

Availability of water and sewer: This property is located on Allen Rd. which is shared with Centerton and is across the street from Sienna Estates in Centerton. Currently there are no city water/sewer lines on the property. Centerton Utilities has been contacted, and they will hook up water/sewer by boring across the street and connecting to the line that services Sienna Estates.



REGISTERED
STATE OF ARKANSAS
NO. 1021
2020.03.26 09:23:04-05'00'
SIGNATURE
JAMES G. TEMPLE
PROFESSIONAL LAND SURVEYOR

Legend

- Boundary Line
- Adjoining Boundary Line
- Easement Line
- Found Monument (As Noted)
- Set 5/8" Rebar "LS#1021"
- Set Mag Nail

SURVEYOR'S BOUNDARY CERTIFICATION:

I hereby certify that the above platted and described survey was performed in the field under my supervision and that all monuments were found or set, as shown, to the best of my knowledge and ability. No statement or certification, written or implied, is made regarding the existence or absence of peculiar subsurface conditions, fl[redacted]s, or any facts that an accurate and co[redacted]t is specifically stated or shown.

2020.03.26 09:23:30-05'00'

James G. Temple, AR, PS No. 1021

3/26/2020
Date

State Survey Code: 500-20N-31W-0-34-420-04-1021

CEI Engineering Associates, Inc.
ENGINEERS · PLANNERS · SURVEYORS
LANDSCAPE ARCHITECTS · ENVIRONMENTAL SCIENTISTS

3108 SW REGENCY PRKWY
BENTONVILLE, AR. 72712 (479) 273-9472
CORPORATE OFFICE TBPLS FIRM: #10031500

3030 LBJ FREEWAY
DALLAS, TX 75234 (972) 488-3737
DALLAS OFFICE TBPLS FIRM: #10194

Thames, John & Tammie

31670	03/23/2020	JGT	TLP	KCD	CSS
CEI PROJECT NO.	DATE	PLS.	DRW	FLD	CHK'R

Boundary Exhibit
Allen Road
City of Centerton, Arkansas

REV DATE	SHEET NO.
3/25/2020 REV-0	1 OF 1

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.

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.

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.

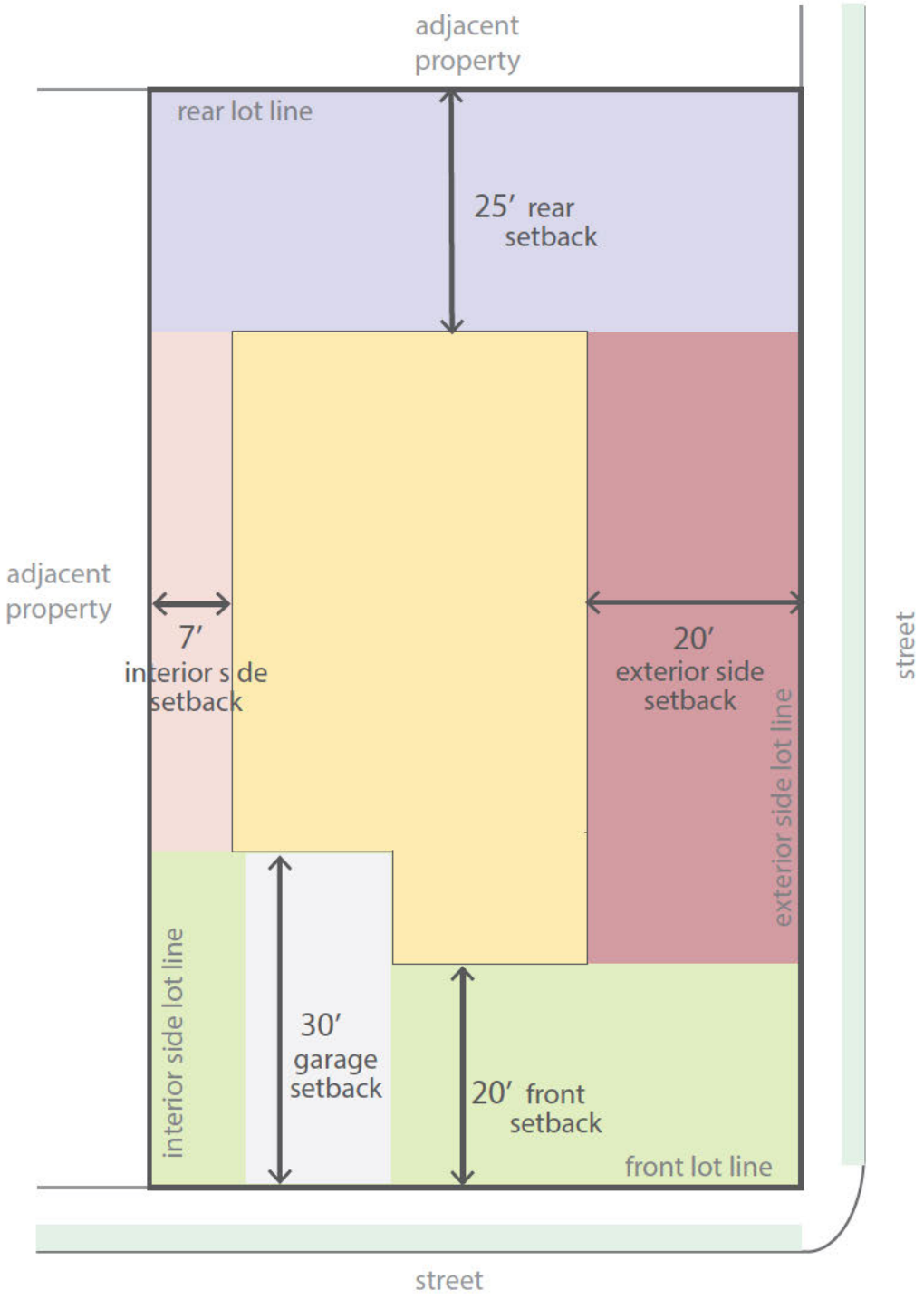
Land Uses:

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.
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

Setback Illustration



Updated June 2021

RESOLUTION NO. _____

A RESOLUTION AMENDING THE CITY OF BENTONVILLE FUTURE LAND USE MAP FOR A SPECIFIC AREA FROM RESIDENTIAL ESTATE AND AGRICULTURAL TO LOW DENSITY RESIDENTIAL. (PROJECT NUMBER: RZ21-0061).

WHEREAS, Joseph Courtland Halbrook and Tabitha T. Halbrook, duly filed a petition with the Planning Commission requesting that the hereinafter described property situated in Benton County, Arkansas, be changed from its present land use classification of Residential Estate and Agricultural to Low Density Residential, which property is described as follows:

A PART LOT 2, SHAW ESTATES, CITY OF BENTONVILLE, A SUBDIVISION OF A PART OF SECTION 34, TOWNSHIP 20 NORTH, RANGE 31 WEST, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD P3 AT PAGE 361, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO WIT: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 2 AND RUNNING THENCE N87°22'45"W 419.48', THENCE N02°18'57"E 80.00', THENCE S87°22'45"E 419.48', THENCE S02°18'57"W 80.00' TO THE POINT OF BEGINNING. CONTAINING 0.77 ACRES, MORE OR LESS;

WHEREAS, the Planning Commission duly met and considered the application and duly set the petition for public hearing to be held October 5, 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 above described real property is hereby changed from its present land use classification of Residential Estate and Agricultural to Low Density 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 this _____ day of October, 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 R-E, RESIDENTIAL ESTATE TO R-1, LOW DENSITY SINGLE FAMILY RESIDENTIAL (PROJECT NUMBER: RZ21-0061).

WHEREAS, Joseph Courtland Halbrook and Tabitha T. Halbrook 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-E, Residential Estate to R-1, Low Density Single Family Residential to be used in accordance with city zoning laws and state laws, which property is described as follows:

A PART LOT 2, SHAW ESTATES, CITY OF BENTONVILLE, A SUBDIVISION OF A PART OF SECTION 34, TOWNSHIP 20 NORTH, RANGE 31 WEST, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD P3 AT PAGE 361, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO WIT: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 2 AND RUNNING THENCE N87°22'45"W 419.48', THENCE N02°18'57"E 80.00', THENCE S87°22'45"E 419.48', THENCE S02°18'57"W 80.00' TO THE POINT OF BEGINNING. CONTAINING 0.77 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 October 5, 2021 in the Council Chambers of the City of Bentonville; and,

WHEREAS, public notice of said hearing having been published in the Northwest Arkansas Democrat-Gazette for the time and in the manner required by law; and,

WHEREAS, the Planning Commission voted to recommend to the City Council that the petition be approved and that said property be rezoned from its present classification of R-E, Residential Estate to R-1, Low Density Single Family Residential.

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

Section 1: That the above described real property is hereby changed from its present zoning classification of R-E, Residential Estate to R-1, Low Density Single Family 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

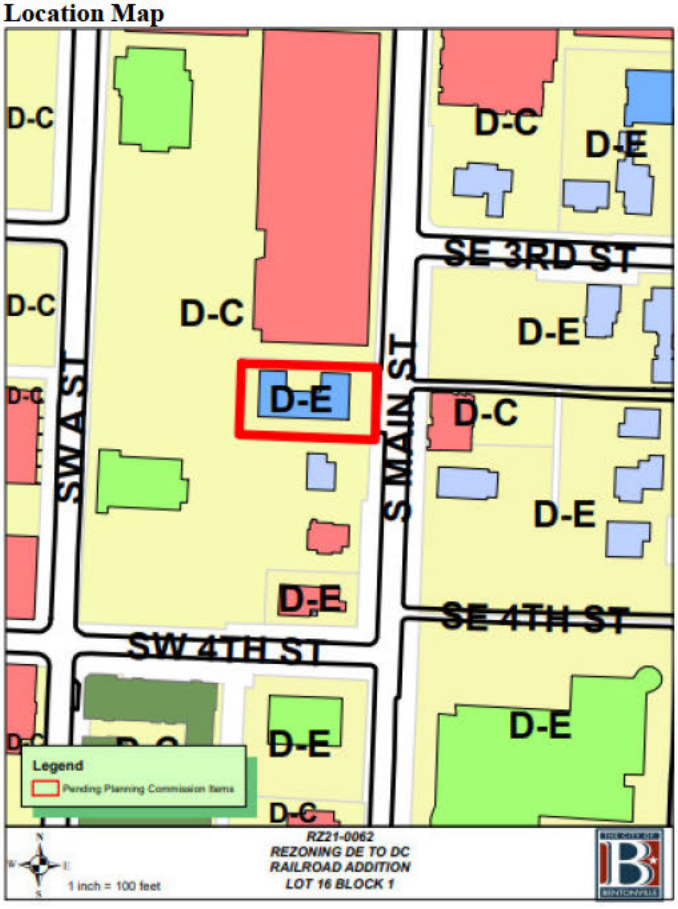
Scott Ventures, LLC

306 North Main Street
PC Date: 10/5/2021
Reviewer: Jon Stanley, Senior Planner, ASLA, APA

Project Number	RZ21-0062
Applicant / Current Owner	Scott Ventures, LLC
Site Area	+/-0.33 acres
Current Zoning	DE, Downtown Edge
Requested Zoning	DC, Downtown Core
Future Land Use Map Designation	Downtown Commercial (DC)
Requested Future Land Use Map Designation	Downtown Commercial (DC)

https://arcg.is/08HvK8

Location Map



Property Description
This property is located at 306 North Main Street, just south of the new Bentonville City Center development. Adjacent zoning districts are all DC, Downtown Core.

Relationship to the Bentonville Community Plan
The Future Land Use Plan currently depicts this property as Downtown Commercial. These areas include traditional mixed-use developments with a focus on design character and pedestrian access. Ground-floor uses should include activities that capitalize on pedestrian traffic and support street life, such as restaurants, retail, and services that create frequent patron traffic. Upper-floor uses could include offices, services not reliant on ground-floor visibility, and residential units. Parking could be provided in downtown commercial areas, but only where it is not detrimental to the character of the area and is secondary to an active use.

The property is located within Priority Area 1, Downtown Intensification and highlights reinvestment in urban neighborhoods in and around Downtown Bentonville (pg. 44).

Public Comment
At the time of writing this staff report, staff has received public comment in support on this item.

Analysis
The Downtown Core comprises that area of the Bentonville Square and extends those urban characteristics along the primary downtown street of SW A Street to Highway 102. The intent of this zone is to maintain and expand the pedestrian oriented character of the town square. The physical form is of an urban character with uses that promote retail and entertainment venues with upper story residential uses permitted. Mixed use is defined as vertical mixed use with commercial and retail on the first floor and office and residential on the upper floors. Buildings are spaced closely or attached.

This rezoning request is consistent with the Bentonville Community Plan and the Future Land Use Plan.

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.


D-C
D-C
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SE 3RD ST
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SW A ST
S MAIN ST
D-C
D-C
D-E
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SE 4TH ST
SW 4TH ST
D-E
D-E
D-C
Legend
Pending Planning Commission Items
N
W
E
S
1 inch = 100 feet
RZ21-0062
REZONING DE TO DC
RAILROAD ADDITION
LOT 16 BLOCK 1
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 30, 2021

Bentonville Planning Department
305 SW A Street
Bentonville, AR 72712

RE: Rezoning Parcel No. 01-03763-000 from D-E, Downtown Edge to DC, Downtown Core

Dear Planning Staff:

This law firm has been hired to assist the applicant, Scott Ventures, LLC, in obtaining a rezoning of Parcel No. 01-03763-000 (hereinafter "the Property") from from D-E, Downtown Edge to D-C, Downtown Core.

The primary reason for this rezoning request is to bring the lot into compliance with surrounding properties, and maximize the development potential of the parcel. No development is contemplated in the immediate future. The requested zoning is in compliance with the Bentonville Future Land Use Plan ("FLUP"). The FLUP designates this parcel as Downtown Commercial, which allows for D-C zoning. All parcels to the North, South, and West are zoned D-C. Additionally, the parcel directly across the Main St. to the East is zoned D-C. All other parcels nearby are zoned D-E.

Because the Property is already zoned D-E, this rezoning will not increase traffic in any appreciable way. Because no development is contemplated at the time, questions of signage and appearance are inapplicable. Lastly, eight inch (8") gravity sewer and water lines are located along Main 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

RZ21-00062

NOTICE OF INTENT TO REZONE

Scott Ventures, LLC has requested the Bentonville Planning Commission to set a public hearing date to consider rezoning the following property from D-E, Downtown Edge to DC, Downtown Core. The legal description of the property is as follows:

Lot 16, Block 1, Railroad Addition, Bentonville, Benton County, as shown in Plat Record "A", Page 38, Less and Except the South 75 feet thereof. Said property having the address of 306 S. Main, Bentonville, Arkansas 72712

The common description of the property is: **306 S. Main St., Bentonville, Arkansas**

Proposed land use: **Downtown Commercial**

The public hearing will be held on **October 5th, 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:

X I/we have no objections to the rezoning.

I/we object to the rezoning because:

_____

_____

[redacted]

Signature

EMMA PARTNERS, LLC
ATTN: PAUL FESTERER, MANAGING MEMBER

Printed Name

[redacted] BENTONVILLE, AR

Physical Address

ORDINANCE NO. _____

AN ORDINANCE CHANGING REAL ESTATE IN THE CITY OF BENTONVILLE, ARKANSAS, FROM ITS PRESENT ZONING CLASSIFICATION OF DE, DOWNTOWN EDGE TO DC, DOWNTOWN CORE (PROJECT NUMBER: RZ21-0062).

WHEREAS, Scott Ventures, 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 DE, Downtown Edge to DC, Downtown Core to be used in accordance with city zoning laws and state laws, which property is described as follows:

Lot 16, Block 1, Railroad Addition, Bentonville, Benton County, as shown in Plat Record "A", Page 38, Less and Except the South 75 feet thereof. Said property having the address of 306 S. Main, Bentonville, Arkansas 72712; and,

WHEREAS, the Planning Commission duly met and considered the application and duly set the petition for public hearing to be held October 5, 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 DE, Downtown Edge to DC, Downtown Core.

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 DE, Downtown Edge to DC, Downtown Core 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

1120 South Walton Partners, LLC

1120 S Walton Boulevard

PC Date: 10/5/2021

Reviewer: Elizabeth Johnson, Senior Planner, AICP

Project Number	RZ21-0063
Applicant / Current Owner	1120 South Walton Partners, LLC
Site Area	+/- 5.63 acres
Current Zoning	C-2, General Commercial
Requested Zoning	C-3, Mixed-Use Commercial
Future Land Use Map Designation	General Commercial (C)
Requested Future Land Use Map Designation	Mixed-Use Commercial (MUC)

https://arcg.is/08HvK8

Location Map



Property Description

This property is located at 1120 S Walton Boulevard. The property is surrounded by C-2, General Commercial to the north, south, east, and west.

Relationship to the Bentonville Community Plan

The Future Land Use Plan currently depicts this property as General Commercial. The applicant is requesting a change in the Future Land Use Plan to Mixed-Use Commercial. These areas include uses that provide goods and services to nearby residents. Local retail, day-to-day services, and small offices are appropriate in these areas. Vertical mixed-use developments are encouraged in mixed-use commercial areas, with upper floors including offices, services, or residential uses. Parking may be more prominent in these areas than in Downtown commercial areas, but should be sited and designed to not be detrimental to the character of the area.

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

Public Comment

At the time of writing this staff report, staff has not received public comment on this item.

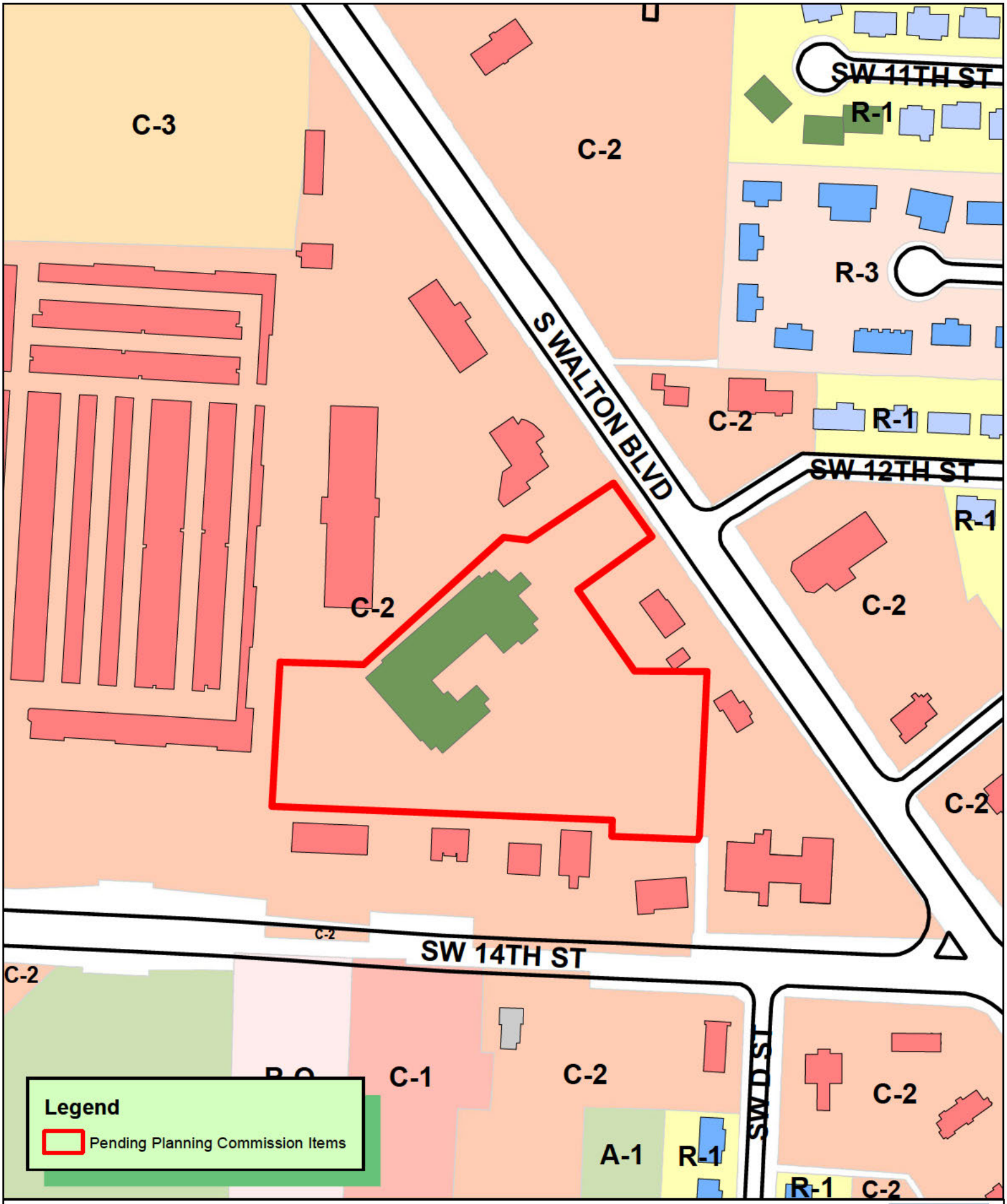
Analysis

The C-3 District is established for areas outside of downtown to provide an opportunity for people to live, work, meet, shop and utilize services within the vicinity of their residences. The C-3 District allows for a mix of neighborhood commercial and personal services, offices and medium density residential uses. Development in this district should be designed with an urban, walkable character that encourages physical activity, alternative transportation and greater social interaction to benefit the health and wellbeing of residents.

While this rezoning request is not consistent with the Future Land Use Plan, there is existing C-3 in the immediate area and this request is a compatible zoning district with the surrounding land uses. Additionally, this request is consistent with the intent of the Bentonville Community Plan.

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 = 200 feet

RZ21-0063
REZONING C-2 TO C-3
EXECUTIVE CENTER PLACE SUBDIVISION
LOT 6 - 1120 S WALTON BLVD

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 30, 2021

Bentonville Planning Department
305 SW A Street
Bentonville, AR 72712

RE: Rezoning Parcel No. 01-09408-000 from C-2–General Commercial to C-3–Mixed Use Commercial

Dear Planning Staff:

This law firm has been hired to assist the applicant, Fifty One Farm Group, LLC, in obtaining a rezoning of No. 01-09408-000 from C-2–General Commercial to C-3–Mixed Use Commercial, pursuant to a proposed sale.

The primary purpose for this rezoning request is to allow the developer a greater variety of uses for this parcel. Notably, C-2 largely does not allow residential uses, either conditionally or by right. Generally speaking, the purpose of this rezoning is to allow the property to be put to its highest and best use if ever redeveloped in the future. The property is currently developed with a mix of commercial and lodging uses. Lastly, rezoning the property to C-3 will not cause the current development to be in violation of any setback, height, area, or density requirements, as all of said requirements are less restrictive under C-3 than under C-2.

Because all adjacent properties have commercial zonings and uses, the requested zoning and proposed use are compatible with the parcel's surroundings. Moreover, this rezoning is expected to act as a continuation of the redevelopment occurring along this stretch of S. Walton Blvd. This rezoning also falls in line with recent rezonings to C-3 at 1002 S. Walton, and 307 S. Walton. As for traffic, the parcel sits Highway 71B, which has ample capacity for further development. Lastly, as for utilities, there is an 8" water line and a 8" gravity sewer line currently serving the property which run from and along S. Walton Blvd.

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
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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

WATKINS, BOYER, GRAY & CURRY, PLLC

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WRITER'S DIRECT E-MAIL
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DELYNN HALE, SECRETARY
AMY BENSON, PARALEGAL
WHITNEY DUCKER, OFFICE MANAGER

August 31, 2021

Bentonville Planning Department
305 SW A Street
Bentonville, AR 72712

RE: Amending the Future Land Use Map Designation of Parcel No. 01-09408-000 from General Commercial to Mixed Use Commercial

Dear Planning Staff:

This law firm has been hired to assist the applicant, Fifty One Farm Group, LLC, in amending the Future Land Use Map designation for Parcel No. 01-09408-000 from General Commercial to Mixed Use Commercial. The primary purpose for this amendment request is to the allow for the applicant to obtain a rezoning from C-2, General Commercial to C-3, Mixed Use Commercial.

There are several reasons why a Mixed Use Commercial land use designation is fitting for this parcel, as well as this stretch of Walton Boulevard in general. If a mix of residential and commercial use were allowed to develop on Walton Boulevard, this stretch in particular could act as an extension of Downtown Bentonville. This is especially the case because this area is walkable or bikable from most of Downtown and the SW A St. and Main St. corridors. Generally speaking, allowing a mix of residential and commercial uses where intense land uses already exist falls in line with Bentonville's goal to be a dense, walkable city. Moreover, this property is located on Highway 71B, which has ample capacity to any handle any additional traffic generated from allowing mixed-use development.

A change to a Mixed Use Commercial designation for this parcel would aid in the continuation of the redevelopment occurring along this stretch of S. Walton Blvd. Lastly, there is precedent for this amendment, granted the recent rezonings to C-3 at 1002 S. Walton, and at 307 S. Walton.

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

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pc:

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Mixed-Use Commercial

Future Land Use Plan Category Description

Res. No. 10-23-18A



Description

Mixed-use commercial areas include uses that provide goods and services to nearby residents. Local retail, day-to-day services, and small offices are appropriate in these areas. Vertical mixed-use developments are encouraged in mixed-use commercial areas, with upper floors including offices, services, or residential uses. Parking may be more prominent in these areas than in Downtown commercial areas, but should be sited and designed to not be detrimental to the character of the area.

C-3, Mixed-Use Commercial

The C-3 District is established for areas outside of downtown to provide an opportunity for people to live, work, meet, shop and utilize services within the vicinity of their residences. The C-3 district allows for a mix of neighborhood commercial and personal services, offices and medium density residential uses. Development in this district should be designed with an urban, walkable character that encourages physical activity, alternative transportation and greater social interaction to benefit the health and wellbeing of residents.

Maximum Height Allowed: 60 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-3	All	None	-	-	-	100%	100%

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-3	0’	0’	0’	10’	0’	0’

Sidewalk Setback: No building in the C-3 district, regardless of the location of the lot lines of the property on which it is to be built, shall be built closer than 8 ft. from the back of the curb line of any public street abutting the property on which the building is located. This spacing shall be maintained in order to provide adequate space for the required sidewalk to be built along that street frontage.

Canopy Standards: Canopies may project over the street right-of-way if they terminate no less than 2 ft. horizontally from the outside edge of the street curb and are no less than 8 ft. above the surface of a new or existing sidewalk.

C-3, Mixed-Use Commercial

ALLOWED BY RIGHT

Agriculture and Animals
Animal - domestic or household
Community garden
Urban farm

Residential
Dwelling - condominium
Dwelling - multi-family
Home occupation - type b
Residential facility - rehabilitation

Recreation, Education & Assembly
Aquarium
Community center
Commercial recreation facility - indoor
Cultural studio
Library
Museum
Park – mini, neighborhood

Services
Adult day care
ATM machine
Auction house
Child care - commercial
Child care - residential (4 children)
Child care - residential (5-10 children)
Copy facilities
Financial institution
Funeral home
Governmental services facility
Lodging - hotel / motel
Medical services - doctor office
Office - small scale (≤ 4,000 gsf)
Office - large 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 - off-site consumption
Convenience store that sells beer, light wine/and or spirits for off-site consumption
Gas station
Outdoor vending - private property
Restaurant
Restaurant, drive-in
Restaurant, drive through
Retail - small scale (≤ 4,000 gsf)
Sidewalk café in public right-of-way

Transportation / Utilities
Broadcasting studio

CONDITIONAL

Agriculture and Animals
Animal clinic
Botanical garden
Greenhouse

Residential
Dwelling - modular
Dwelling - townhouse or rowhouse
Dwelling - two-family

Recreation, Education & Assembly
Arena / Auditorium
Commercial recreation facility - outdoor
Educational facility
Event center
Golf course
Outdoor music venue
Religious facilities

Services
Cemetery or mausoleum
Lodging - bed & breakfast
Medical services - hospital
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
Convenience store that sells beer, light wine/and or spirits for off-site consumption within 500 ft. of a city owned park or trail
Outdoor vendor park

Transportation / Utilities
Parking facility (as principle use)
Transportation facilities excluding airports
Utility facility
Wireless communication facility (cell towers)

Other
Temporary uses

ACCESSORY

Residential
Dwelling - accessory
Home occupation - type a

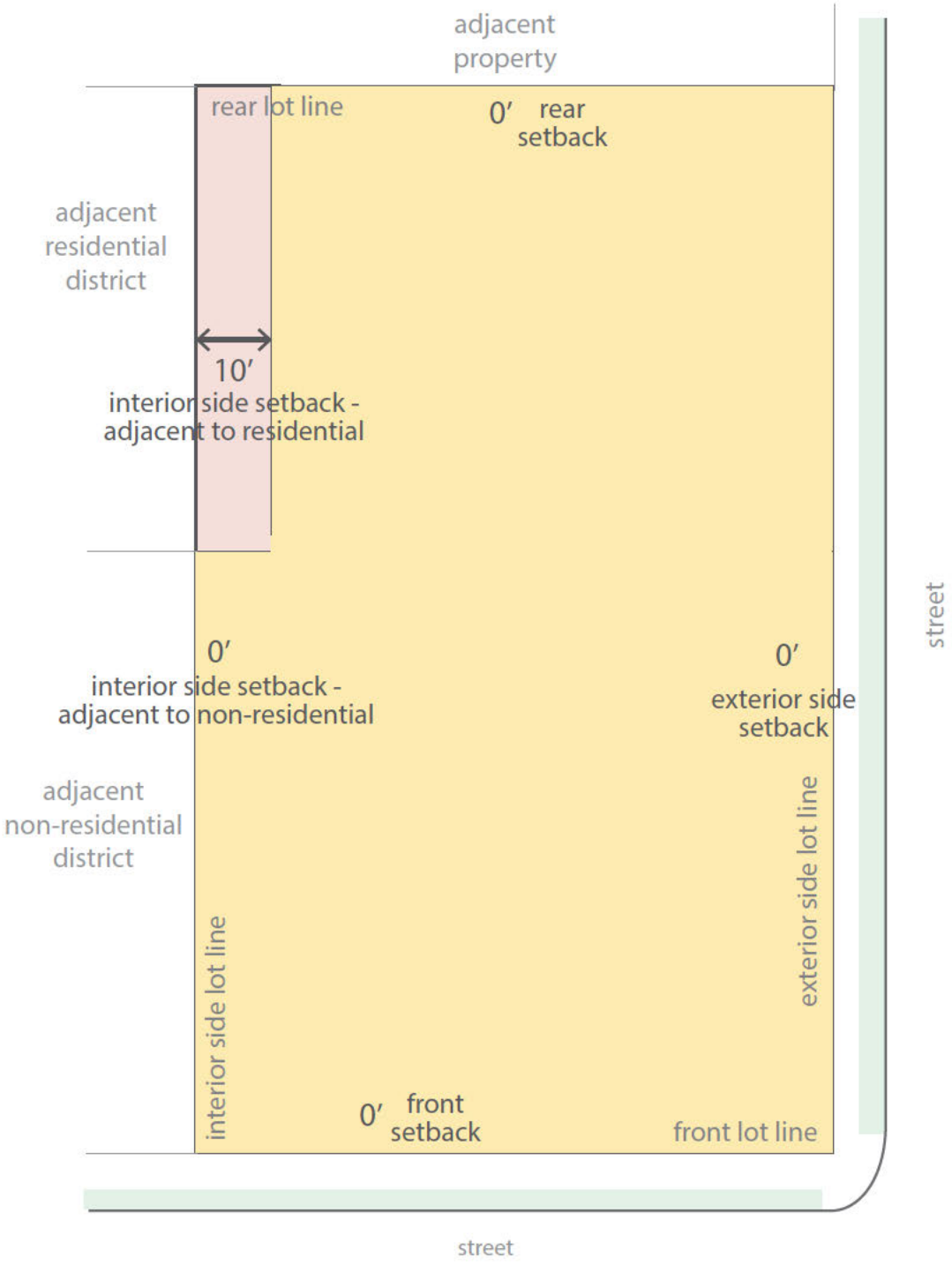
Transportation / Utilities
Solar energy system
Wind energy system, small

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.

C-3, Mixed- Use Commercial

Setback Illustration



Updated May 2020

RESOLUTION NO. _____

A RESOLUTION AMENDING THE CITY OF BENTONVILLE FUTURE LAND USE MAP FOR A SPECIFIC AREA FROM GENERAL COMMERCIAL TO MIXED-USE COMMERCIAL. (PROJECT NUMBER: RZ21-0063).

WHEREAS, 1120 South Walton Partners, 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 land use classification of General Commercial to Mixed-Use Commercial, which property is described as follows:

Lot 6 Executive Center Place, Property Line Adjustment, Bentonville, Benton County, Arkansas as shown on Plat L201808023

WHEREAS, the Planning Commission duly met and considered the application and duly set the petition for public hearing to be held October 5, 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 above described real property is hereby changed from its present land use classification of General Commercial to Mixed-Use 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 this _____ day of October, 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 C-2, GENERAL COMMERCIAL TO C-3, MIXED-USE COMMERCIAL (PROJECT NUMBER: RZ21-0063).

WHEREAS, 1120 South Walton Partners, 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 C-2, General Commercial to C-3, Mixed-Use Commercial to be used in accordance with city zoning laws and state laws, which property is described as follows:

Lot 6 Executive Center Place, Property Line Adjustment, Bentonville, Benton County, Arkansas as shown on Plat L201808023; and,

WHEREAS, the Planning Commission duly met and considered the application and duly set the petition for public hearing to be held October 5, 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 C-2, General Commercial to C-3, Mixed-Use 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 C-2, General Commercial to C-3, Mixed-Use Commercial 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

Shasta Properties, LLC

South Vaughn Road & Motley Road

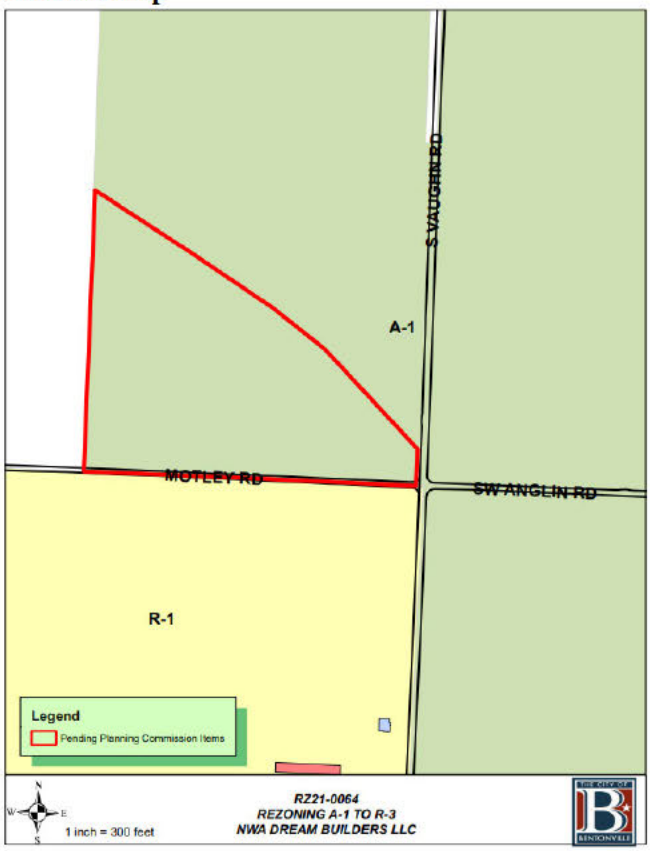
PC Date: 10/5/2021

Reviewer: Jon Stanley, Senior Planner, ASLA, APA

Project Number	RZ21-0064
Applicant / Current Owner	Scott Ventures, LLC
Site Area	+/-19.69 acres
Current Zoning	A-1, Agricultural
Requested Zoning	R-3, Medium-High Density Multifamily Residential
Future Land Use Map Designation	Low-Density Residential (LDR)
Requested Future Land Use Map Designation	High-Density Residential (HDR)

https://arcg.is/08HvK8

Location Map



Property Description

This property is located at the intersection of South Vaughn Road and Motley Road. 306 North Main Street, just south of the new Bentonville City Center development. Adjacent zoning districts are A-1, Agricultural to the north and east, R-1, Low Density Single-Family Residential to the south, and Centerton to the west.

Relationship to the Bentonville Community Plan

The Future Land Use Plan currently depicts this property as Low-Density Residential. 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.

The applicant is requesting a change in the Future Land Use Plan to High Density Residential. These 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 and focuses on development in areas proximate to existing infrastructure on order to capitalize on municipal investments that have already taken place. (pg. 44).

Public Comment

At the time of writing this staff report, staff has not received public comment on this item.

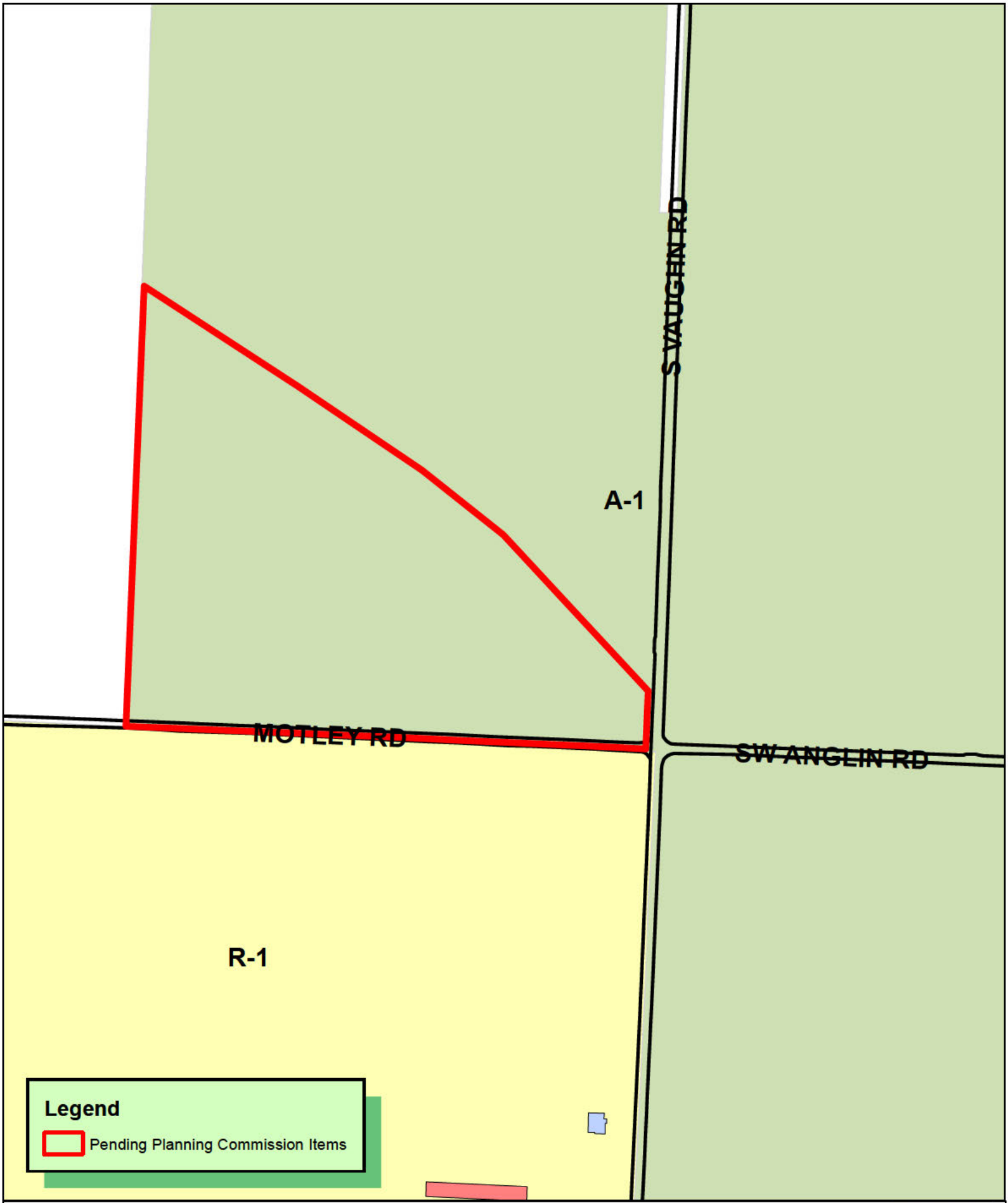
Analysis

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.

This rezoning request is not consistent with the Future Land Use Plan, however it is compatible with the property on South Vaugh Road that was recently rezoned to R-3 by the Planning Commission on September 21, 2021.

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
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1 inch = 300 feet

RZ21-0064
REZONING A-1 TO R-3
NWA DREAM BUILDERS LLC

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 30, 2021

Bentonville Planning Department
305 SW A Street
Bentonville, AR 72712

RE: Amending the Future Land Use Map from Agriculture to High Density Residential for 19.69 Acres on Vaughn Road

Dear Planning Staff:

This law firm has been hired to assist the applicant, NWA Dream Builders, LLC, in amending the Future Land Use Map (hereinafter the "FLUM") from Agriculture to High Density Residential for 19.69 acres located at 4100 S. Vaughn Road in Bentonville (hereinafter the "Property").

Currently, the Property is designated as Agriculture on the FLUM, which allows for only A-1 zoning. The primary purpose for this FLUM amendment request is to obtain a rezoning from A-1 Agricultural to R-3, Medium-High Density Residential.

There have been several recent rezonings and developments in the area which suggest that the Property is a good candidate for being rezoned to a residential use. There are several parcels along Anglin/Motley Road which have recently been rezoned to R-1. Additionally, there are several other residential developments along Vaughn Road as it approaches Arkansas Highway 102 in Centerton. Lastly, there are two other apartment complexes on Vaugh Road–one to the North near the intersection of Vaughn Road and Highway 102 in Centerton and one to the South at the intersection of Vaughn Road and SW Regional Airport Boulevard in Bentonville. Lastly, the Property is in close proximity to both the Northwest Arkansas Regional Airport and several distribution centers. Accordingly, this is an excellent location for workforce housing.

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
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WATKINS, BOYER, GRAY & CURRY, PLLC

ATTORNEYS AT LAW

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wkellstrom@watkinslawoffice.com

DELYNN HALE, SECRETARY
AMY BENSON, PARALEGAL
WHITNEY DUCKER, OFFICE MANAGER

August 30, 2021

Bentonville Planning Department
305 SW A Street
Bentonville, AR 72712

RE: Rezoning 19.69 Acres at 4100 Vaughn Road from A-1, Agricultural, to R-3, Medium High Density Multifamily

Dear Planning Staff:

This law firm has been hired to assist the applicant, NWA Dream Builders, LLC, in obtaining a rezoning of 19.69 Acres at 4100 Vaughn Road (hereinafter "the Property") from A-1, Agricultural, to R-3, Medium High Density Multifamily.

The primary reason for this rezoning request is to allow the applicant to build an apartment complex on the Property. The immediately adjacent land uses are all either residential estate or agriculture. Accordingly, the planned residential use is unlikely to interfere with either of those types of land uses. Additionally, there have been several recent residential developments along Anglin/Motley Road to the East and West and along Vaughn Road to the North and South. Moreover, some of those developments have been multifamily. Specifically, the Aviator Apartments and the Glen at Polo Park Apartments are located near the intersection of Vaughn Road and SW Regional Airport Boulevard. Also, there is an apartment complex located near the intersection of Vaughn Road and Highway 102 in Centerton. Lastly, granted its proximity to Northwest Arkansas National Airport and to nearby distribution centers, this property is a prime candidate for a workforce housing development.

As for traffic, the Property is located on Arkansas Highway 279, which should have ample capacity for additional residents. Signage, if any, will consist of a monument sign for the development, and the appearance of the development will be similar to other apartment complexes in the area. Lastly, there is a 12" water line running along Vaughn Road, and there is an easement for a future 12" gravity sewer line which runs Northwest/Southeast along the northern boundary of the Property.

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

Will A. Kellstrom

WK:
pc:

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RESOLUTION NO. _____

A RESOLUTION AMENDING THE CITY OF BENTONVILLE FUTURE LAND USE MAP FOR A SPECIFIC AREA FROM LOW-DENSITY RESIDENTIAL TO HIGH-DENSITY RESIDENTIAL. (PROJECT NUMBER: RZ21-0064).

WHEREAS, Shasta Properties, 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 land use classification of Low-Density Residential to High-Density Residential, which property is described as follows:

A PART OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 19 NORTH, RANGE 31 WEST, BENTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT A POINT ON THE WEST LINE OF SAID FORTY ACRE TRACT WHICH IS S87°49'08"E 1322.34' AND S02°20'35"W 1513.72' FROM THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 8 AND RUNNING THENCE S56°51'41"E 452.41', THENCE S55°55'51"E 369.40', THENCE S51°35'51"E 255.93', THENCE S42°47'08"E 524.78' TO THE WEST MASTER STREET PLAN RIGHT-OF-WAY OF ARKANSAS HIGHWAY #279, THENCE ALONG SAID RIGHT-OF-WAY S02°08'29"W 143.05' TO THE NORTH MASTER STREET PLAN RIGHT-OF-WAY OF MOTLEY ROAD, THENCE ALONG SAID RIGHT-OF-WAY THE FOLLOWING: N86°52'58"W 73.54', N87°08'24"W 63.06', N87°41'01"W 135.63', N87°17'09"W 91.53', N87°21'45"W 88.60', N87°15'40"W 102.38', N87°24'00"W 85.17', N88°01'38"W 79.76', N87°14'27"W 72.47', N87°35'59"W 68.98', N87°28'14"W 71.16', N87°41'59"W 130.17', N87°44'16"W 120.47', N87°44'51"W 99.23' TO THE WEST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 8, THENCE ALONG SAID WEST LINE N02°20'35"E 1086.29' TO THE POINT OF BEGINNING, CONTAINING 19.69 ACRES, MORE OR LESS. SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD;

WHEREAS, the Planning Commission duly met and considered the application and duly set the petition for public hearing to be held October 5, 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 above described real property is hereby changed from its present land use classification of Low-Density Residential to High-Density 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 this _____ day of October, 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-3, MEDIUM-HIGH DENSITY MULTIFAMILY RESIDENTIAL (PROJECT NUMBER: RZ21-0064).

WHEREAS, Shasta Properties, 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-3, Medium-High Density Multifamily Residential to be used in accordance with city zoning laws and state laws, which property is described as follows:

A PART OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 19 NORTH, RANGE 31 WEST, BENTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT A POINT ON THE WEST LINE OF SAID FORTY ACRE TRACT WHICH IS S87°49'08"E 1322.34' AND S02°20'35"W 1513.72' FROM THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 8 AND RUNNING THENCE S56°51'41"E 452.41', THENCE S55°55'51"E 369.40', THENCE S51°35'51"E 255.93', THENCE S42°47'08"E 524.78' TO THE WEST MASTER STREET PLAN RIGHT-OF-WAY OF ARKANSAS HIGHWAY #279, THENCE ALONG SAID RIGHT-OF-WAY S02°08'29"W 143.05' TO THE NORTH MASTER STREET PLAN RIGHT-OF-WAY OF MOTLEY ROAD, THENCE ALONG SAID RIGHT-OF-WAY THE FOLLOWING: N86°52'58"W 73.54', N87°08'24"W 63.06', N87°41'01"W 135.63', N87°17'09"W 91.53', N87°21'45"W 88.60', N87°15'40"W 102.38', N87°24'00"W 85.17', N88°01'38"W 79.76', N87°14'27"W 72.47', N87°35'59"W 68.98', N87°28'14"W 71.16', N87°41'59"W 130.17', N87°44'16"W 120.47', N87°44'51"W 99.23' TO THE WEST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 8, THENCE ALONG SAID WEST LINE N02°20'35"E 1086.29' TO THE POINT OF BEGINNING, CONTAINING 19.69 ACRES, MORE OR LESS. SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD.S02°37'19"W 469.61' FROM; and,

WHEREAS, the Planning Commission duly met and considered the application and duly set the petition for public hearing to be held October 5, 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 A-1, Agricultural 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 A-1, Agricultural 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

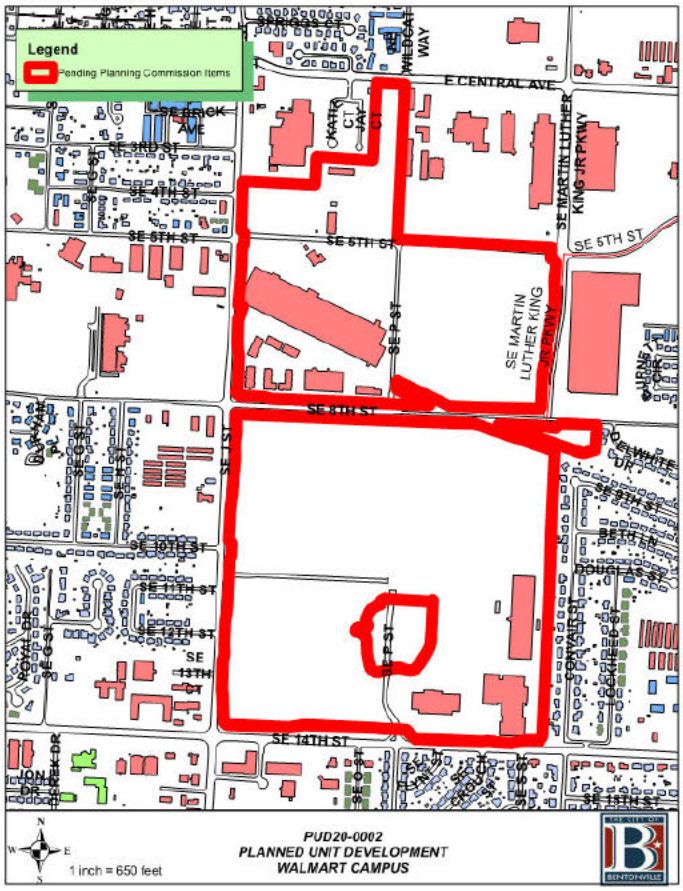
Walmart Campus

301 SE J Street
PC Date: 10/5/2021
Reviewer: Tyler Overstreet, Planning Services Manager, AICP

Project Number	PUD20-0002
Applicant / Current Owner	Wal-Mart Stores, Inc. PO Box 8050 Bentonville, AR 72712
Site Area	+/- 231 acres
Current Zoning	PUD, Planned Unit Development
Requested Zoning	PUD, Planned Unit Development
Future Land Use Map Designation	General Commercial

https://arcg.is/08HvK8

Location Map



Note: This is an amendment to a previously approved Planned Unit Development.

Amendment Description
An amendment to the previously approved Walmart Campus PUD to add Katie Lynn Courts Subdivision to the area. The area is depicted in the revised PUD plan set as Zone 02NE. The area includes a Childcare Center, housed in buildings L-02 and I-02. The primary materials depicted on the exterior elevations are brick, burnished concrete block, wood, and architectural metal panel.

Project Description
This property is the future site of the Walmart Home Office Campus. The property is generally bounded by E Central Avenue to the north, SE Martin Luther King Junior Parkway and SE Moberly Lane to the east, SE 14th Street to the south, and SE J Street to the west. Vicinity maps and streetscape layouts are included in the Planned Unit Development packet.

The campus includes a total of 13 commercial buildings, 13 parking decks, and 10 surface parking lots. The development is divided into five zones to be constructed in three phases. Depictions of each of the zones and a phasing plan are included within the packet. The development provides a total of 11,255 parking spaces. The Planned Unit Development depicts 15-foot setbacks along SE J Street and SE 14th Street, 10-foot setbacks along MLK, and 0-foot setbacks along SE 8th Street. The development depicts a total of 108 acres of open space, or 47% of the project area. The development provides a variety of materials such as architectural metal panel, wood finish, brick, glass, and precast concrete panels.

Currently zoned I-2 Heavy Industrial, R-3 Medium-Density Residential, R-O, Residential Office, and C-2, General Commercial. Adjacent zoning districts include R-1, R-4, C-2, and C-1 to the north, R-1, R-3, C-2, and C-1 to the east, R-1, R-O, and C-2 to the south, and R-O, C-1, C-2, R-1, I-2, and PUD to the west.

Relationship to the General Plan
The Future Land Use Plan currently depicts this property as General Commercial. General Commercial areas typically include uses that serve nearby residents and those coming from other parts of the region. They encourage a variety of commercial uses and should balance access between vehicles and pedestrians. The General Commercial land use category is compatible with the proposed Planned Unit Development

Public Comment
Staff has not received comments regarding this request.

Conclusion
According to the applicant's narrative the purpose of their Planned Unit Development is to provide a smart and sustainable design and a connected campus rooted in the community. The Campus seeks to meet these goals through the use of local materials, environmentally friendly design, connection with the Razorback Greenway and 8th Street, and building and architectural selections to serve as an extension of the existing community.

The Commerce and Industry Chapter of the 2015 Bentonville Community Plan is of special importance to this project. The Chapter's Community-Wide Recommendations suggest the City require a high quality of design and make unique and interesting places. In addition, the chapter depicts this property as being within the East Side Walmart Employment Sector Area. The plan notes that this area should serve as a link between the western trail network (which includes Downtown and Crystal Bridges) and the eastern trail network (which includes NWACC and the City of Rogers).

This Planned Unit Development, through its use of unique design, open space, and pedestrian connectivity, meets the purpose and intent of the PUD ordinance and of the Commerce and Industry Chapter of the Community Plan. Staff recommends approval of this rezoning request.

WALMART CAMPUS

PUD SUBMISSION - 3RD REVISED SUBMISSION

AUGUST 30, 2021

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Walmart
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CEI Page/ WALKER CONSULTANTS wpm ENGINEERING

SHEET INDEX

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P55 Parking Garage | PD09

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Walmart
Bentonville, AR

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Dallas, TX 75206

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Durham, NC 27701

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Houston, TX 77002

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Suite 600
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CIVIL ENGINEER
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Bentoville, AR 72712

CIVIL ENGINEER
Walter P Moore
1301 McKinney, Suite 1100
Houston, TX 77010

LANDSCAPE ARCHITECT
SWA
811 W. 7th Street
8th Floor
Los Angeles, CA 90017

WRITTEN DESCRIPTION OF PUD

Walmart Home Office Campus

PUD Submission - Revision 3

August 30, 2021

Walmart is pleased to submit this application for a Planned Unit Development for the new Home Office Campus. We are proud that Northwest Arkansas is our home and intend, through this project, to make both Bentonville and the region even more attractive for the recruitment and retention of talented people. We believe this Home Office Campus project not only reflects the shared values that have helped accelerate growth of the company, the City of Bentonville, and the region, but also will leave a positive impact on the travelers from around the world who visit Bentonville.

4.1.10(a) Description and purpose of the PUD district.

This submission is the result of more than two years of planning and reflects the goals memorialized in the PUD ordinance. With thousands of associates in mind, both present and future, this campus is designed as a place that embraces the natural beauty of the region, enhances, and promotes the community experience, and reflects our company values.

Smart and Sustainable Design

- The campus reflects Walmart's leadership in environmental sustainability through smart building design with high performance building materials, renewable structural systems, and energy-efficient lighting and HVAC systems.
- It incorporates regionally sourced materials, including Southern Yellow Pine timber, grown in Arkansas and custom manufactured in Central Arkansas, for the primary office structural system.
- Thoughtful design in the use of bioswales, stormwater collection and management for irrigation, and wildlife habitat reflect the company's commitment to water quality and control across campus and into city systems.
- Thousands of low-maintenance native trees, shrubs and grasses provide an inviting landscape experience and open space areas that meet or exceed city requirements.
- Green spaces and trails are designed to provide direct access to nature and encourage outdoor interaction between Walmart associates, the Bentonville community, and the physical environment to reinforce sustainable living and holistic well-being.

Connected Campus

- The new 8th Street corridor will improve both visitor and commuter access to campus and the movement from east to west across town.
- The Razorback Greenway will connect the campus via bike trails, walking paths, and street crossings, encouraging safe and accessible alternative access for associates and visitors.
- The campus is designed with functional and attractive streetscapes framed by trees, plazas, buildings, and bikeways via the reestablished street grid. The road network is designed to disperse traffic more efficiently without putting pressure on only a few points of access.

Rooted in our Community

- A portion of the Razorback Greenway passes through campus and provides new tunnels at J Street and 8th Street.
- The trail network will improve pedestrian and cyclist access to the Bentonville Square, Crystal Bridges Museum, The Momentary, Thaden School, NWACC and other points of interest around the region.

401.10(b) Minimum area required for PUD districts.

This PUD application covers an area of approximately 237.73 acres, exceeding the minimum size required (10 acres).

401.10(c) Master site plan required.

See P07-P08 for the Master Plan.

401.10(d) Allowed uses.

All nonresidential uses in Article 401 which are permitted conditionally or by-right in commercial and mixed-use districts. Further details with respect to land use, phasing, and future uses are described by the Master Plan and Construction Phasing Plan on P07, P08, and P17.

401.10(e) Density requirements.

No density requirements are set, as this PUD proposes no residential uses.

401.10(f)(1) Description of proposed zoning and development standards.

Density:	N/A. No residential uses are proposed.
Building setbacks:	See P18, ROW & Setback Boundaries, for setbacks from public streets. Side and rear setbacks are 0' for any interior parcels.
Height of building or structure:	Structures shall have a maximum height of 100' above ground level finished floor elevation, except mechanical and telecommunications equipment and required screens may extend beyond this limit.
Lot size, lot width, and lot depth:	No minimum or maximum dimension.
Landscaping:	Parking Lot Landscaping: As required for similar developments, except that the number of trees required shall be provided in the continuous planting islands, where applicable, at the minimum rate of (1) shade tree per every nine (9) parking spaces located in the double row. Internal planting islands shall not be required. Trees shall not be required in external planting islands. External planting islands shall be a minimum size of nine (9) feet by sixteen (16) feet. Street Frontage Buffer Landscaping: See P19-P25 Street Sections.
Required off-street parking spaces:	N/A. No residential uses are proposed.
Street widths:	See P19-P25 Street Sections.
Garage setbacks:	N/A. No residential garages are proposed.

401.10(f)(2) Modifications prohibited.

Compliance with the development standards referenced in this code section will be demonstrated by way of the Large Scale Development submission.

401.10(g)(1) PUD districts common open space requirements.

This proposal exceeds the minimum requirements for open space to provide a variety of accessible outdoor experiences for Walmart associates, visitors, and, where provided, the public. Please refer to the open space plan which provides details for each phase.

The master plan will provide open space that meets or exceeds code requirements.

See P27, Open Space Area, for required details.

401.10(g)(2) PUD districts parking and off-street loading requirements.

Each phase of the PUD delivers parking in a campus format. The total amount of parking provided in each phase meets or exceeds the minimum requirements set forward in Article 501 of the Bentonville Unified Development Code.

See P17, Phasing Plan, for additional details.

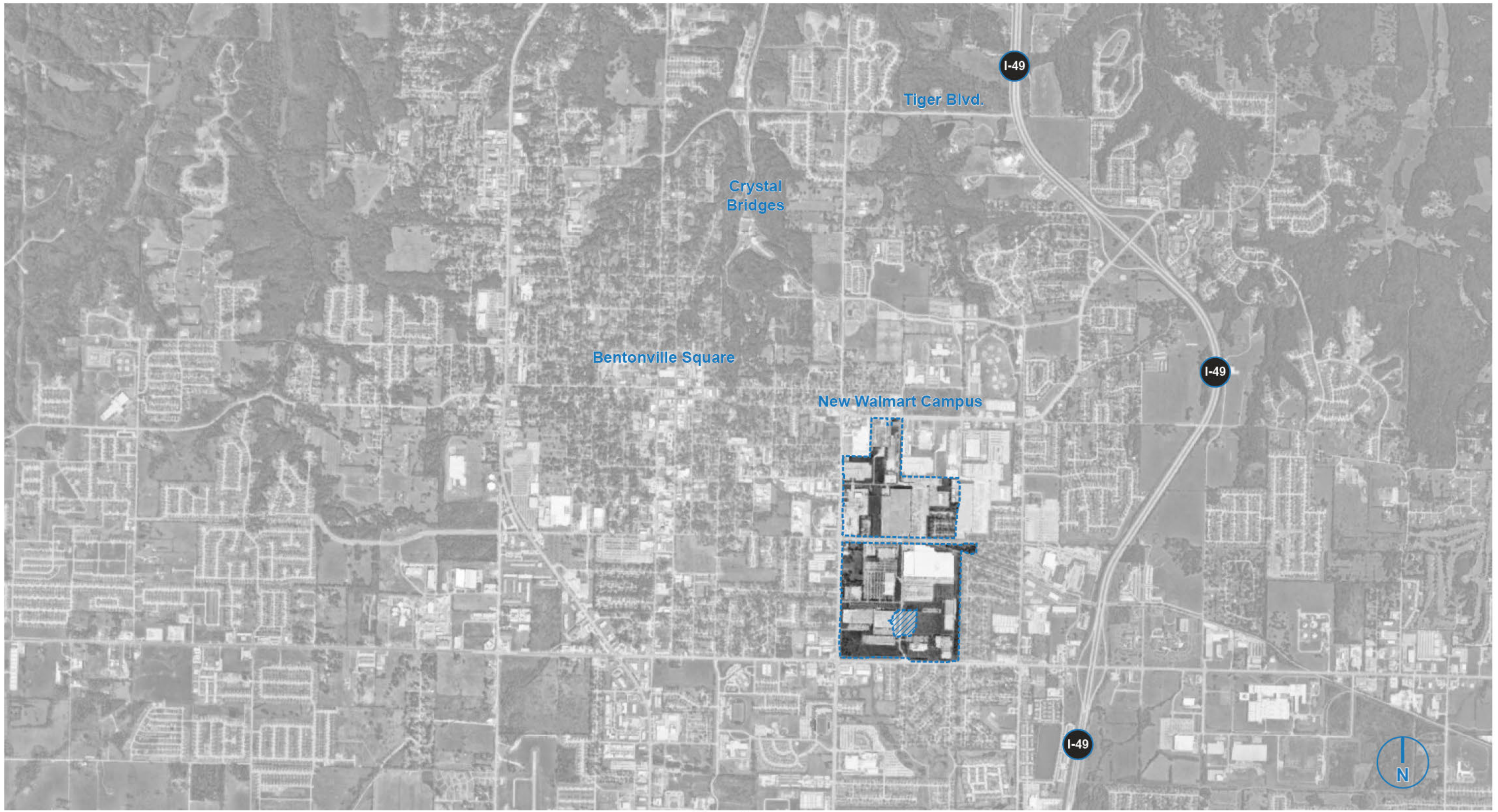
401.10(g)(3) PUD districts perimeter requirements.

The master plan is designed to create maximum compatibility with surrounding land uses.

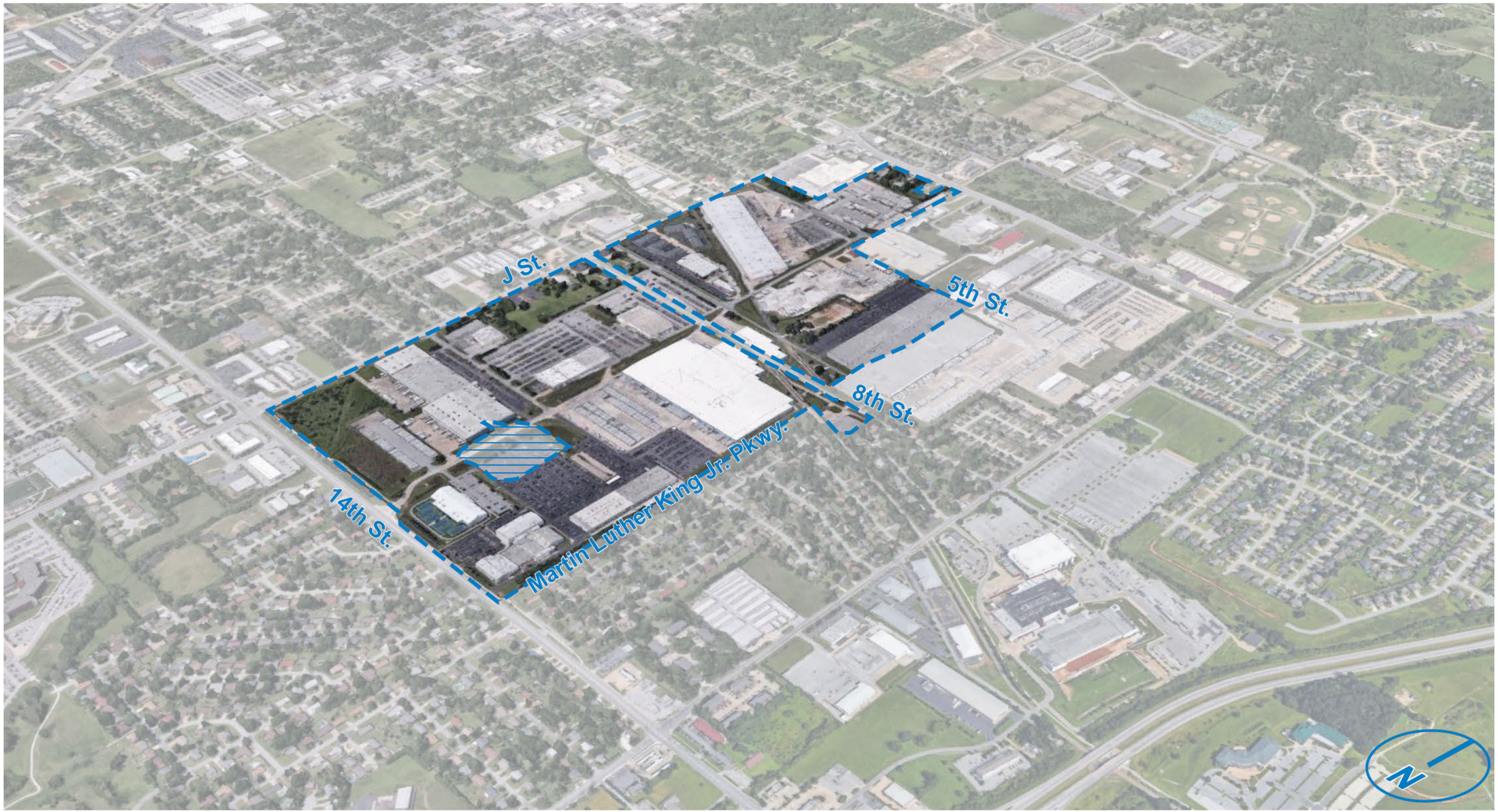
These street and landscaping improvements have been designed to meet the expectations Bentonville residents living in adjacent neighborhoods have for excellent and continuous public improvements.

401.10(g)(4) PUD districts structural design standards.

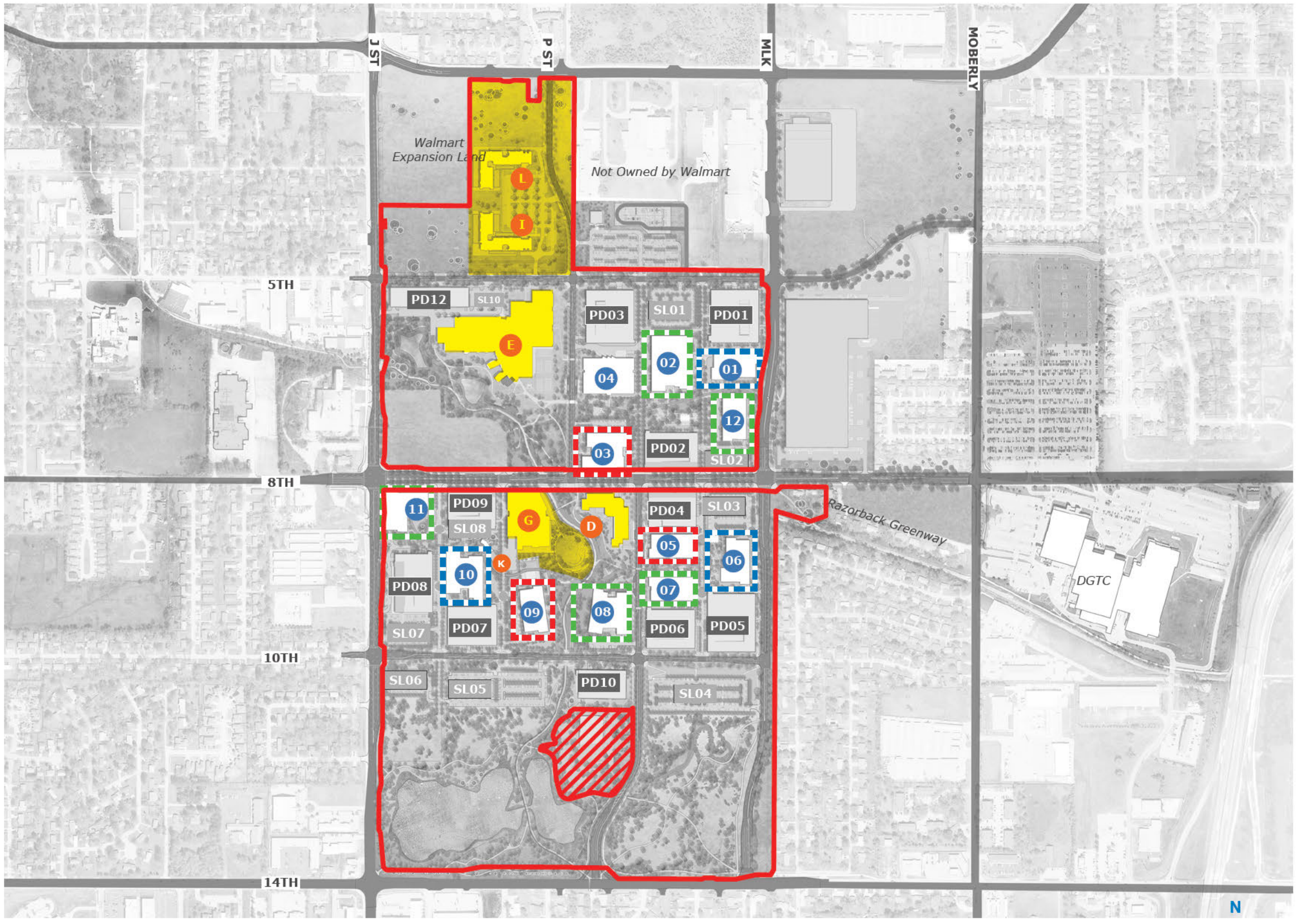
Refer to P28 and the following pages for documentation showing compliance with structural design standards, such as elevations and material palettes.


I-49
Tiger Blvd.
Crystal Bridges
Bentonville Square
New Walmart Campus
I-49
I-49
N

Google Maps

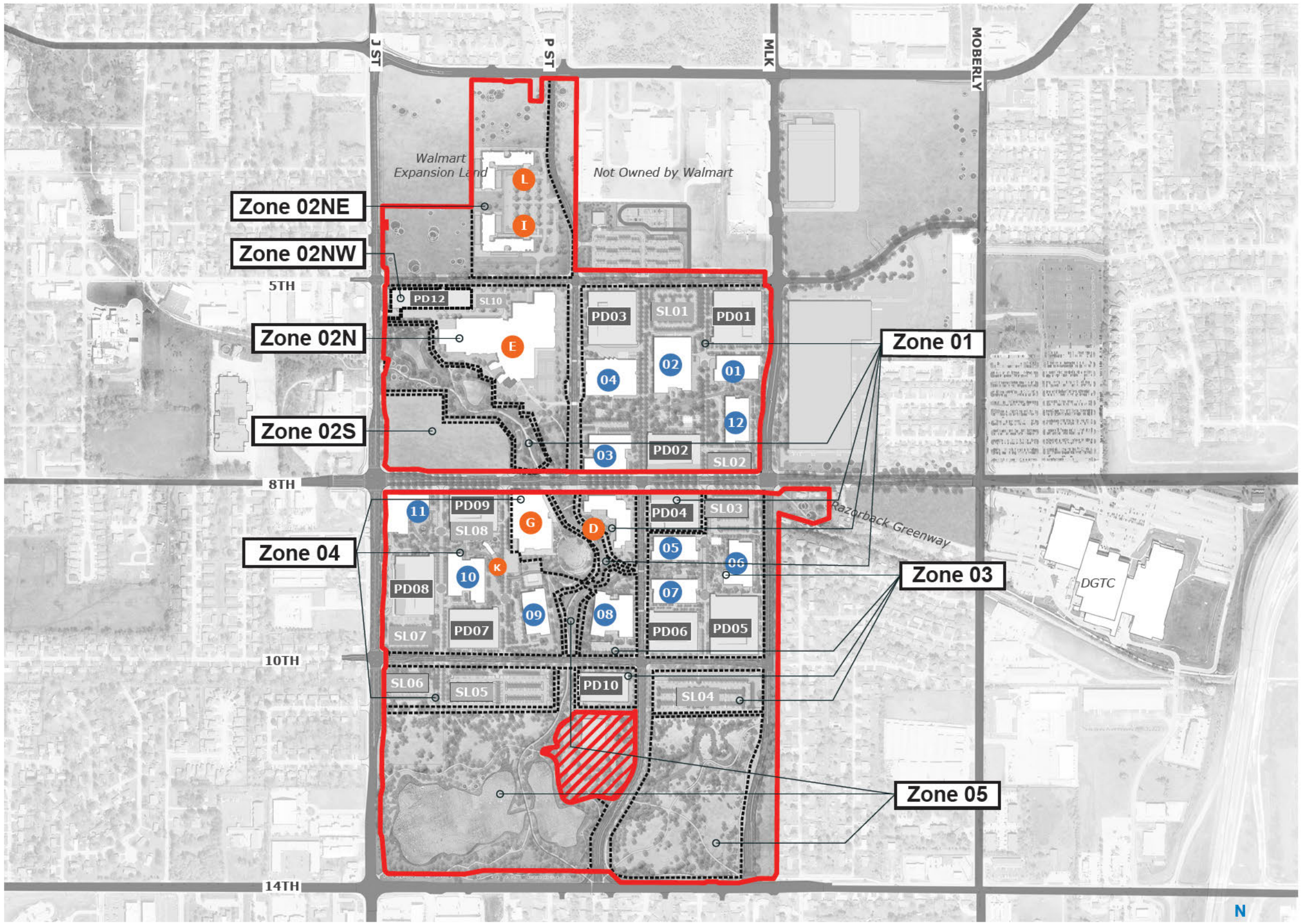


Google Maps



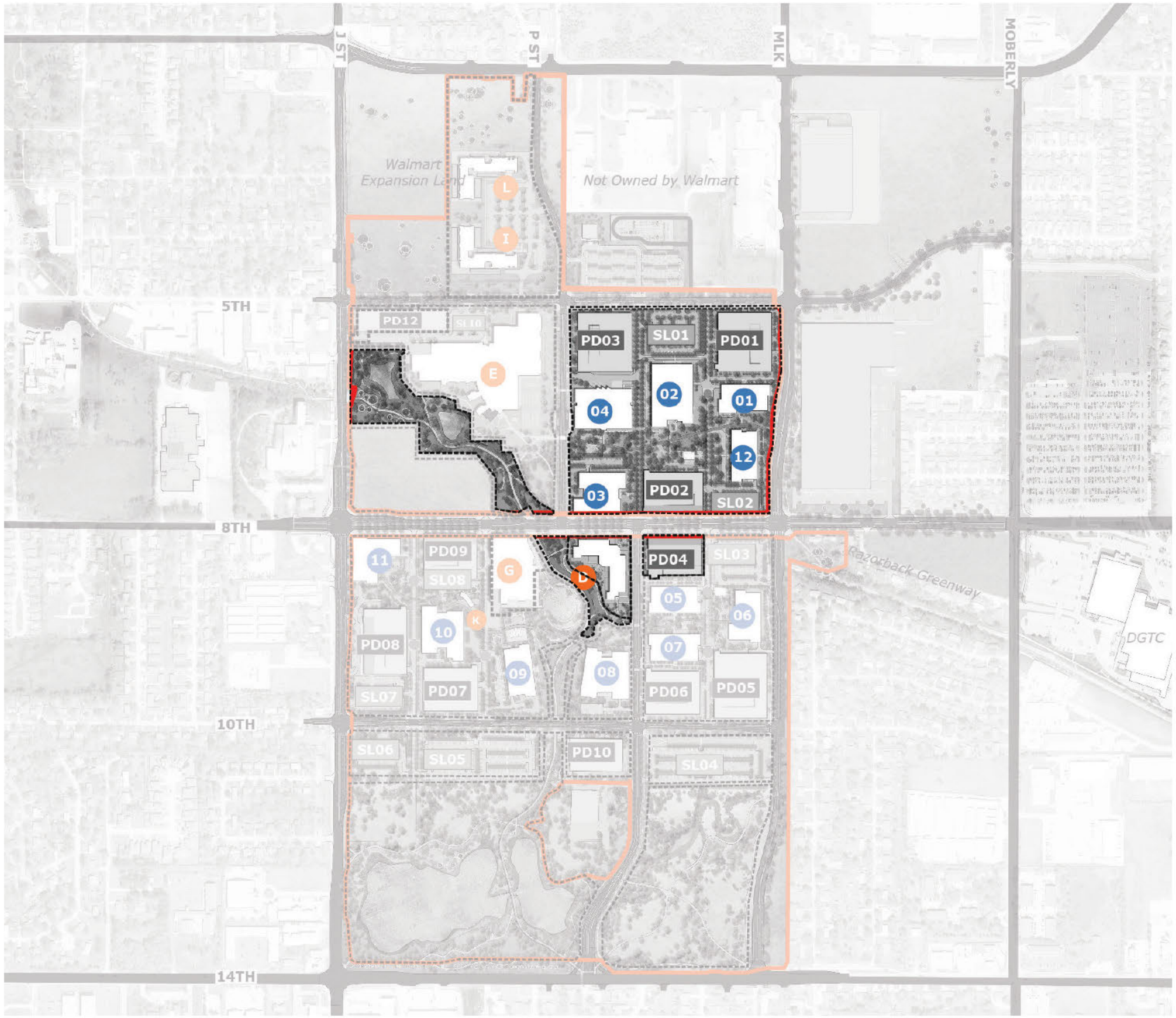
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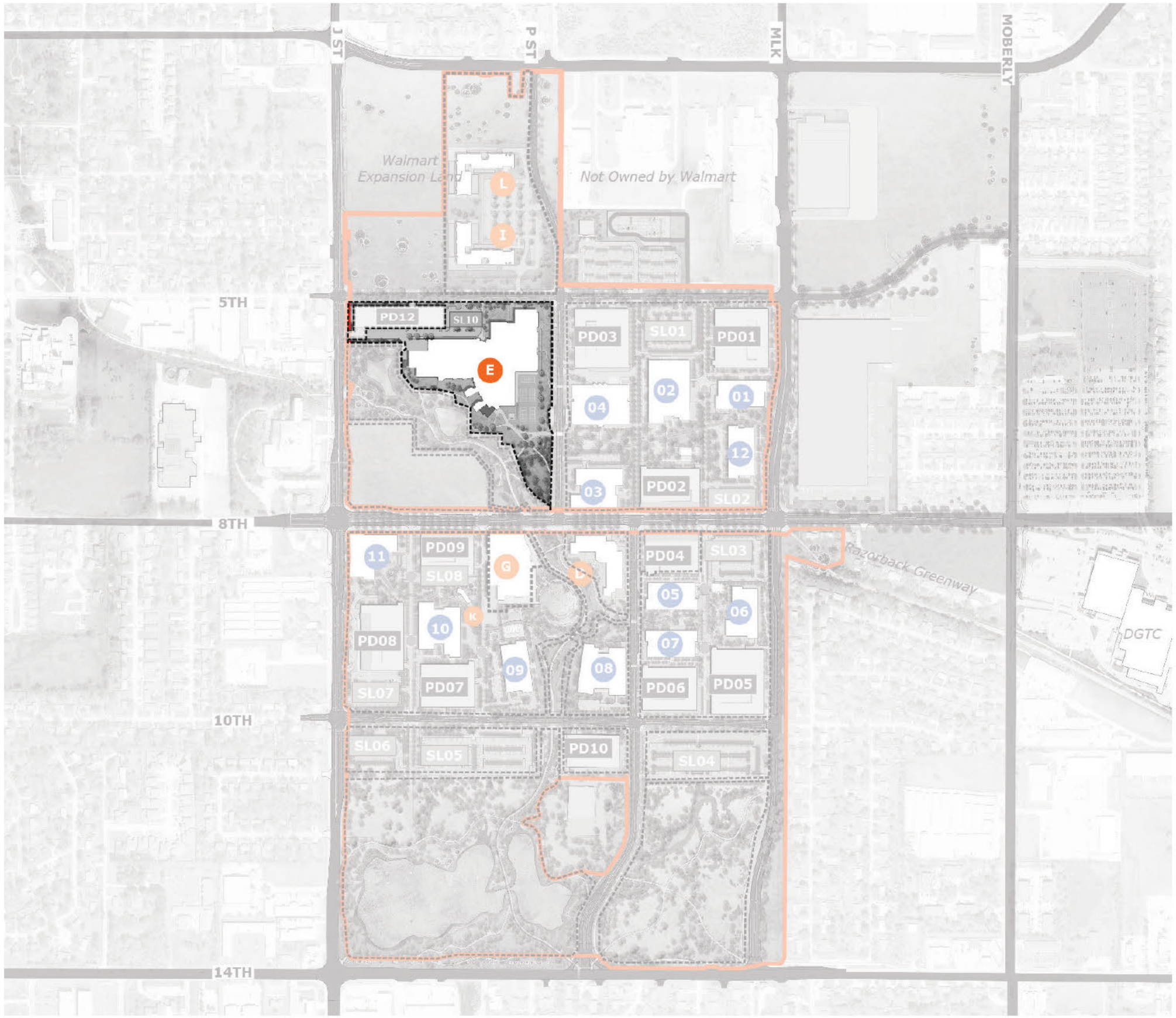
- Office Building Number
- Amenity & Support
- PD# Parking Deck
- SL# Surface Lot
- "Mill" Building
- "Foundry" Building
- "Collection" Building
- Areas Revised from Previous Submission



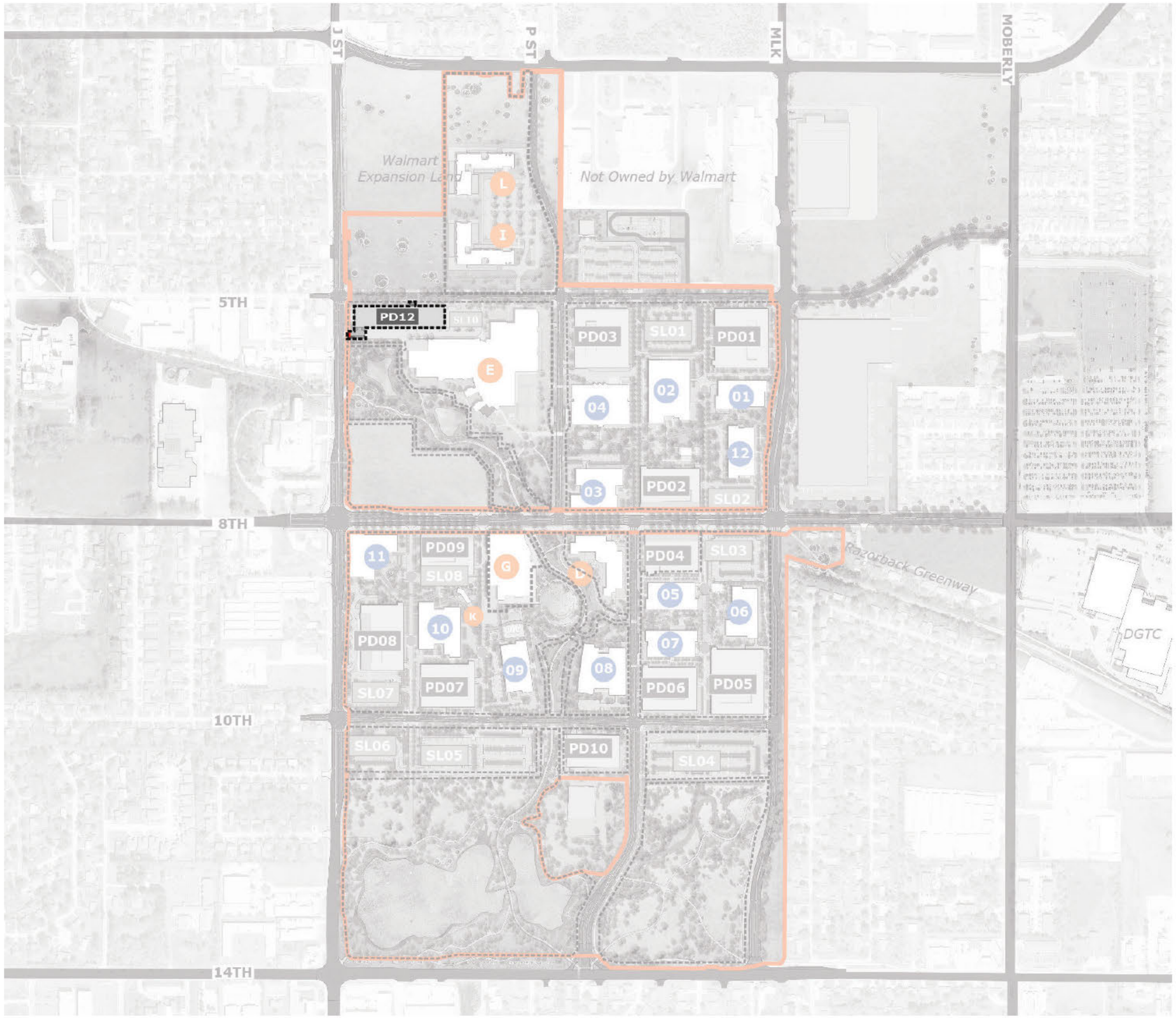
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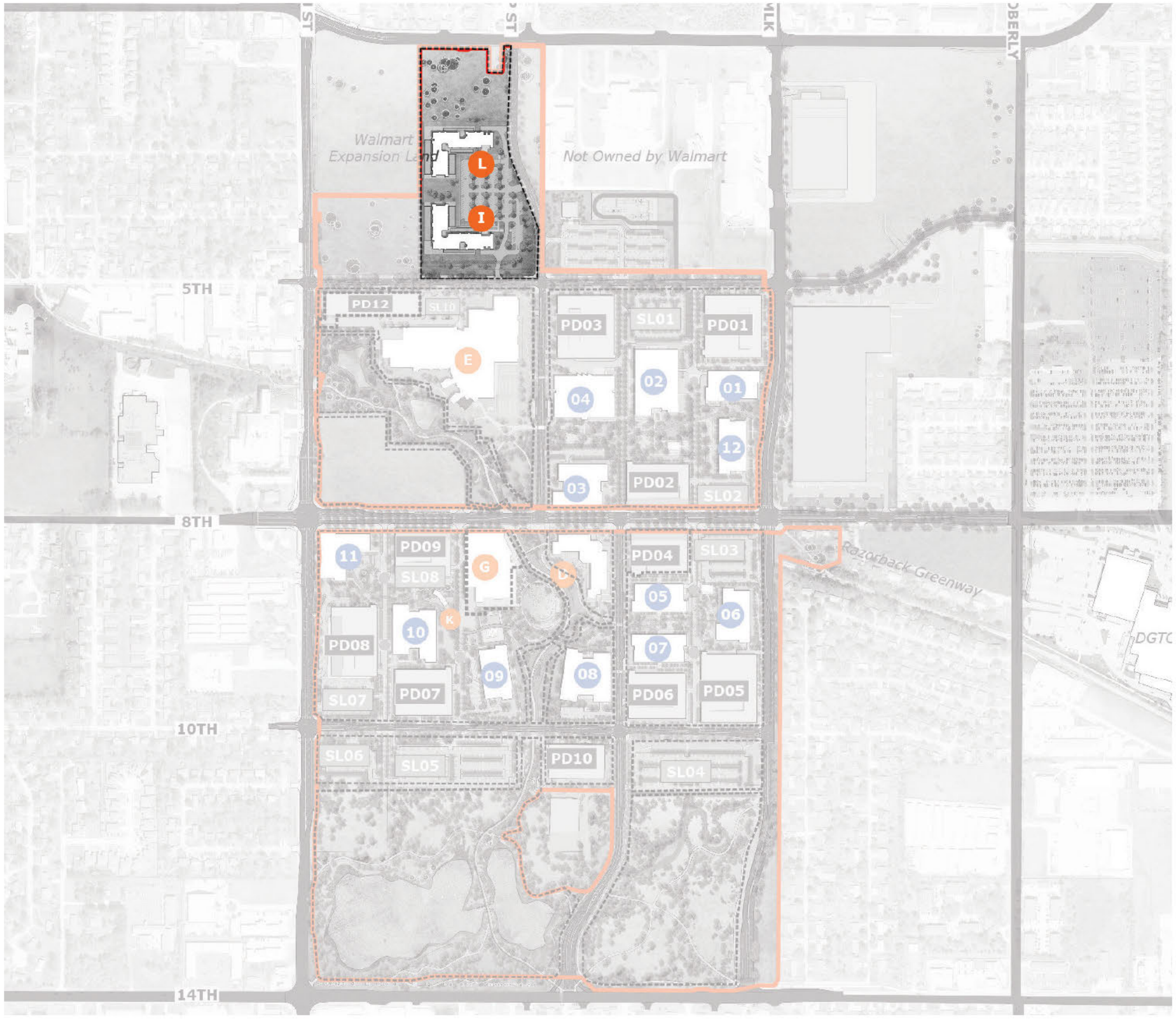
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- A — Amenity & Support
- PD# — Parking Deck
- SL# — Surface Lot
- Zone Boundary

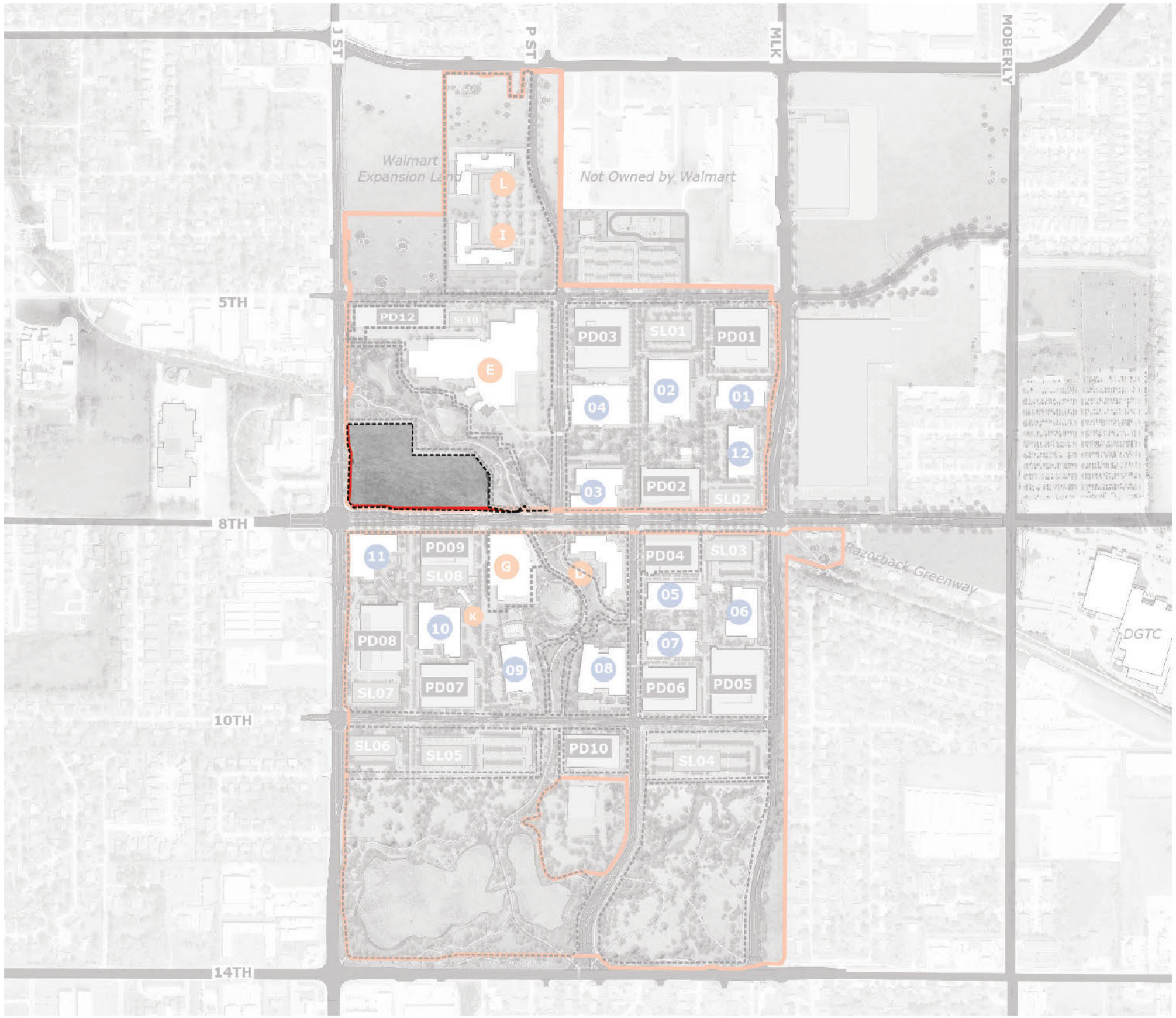

J ST
P ST
MLK
MOBERLY
Walmart Expansion Land
Not Owned by Walmart
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SL10
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Razorback Greenway
DGTC
14TH

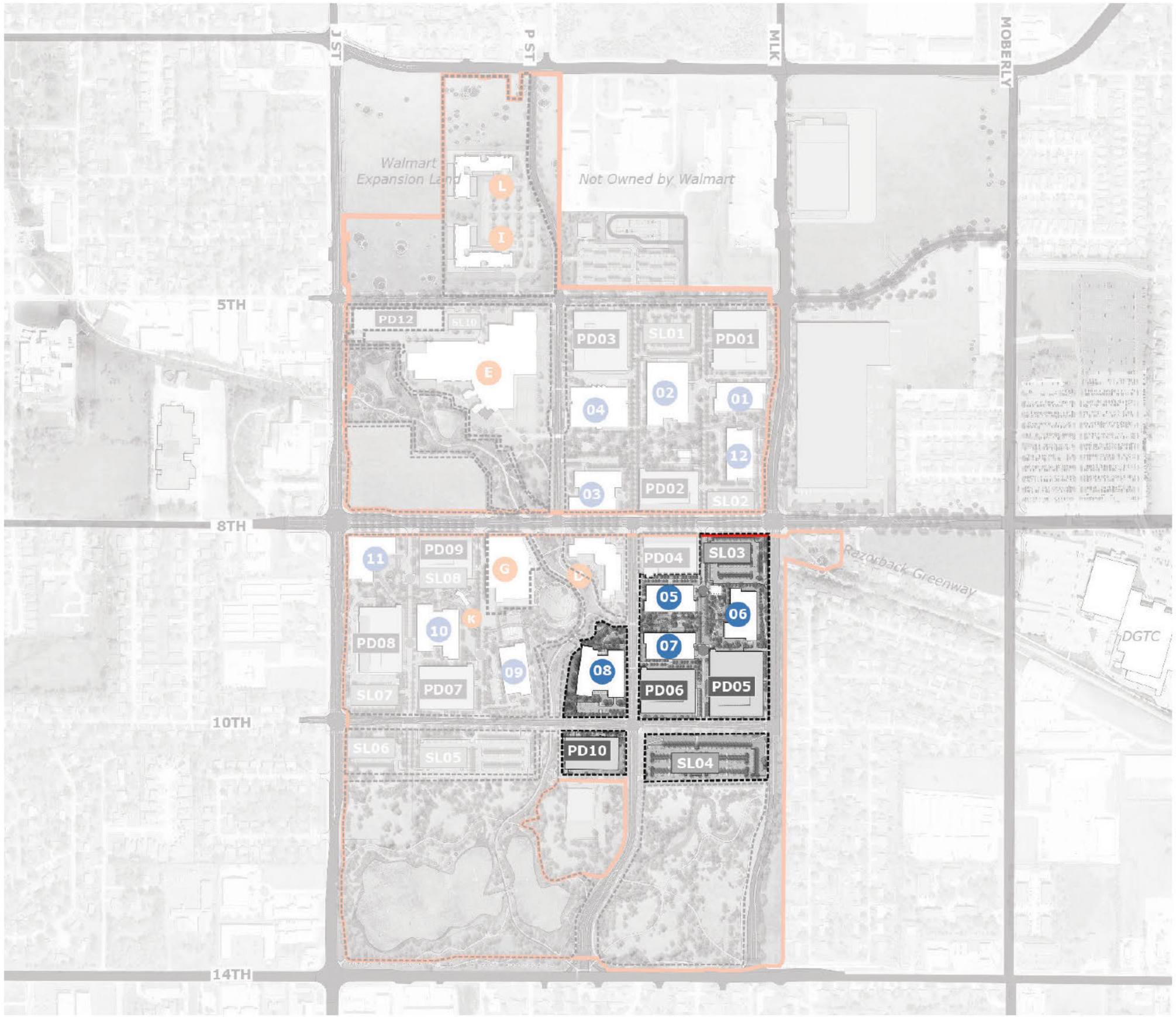

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14TH

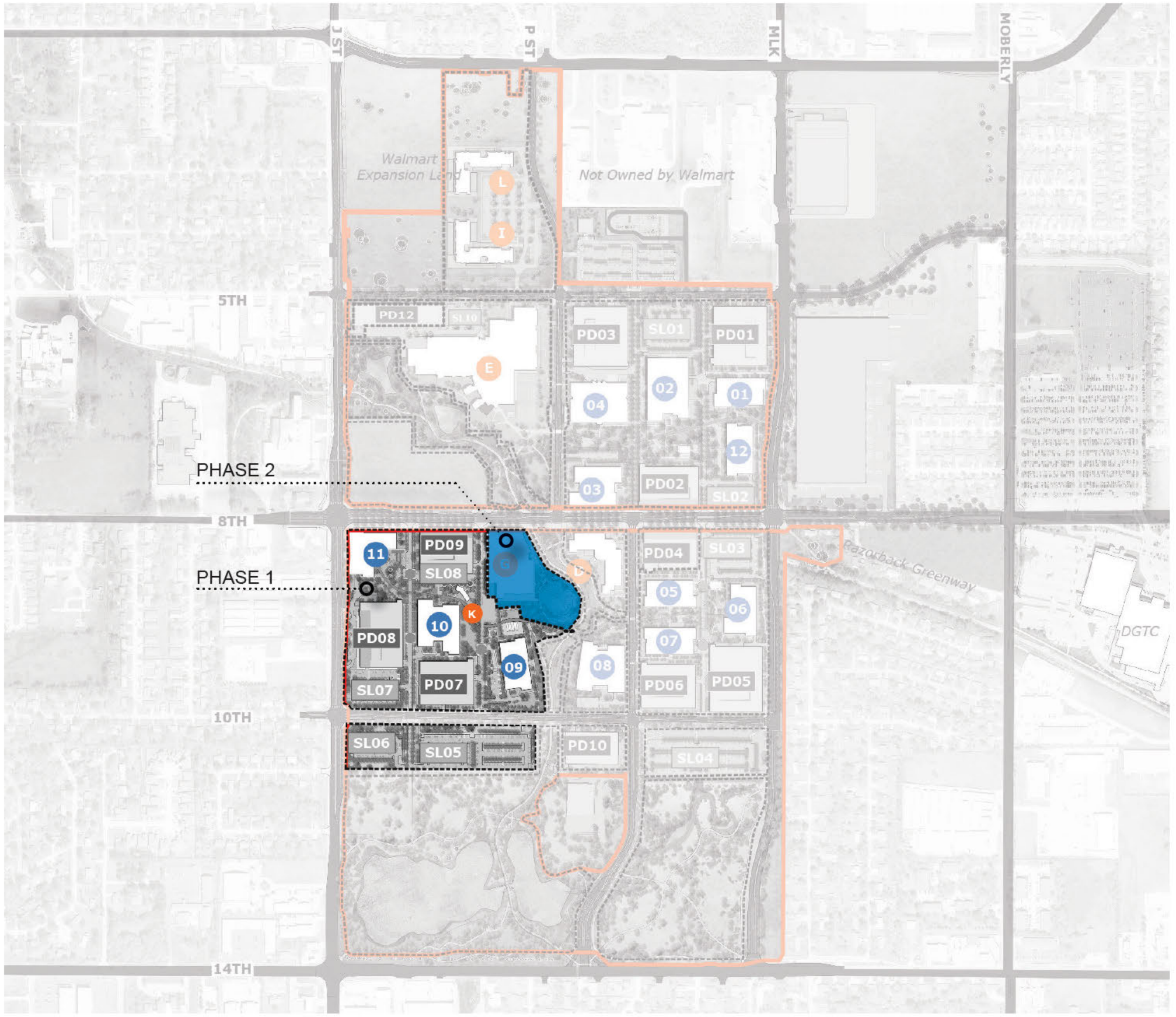
The PD12 parking garage will be constructed in an early phase without landscaping. Landscaping will be added during the construction of the adjacent Zone 02N/Fitness Center and will be complete before Grand Opening of Fitness Center.

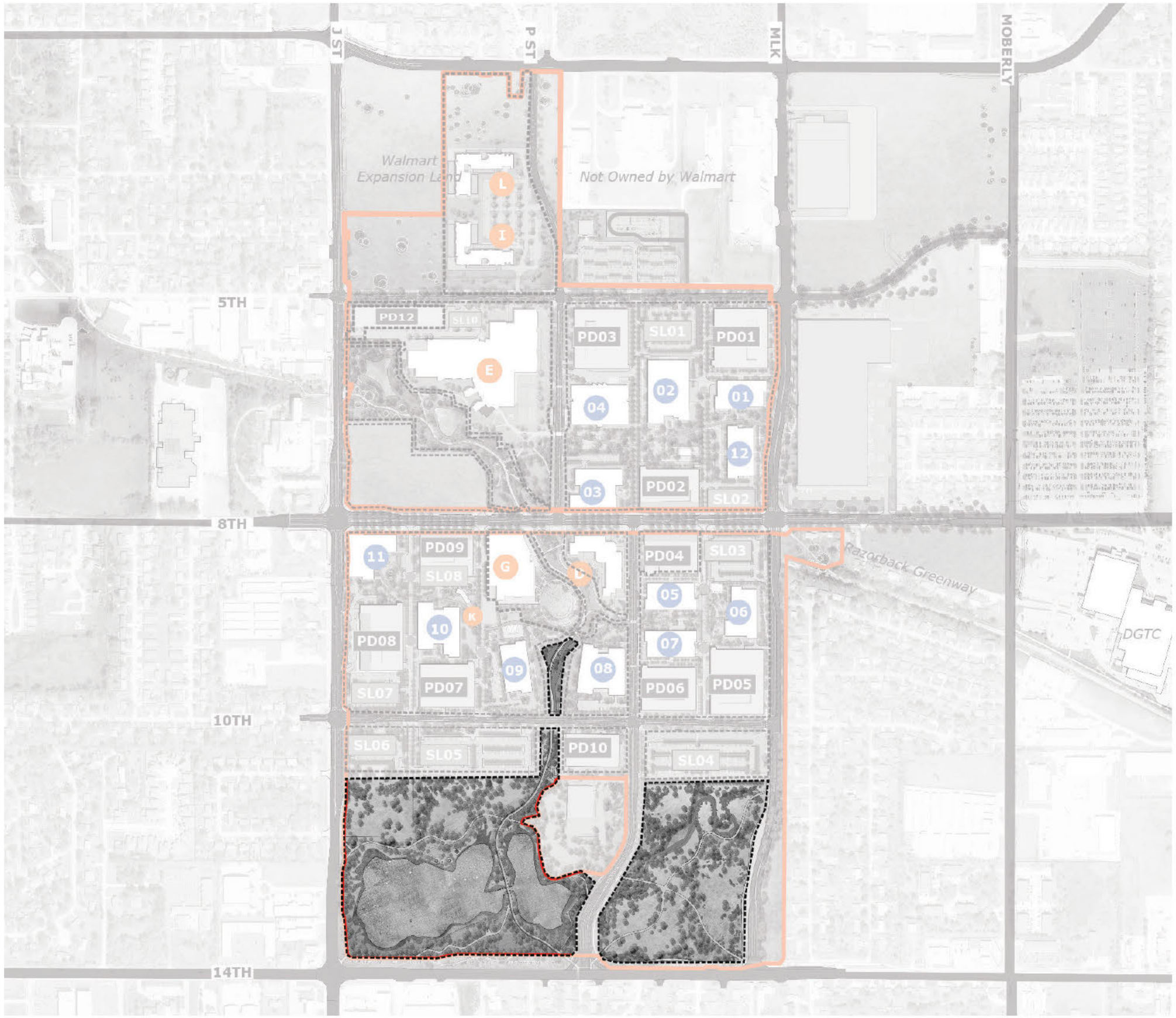


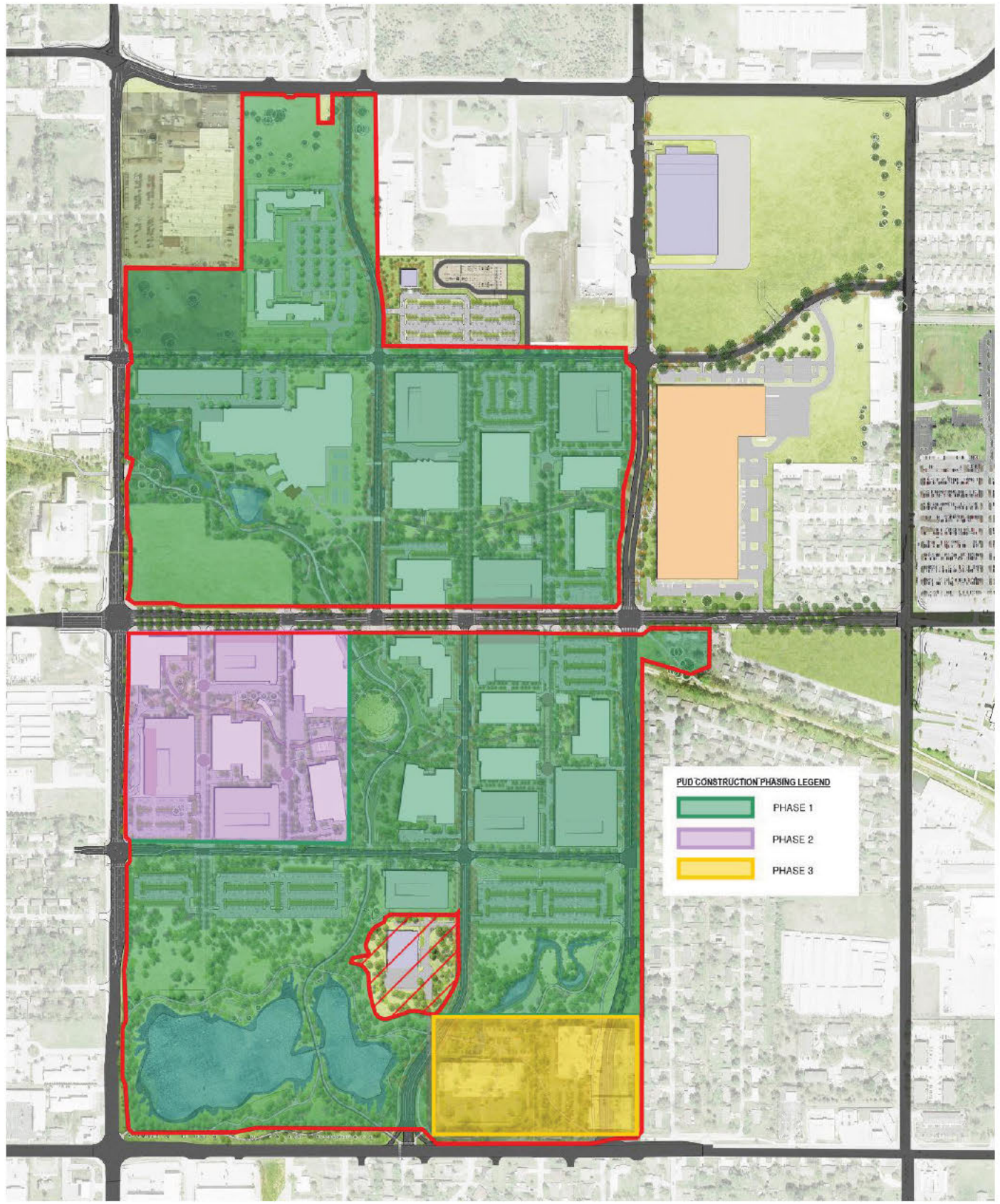

Walmart Expansion Land
Not Owned by Walmart
L
I
5TH
PD12
SL10
E
PD03
SL01
PD01
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03
PD02
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PD09
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K
10
07
PD08
09
08
PD07
PD06
PD05
SL07
10TH
SL06
SL05
PD10
SL04
Razorback Greenway
14TH


J ST
P ST
MLK
MOBERLY
Walmart Expansion Land
Not Owned by Walmart
L
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SL10
E
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10TH
SL06
SL05
PD10
SL04
Razorback Greenway
DGTC
14TH


J ST
P ST
MLK
MOBERLY
Walmart Expansion Land
Not Owned by Walmart
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SL04
Razorback Greenway
DGTC
14TH


J ST
P ST
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Walmart Expansion Land
Not Owned by Walmart
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SL07
PD07
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PD06
PD05
Razorback Greenway
DGTC
10TH
SL06
SL05
PD10
SL04
14TH


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Walmart Expansion Land
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PD06
PD05
Razorback Greenway
DGTC
10TH
SL06
SL05
PD10
SL04
14TH



PHASE 1

Required Parking Spaces:	5,536
Total Parking Spaces:	11,578

PHASE 2

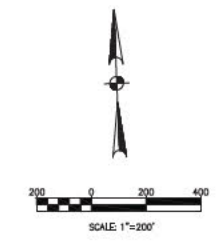
Required parking spaces:	2,846
Total parking spaces:	6,536

PHASE 3

Required parking spaces:	0
Total parking spaces:	0



LEGEND



PROPOSED ROW

EXISTING ROW

BUILDING SETBACK

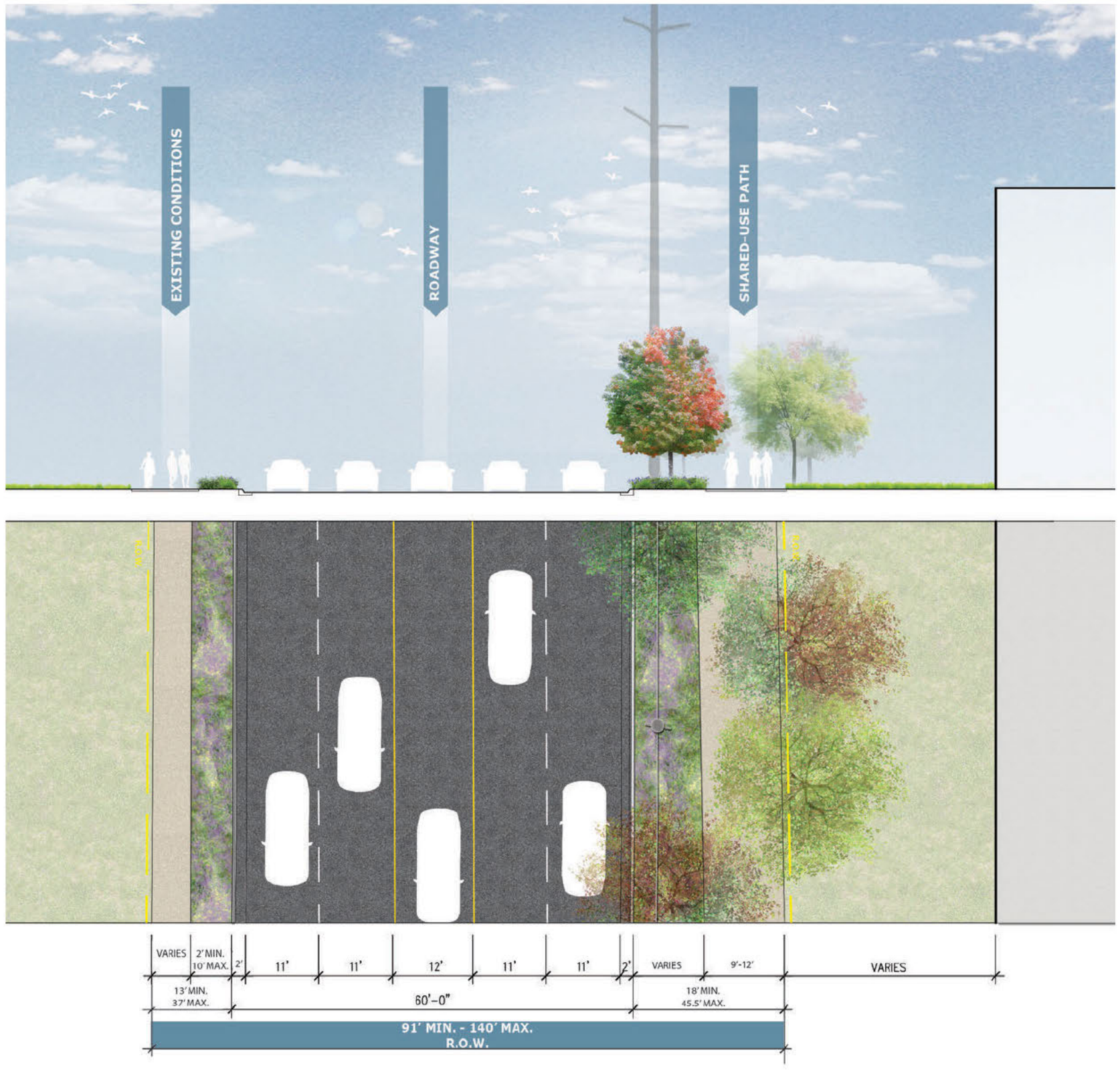
10' BUILDING SETBACK – J STREET, 14TH, E. CENTRAL STREET

10' BUILDING SETBACK – MLK PARKWAY

0' BUILDING SETBACK – 8TH STREET

*WHERE A UTILITY EASEMENT EXIST THE EASEMENT SHALL BE THE SETBACK IF THE EASEMENT IS GREATER THAN THE SETBACK

100' MAX. BUILDING HEIGHT
ABOVE GROUND LEVEL FINISHED FLOOR ELEVATION



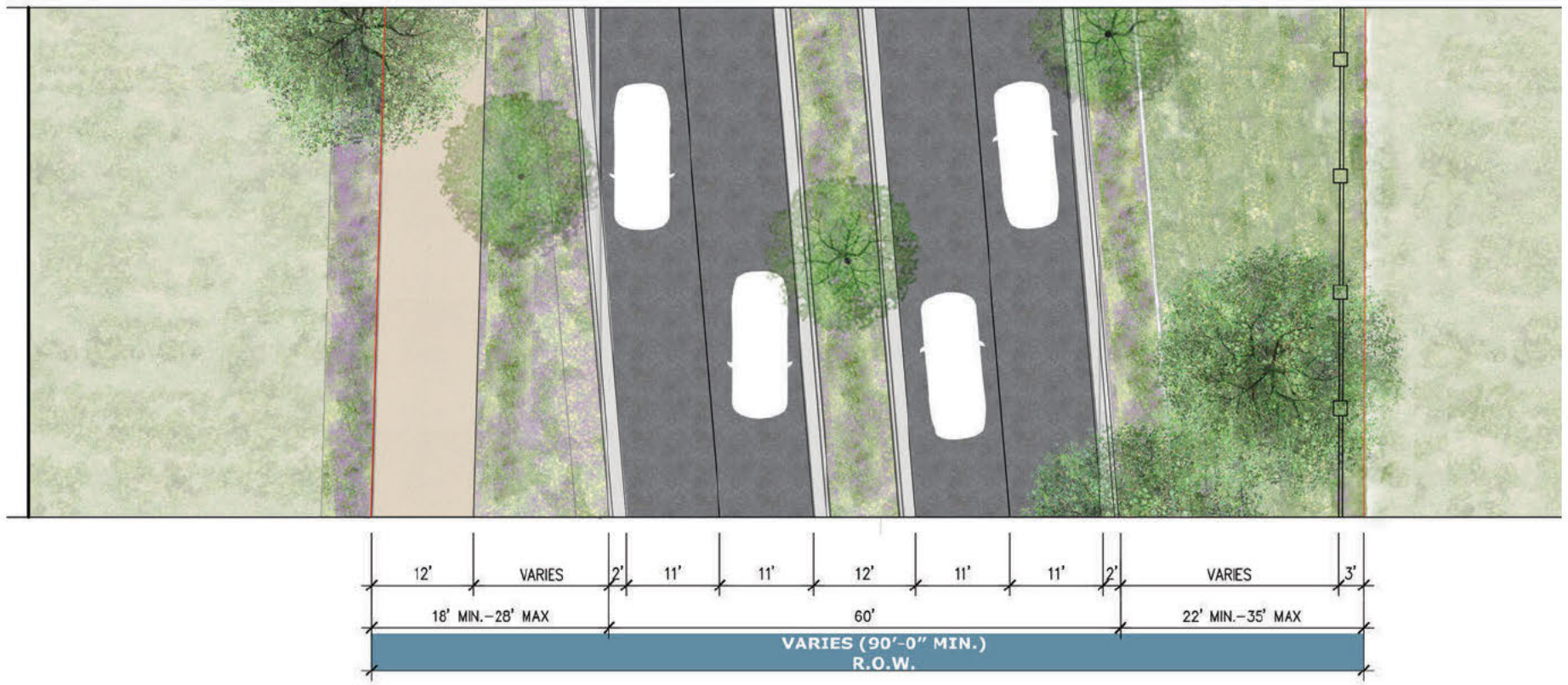
PROPOSED GUIDELINES

EAST

- *6′ Min. wide green space curb zone*
- *10′ Min. wide shared-use sidewalk Note: Reduced width where necessary to minimize impact to existing trees.*
- *Shade trees provided at a minimum rate of one (1) shade tree per every forty (40) linear feet or fraction thereof of street frontage.*
- *New trees planted under overhead utilities shall not exceed a mature height of 25 feet.*

*All utility clearance standards (trees, pavement, adjacent utilities) will be coordinated with the City of Bentonville during Large Scale Development



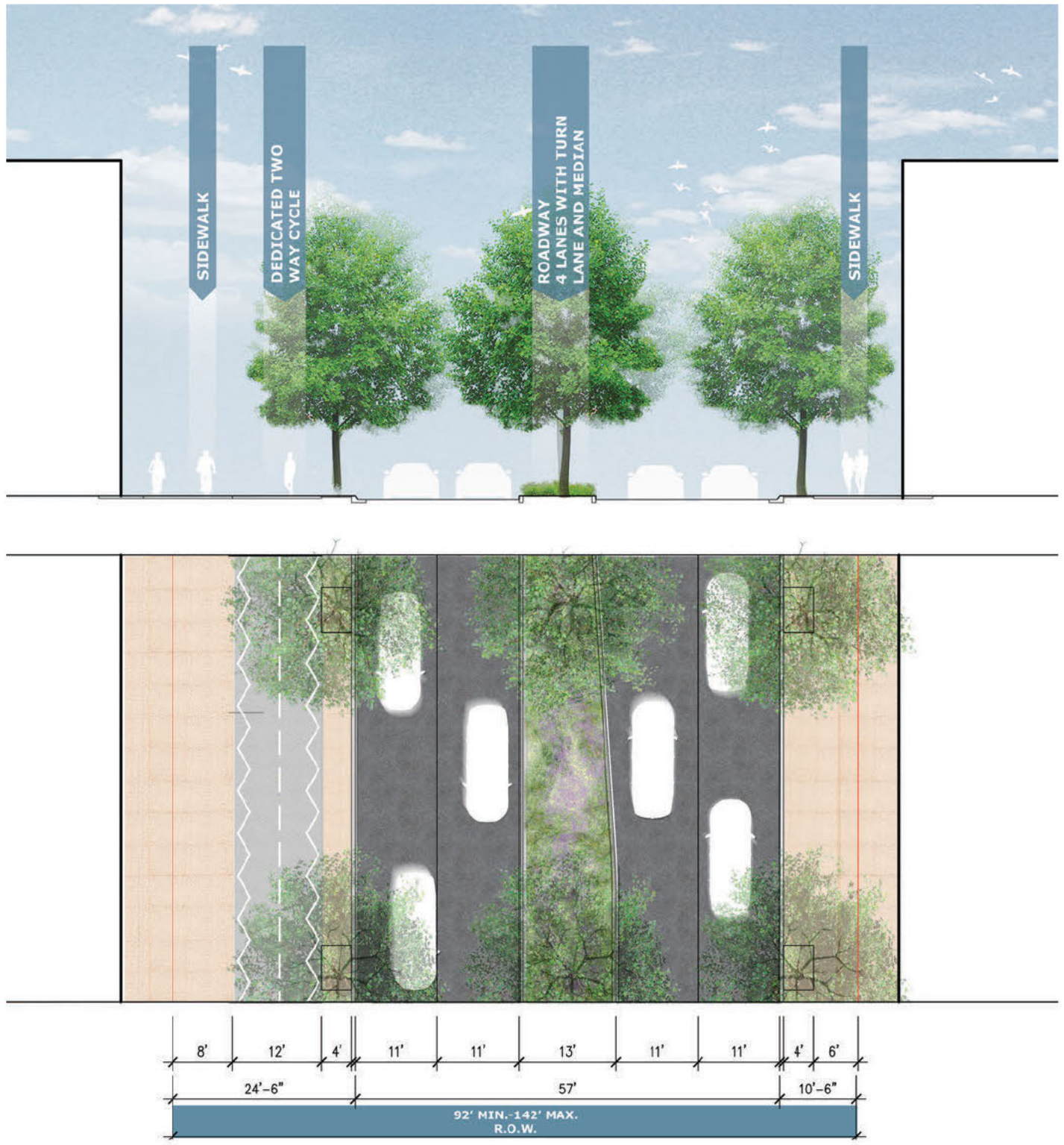


PROPOSED GUIDELINES

EAST & WEST

- *6′ Min. wide green space curb zone*
- *10′ Min. wide shared-use sidewalk (on west side only)*
- *Shade trees provided at a minimum rate of one (1) shade tree per every forty (40) linear feet or fraction thereof of street frontage.*

*All utility clearance standards (trees, pavement, adjacent utilities) will be coordinated with the City of Bentonville during Large Scale Development



PROPOSED GUIDELINES

NORTH

- *4' wide paved curb zone*
- *6' Min. wide sidewalk*

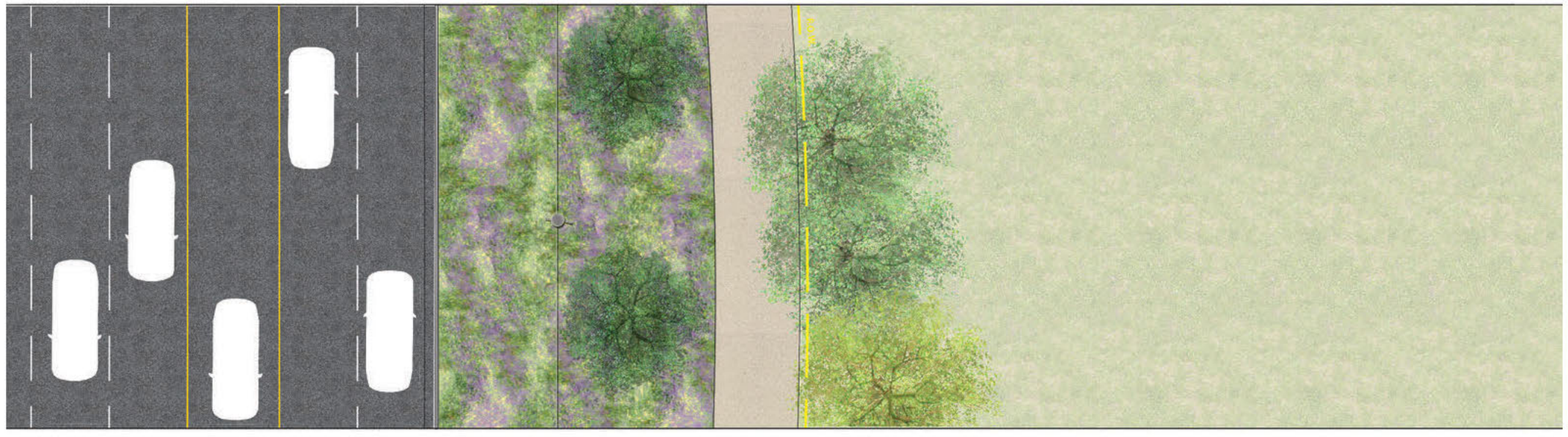
SOUTH

- *4' paved curb zone*
- *12' wide two-way cycle path*
- *8' Min. wide sidewalk*

- *Shade trees provided at a minimum rate of one (1) shade tree per every forty (40) linear feet or fraction thereof of street frontage.*

*All utility clearance standards (trees, pavement, adjacent utilities) will be coordinated with the City of Bentonville during Large Scale Development





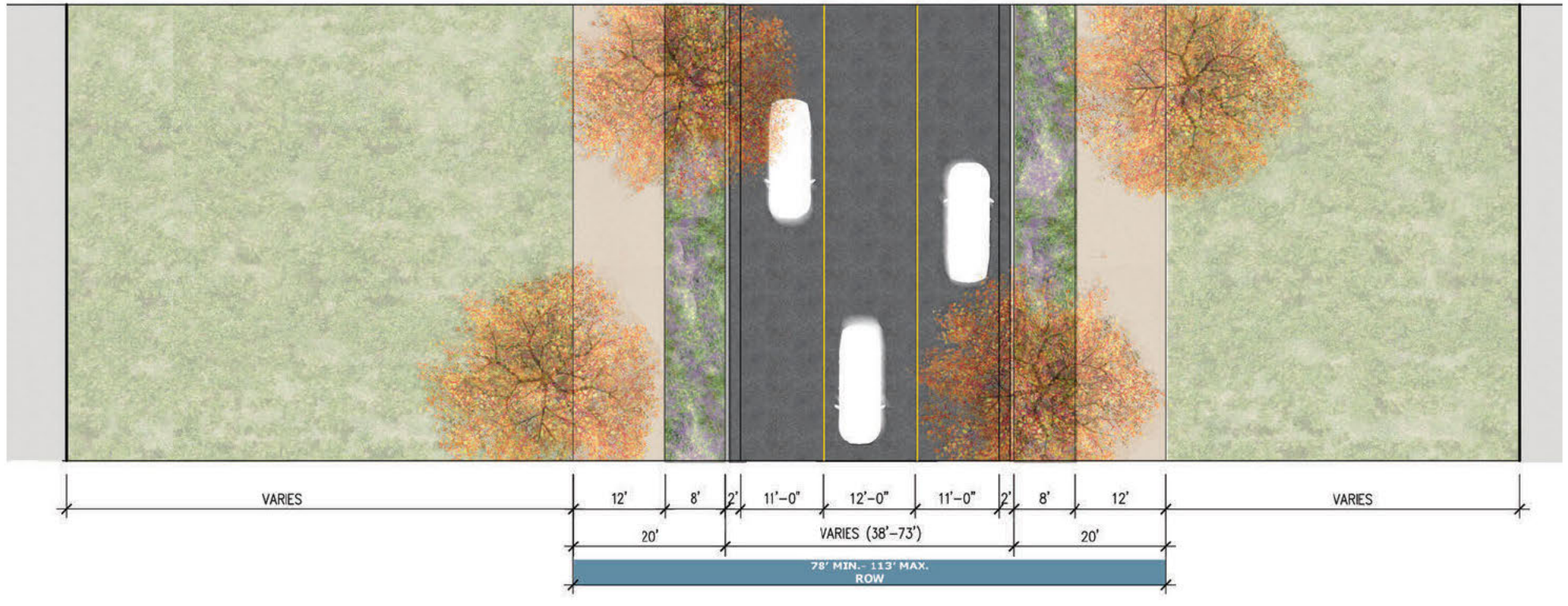
PROPOSED GUIDELINES

NORTH

- *8' Min. wide green space curb zone*
- *10' Min. wide shared-use sidewalk*
- *Shade trees provided at a minimum rate of one (1) shade tree per every forty (40) linear feet or fraction thereof of street frontage.*
- *New trees planted under overhead utilities will be coordinated with AEP/ SWEPCO.*

*All utility clearance standards (trees, pavement, adjacent utilities) will be coordinated with the City of Bentonville during Large Scale Development
**Roadway lane layout provided for reference only and subject to change based on approved documents

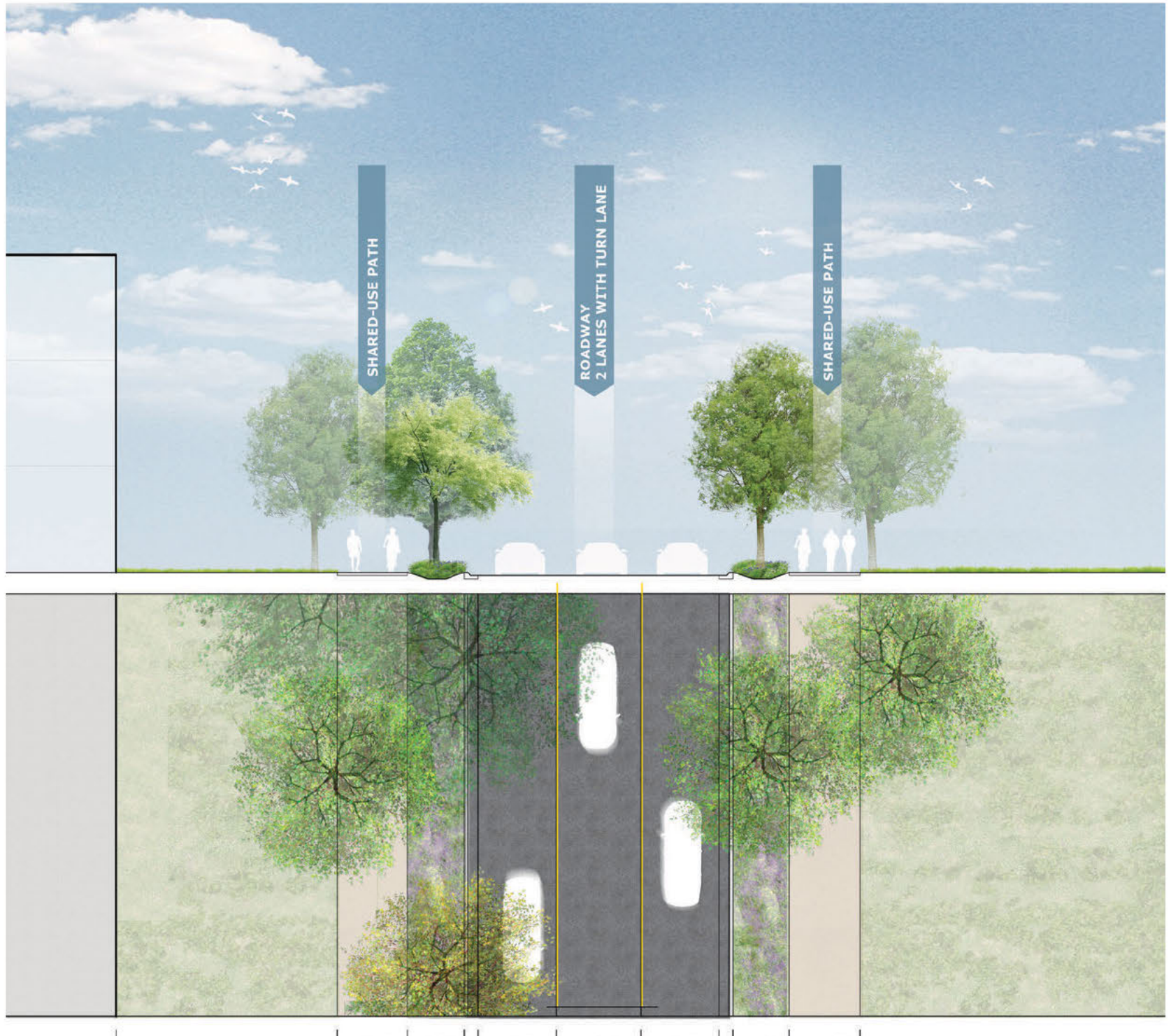




PROPOSED GUIDELINES

- *8' wide green space curb zone*
- *10' Min. wide shared-use sidewalk on at least one side of the street*
- *Shade trees provided at a minimum rate of one (1) shade tree per every forty (40) linear feet or fraction thereof of street frontage.*

*All utility clearance standards (trees, pavement, adjacent utilities) will be coordinated with the City of Bentonville during Large Scale Development

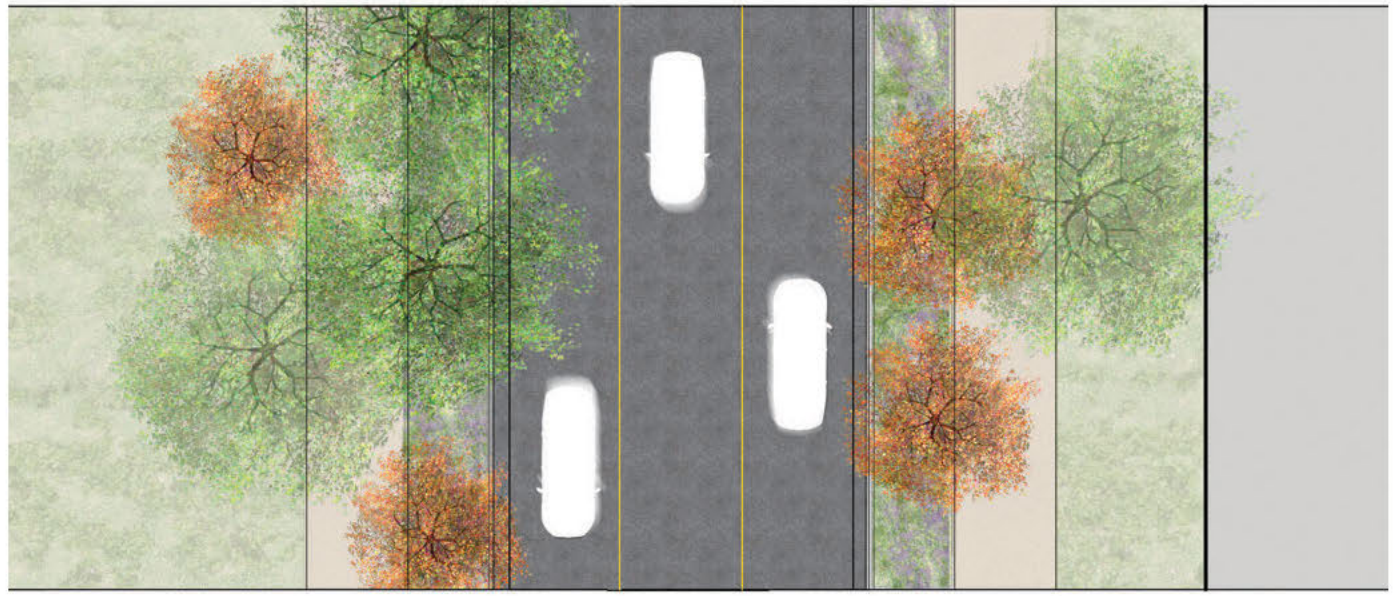


*All utility clearance standards (trees, pavement, adjacent utilities) will be coordinated with the City of Bentonville during Large Scale Development

PROPOSED GUIDELINES

- *8' wide green space curb zone*
- *10' Min. wide shared-use sidewalk on at least one side of the street*
- *Shade trees provided at a minimum rate of one (1) shade tree per every forty (40) linear feet or fraction thereof of street frontage.*





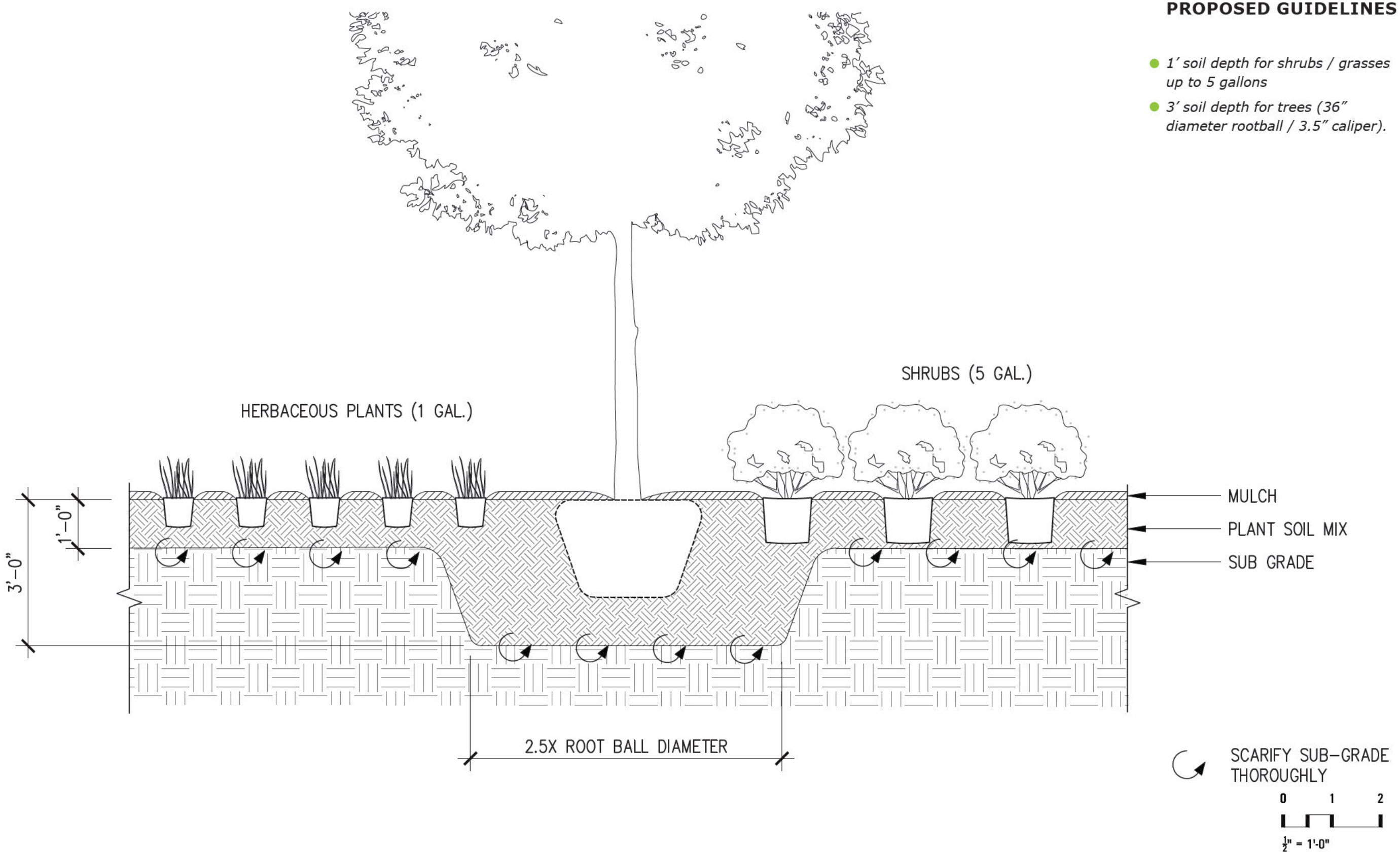
*All utility clearance standards (trees, pavement, adjacent utilities) will be coordinated with the City of Bentonville during Large Scale Development

PROPOSED GUIDELINES

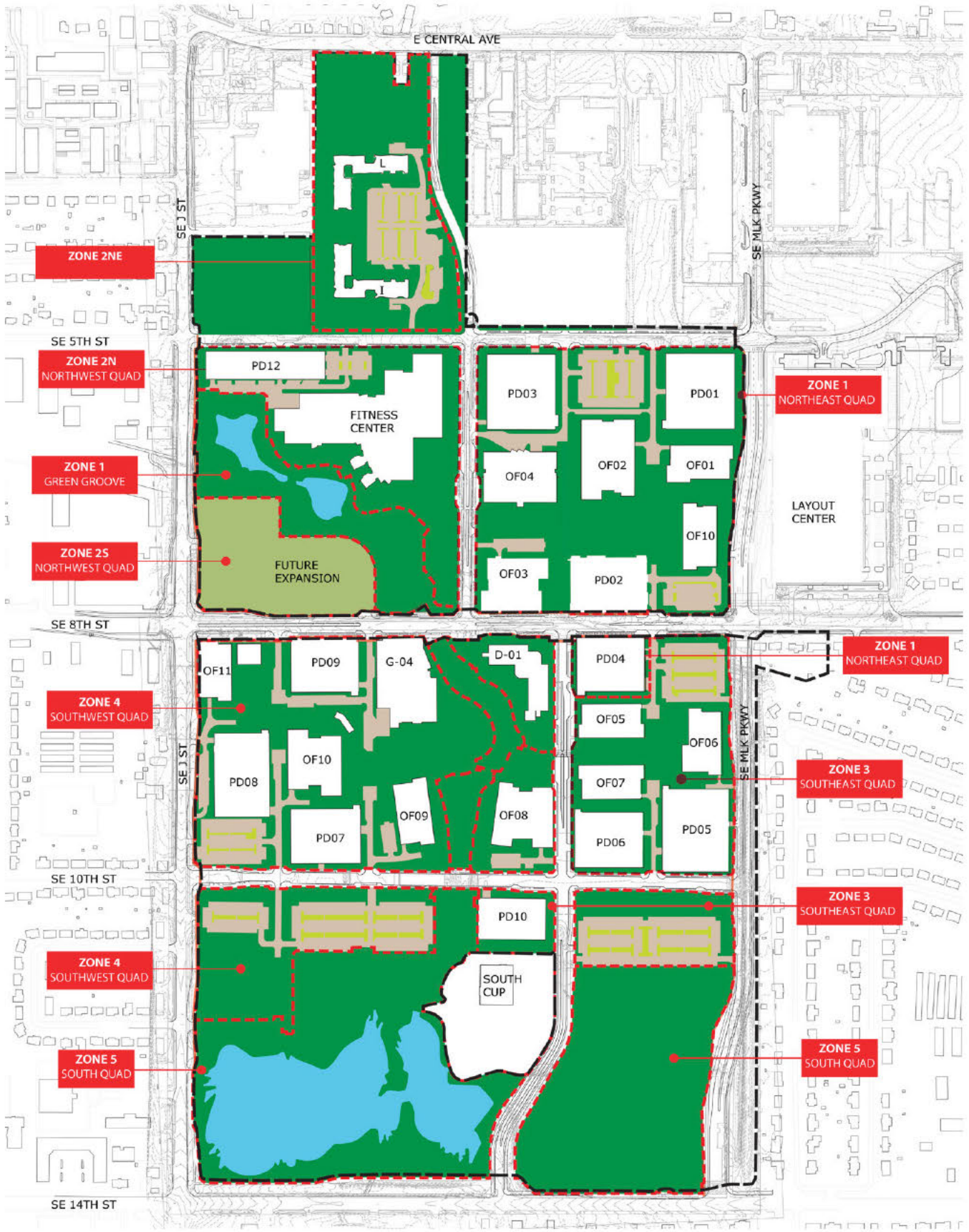
- *8' wide green space curb zone*
- *10' Min. wide shared-use sidewalk on at least one side of the street*
- *Shade trees provided at a minimum rate of one (1) shade tree per every forty (40) linear feet or fraction thereof of street frontage.*

PROPOSED GUIDELINES

- *1’ soil depth for shrubs / grasses up to 5 gallons*
- *3’ soil depth for trees (36” diameter rootball / 3.5” caliper).*



OPEN SPACE AREA



ZONE 1
AREA: 34.1 acres
OPEN SPACE: 16.22 acres
OPEN SPACE PERCENTAGE: 47%
(27% ABOVE REQUIREMENT)

ZONE 1 - GREEN GROOVE
AREA: 11 acres
OPEN SPACE: 10 acres
OPEN SPACE POND: 1.2 acres
OPEN SPACE PERCENTAGE: 90%
(70% ABOVE REQUIREMENT)

ZONE 2S
AREA: 7.7 acres
FUTURE EXPANSION AREA: 7.7 acres

ZONE 2N
AREA: 16.2 acres
OPEN SPACE: 7.6 acres
OPEN SPACE PERCENTAGE: 47%
(27% ABOVE REQUIREMENT)

ZONE 3
AREA: 24.8 acres
OPEN SPACE: 11.57 acres
OPEN SPACE PERCENTAGE: 46%
(26% ABOVE REQUIREMENT)

ZONE 4
AREA: 38.6 acres
OPEN SPACE: 18.2 acres
OPEN SPACE PERCENTAGE: 46%
(26% ABOVE REQUIREMENT)

ZONE 5
AREA: 48.5 acres
OPEN SPACE: 36.0 acres
OPEN SPACE POND: 12.5 acres
OPEN SPACE PERCENTAGE: 100%
(80% ABOVE REQUIREMENT)

ZONE 2NE
AREA: 15.67 acres
OPEN SPACE: 11.31 acres
OPEN SPACE PERCENTAGE: 72%
(52% ABOVE REQUIREMENT)

TOTAL AREA: 237.73 ACRES
OPEN SPACE: 123.9 acres
TOTAL OPEN SPACE PERCENTAGE: 52%
(32% ABOVE REQUIREMENT)

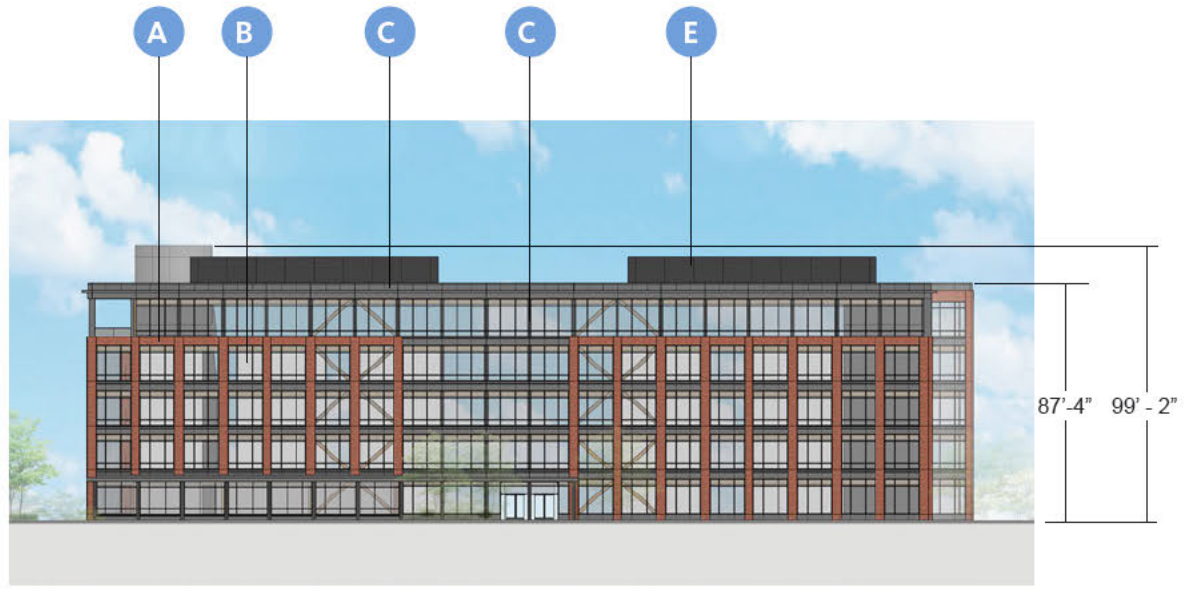
KEY

- OPEN SPACE AREA - SOFTSCAPE OR PEDESTRIAN HARDSCAPE
- OPEN SPACE AREA - POND OR SEASONAL WATERWAY
- FUTURE EXPANSION ZONE (NOT INCLUDED IN OPEN SPACE AREA)
- PARKING LOT/VEHICULAR PAVING AREA (NOT INCLUDED IN OPEN SPACE AREA)
- PARKING LOT PLANTING (NOT INCLUDED IN OPEN SPACE AREA)

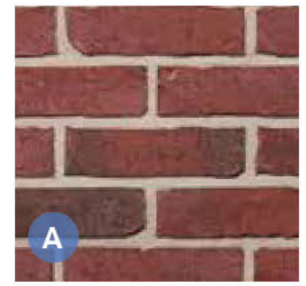
Note: PUD Revision 3 includes adjustments to open space areas associated with the child care center in Zone 2NE, which was previously shown as future expansion area.



NORTH ELEVATION



SOUTH ELEVATION



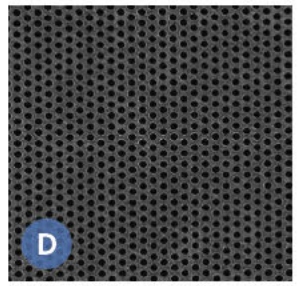
BR01- RED THIN BRICK



GL01- VISION GLASS



MP01- GRAY METAL MINIMUM 24 GAUGE



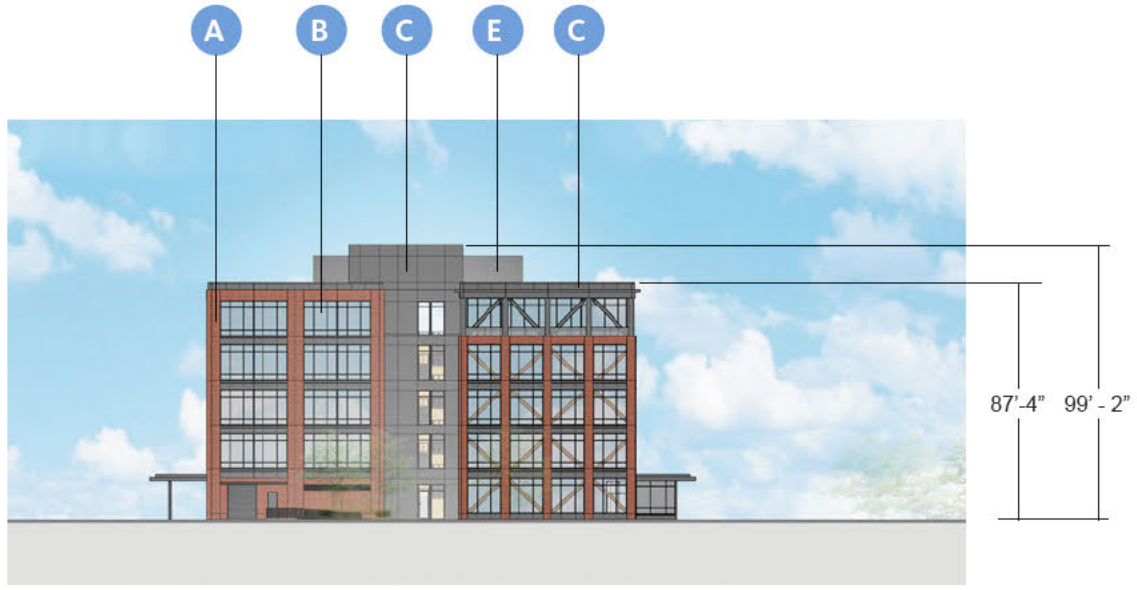
MP05- PERFORATED METAL MINIMUM 24 GAUGE



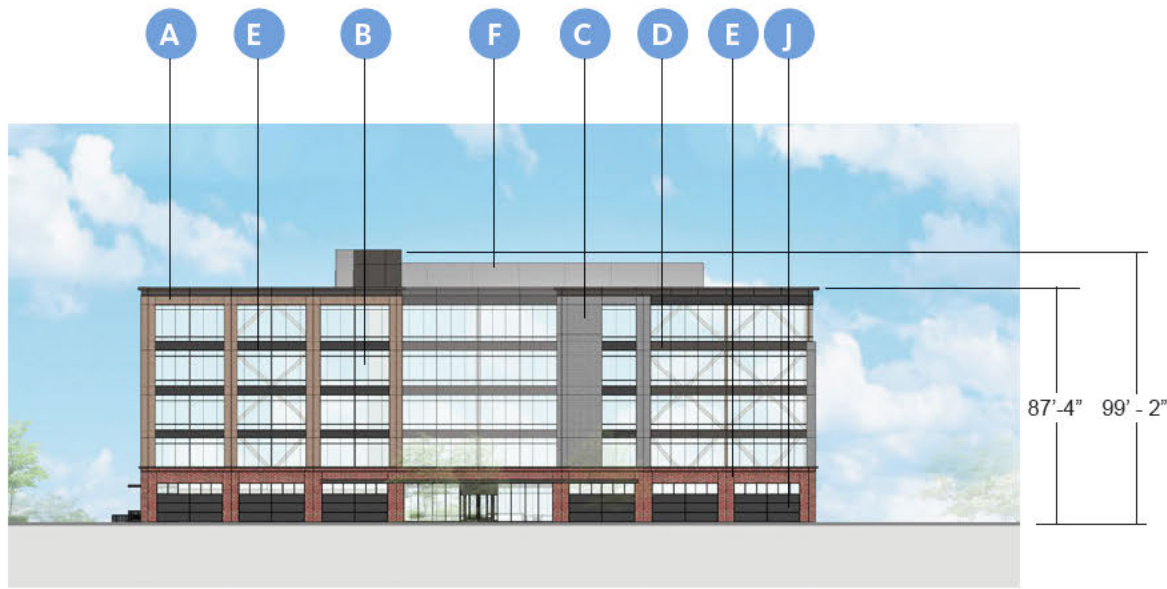
WD01- WOOD FINISH (CANOPY AND TERRACE SOFFITS)



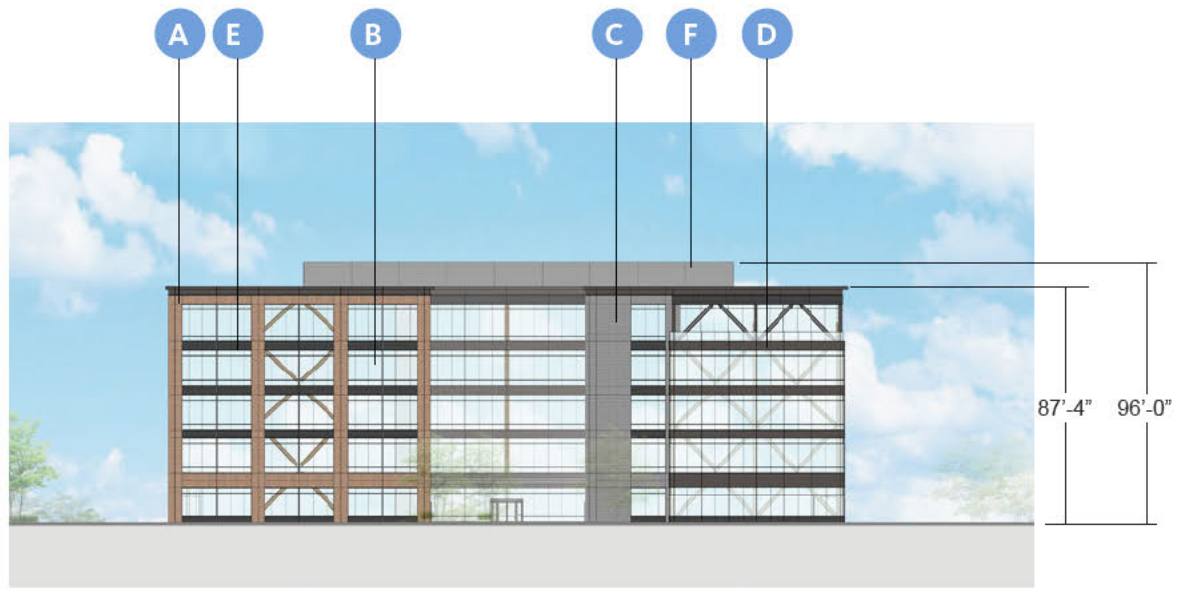
EAST ELEVATION



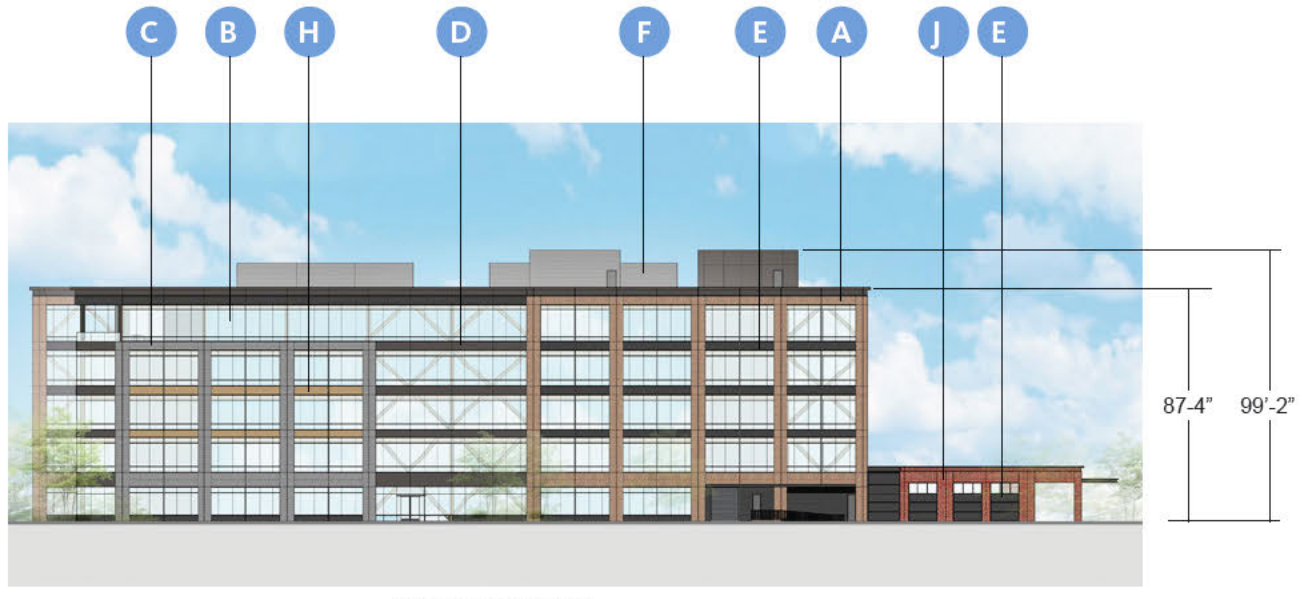
WEST ELEVATION



NORTH ELEVATION



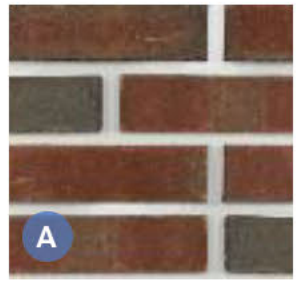
SOUTH ELEVATION



EAST ELEVATION



WEST ELEVATION



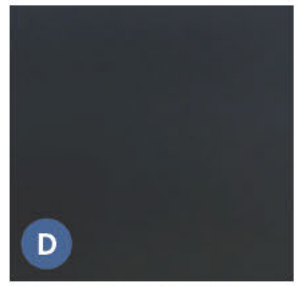
BR02- RED THIN BRICK



GL01- VISION GLASS



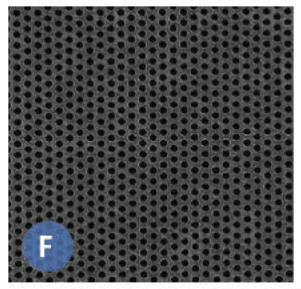
BR04- GRAY THIN BRICK



MP03- BLACK METAL MINIMUM 24 GAUGE



MP04- CORRUGATED METAL MINIMUM 24 GAUGE



MP05- PERFORATED METAL MINIMUM 24 GAUGE



WD01- WOOD FINISH (CANOPY AND TERRACE SOFFITS)



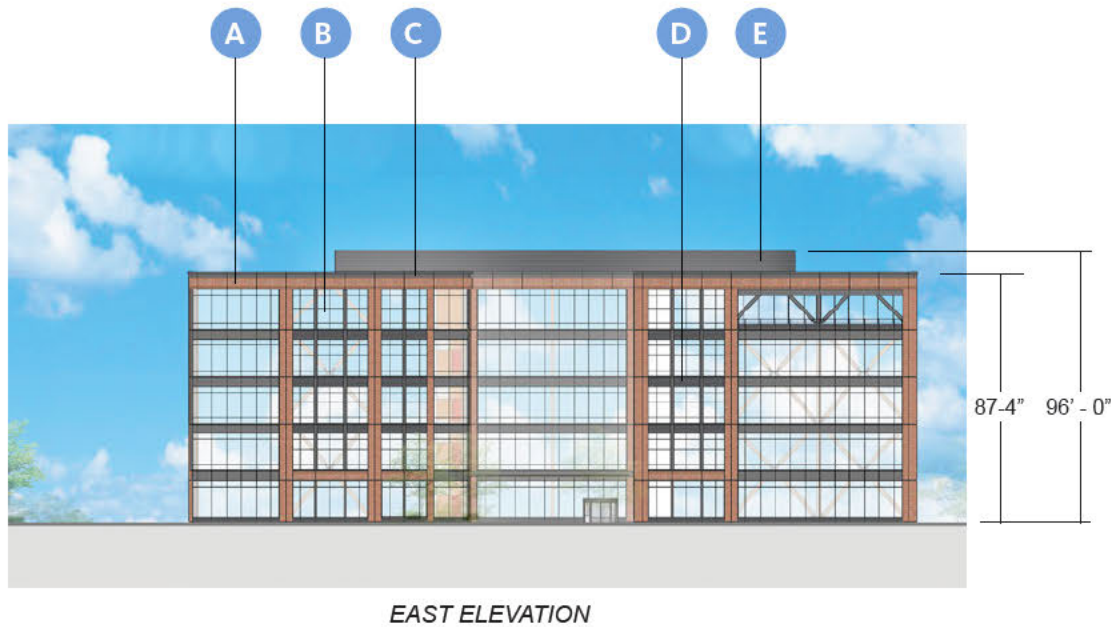
BR05- RED THIN BRICK



NORTH ELEVATION



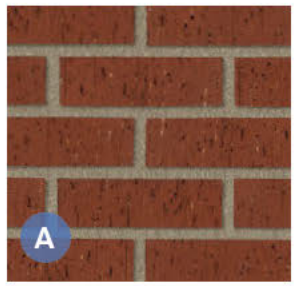
SOUTH ELEVATION



EAST ELEVATION



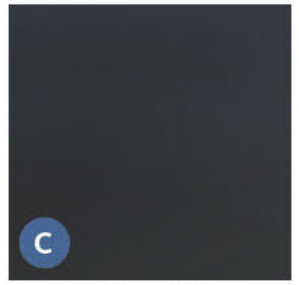
WEST ELEVATION



BR01- RED THIN BRICK



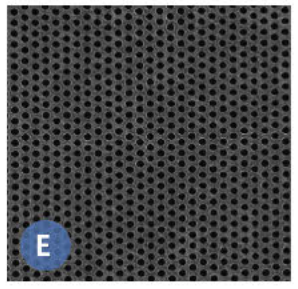
GL01- VISION GLASS



MP03- BLACK METAL MINIMUM 24 GAUGE



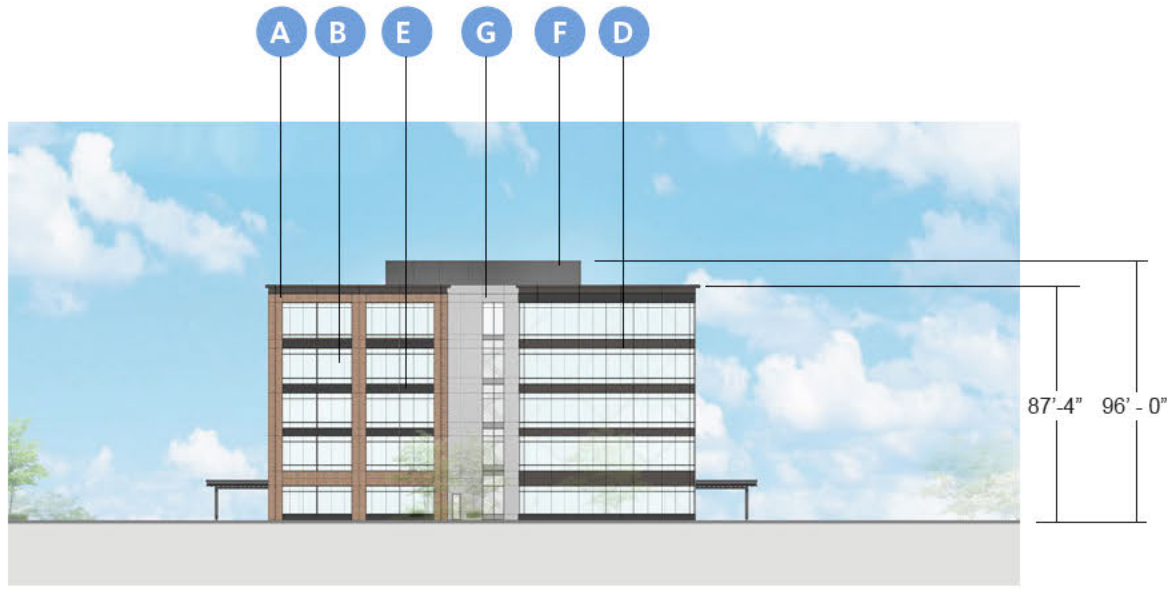
MP04- CORRUGATED METAL MINIMUM 24 GAUGE



MP05- PERFORATED METAL MINIMUM 24 GAUGE



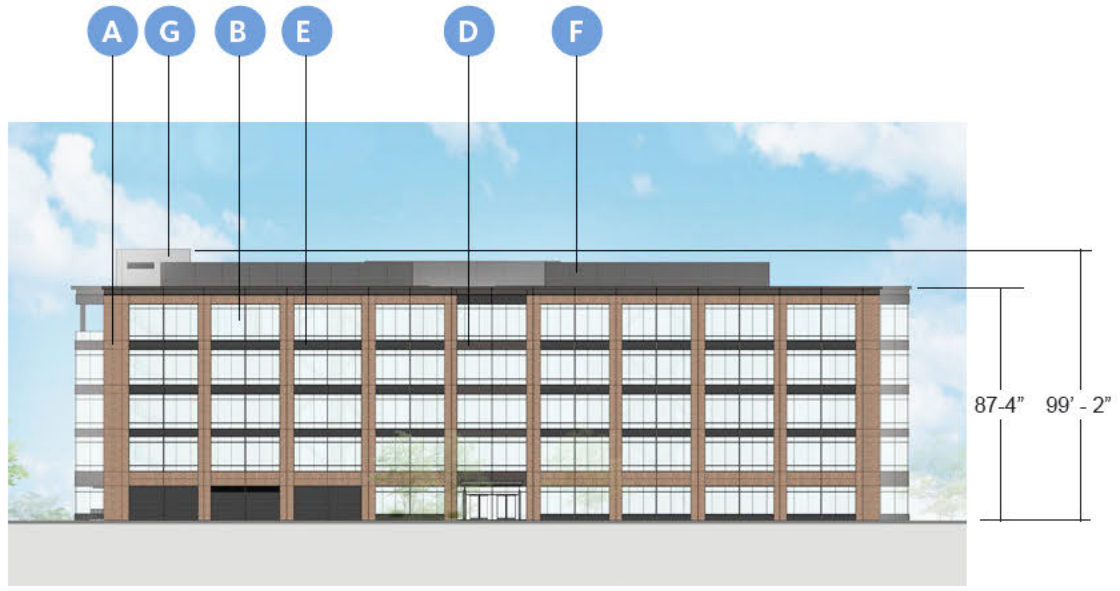
WD01- WOOD FINISH (CANOPY AND TERRACE SOFFITS)



NORTH ELEVATION



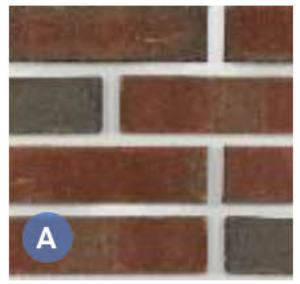
SOUTH ELEVATION



EAST ELEVATION



WEST ELEVATION



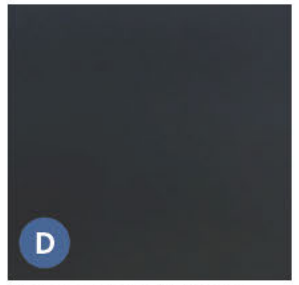
BR02- RED THIN BRICK



GL01- VISION GLASS



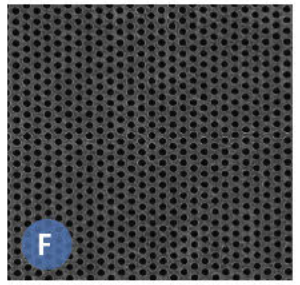
BR04- GRAY THIN BRICK



MP03- BLACK METAL
MINIMUM 24 GAUGE



MP04- CORRUGATED METAL
MINIMUM 24 GAUGE



MP05- PERFORATED METAL
MINIMUM 24 GAUGE



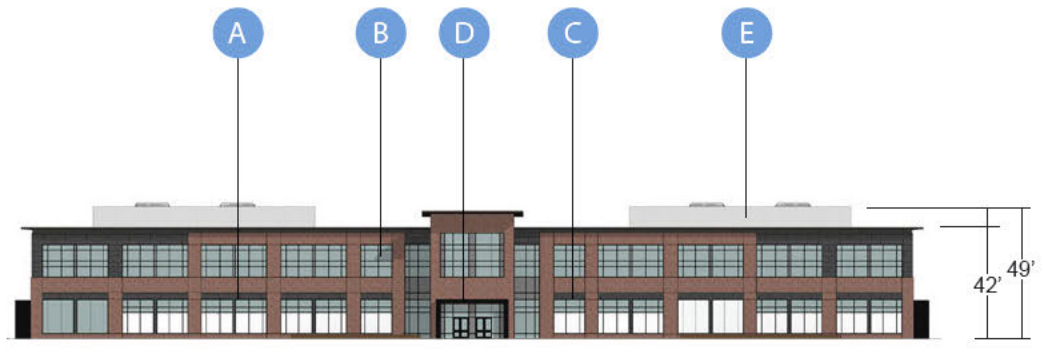
MP01- GRAY METAL
MINIMUM 24 GAUGE



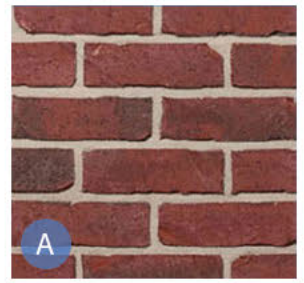
WD01- WOOD FINISH
(CANOPY AND
TERRACE SOFFITS)



NORTH ELEVATION



SOUTH ELEVATION



BR01- RED BRICK



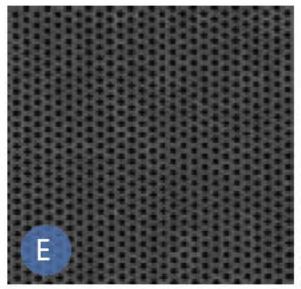
GL01- VISION GLASS



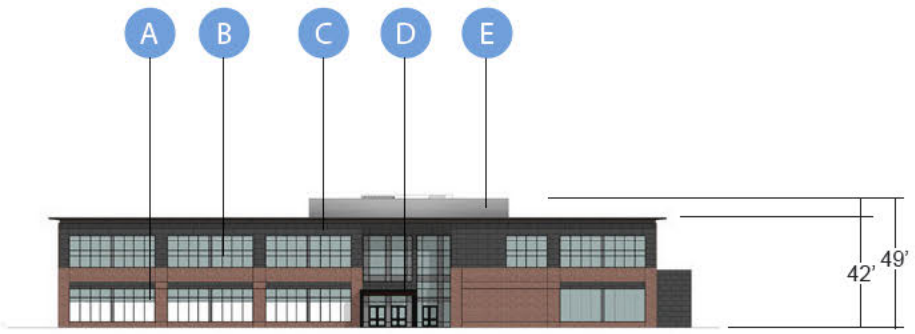
MP01- GRAY METAL
MINIMUM 24 GAUGE



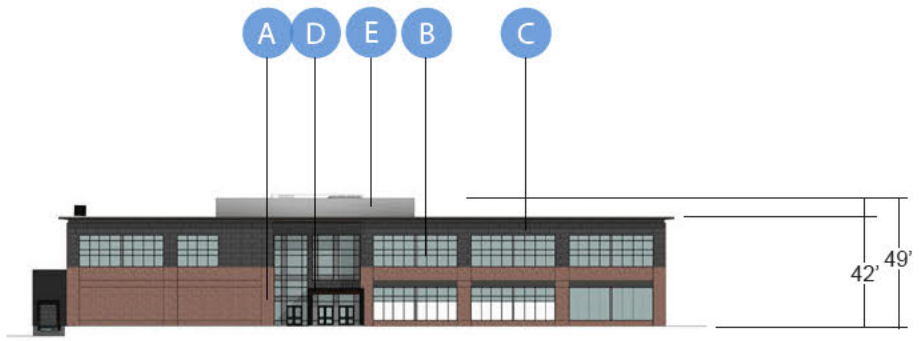
MP03- BLACK METAL
MINIMUM 24 GAUGE



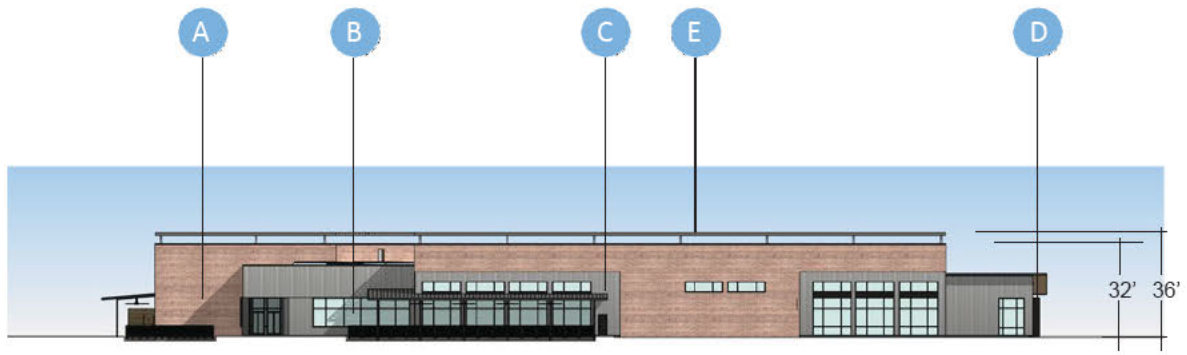
MP05- PERFORATED METAL
MINIMUM 24 GAUGE



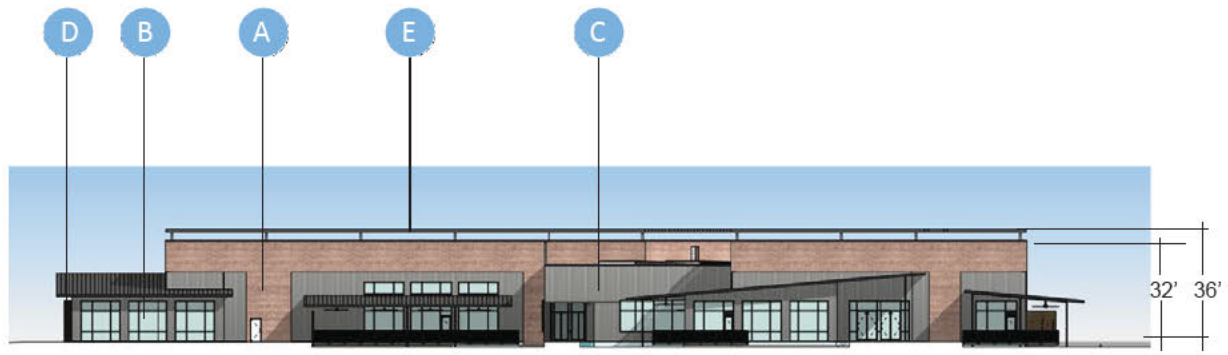
EAST ELEVATION



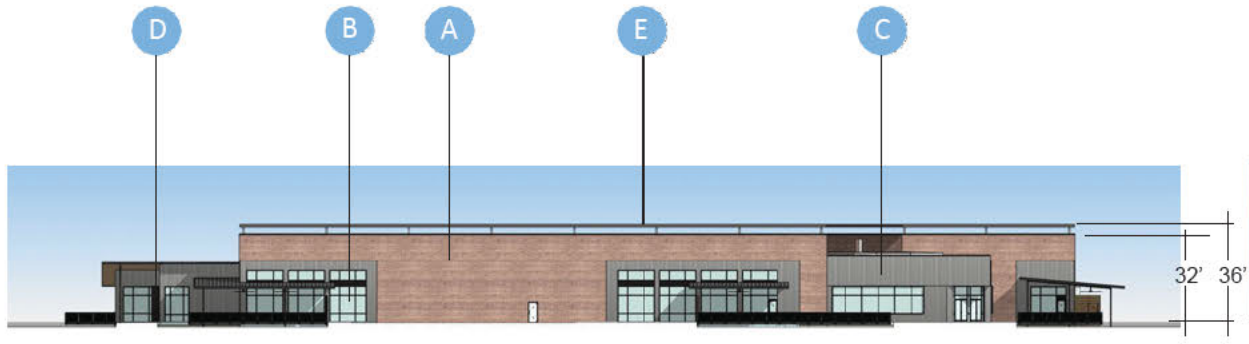
WEST ELEVATION



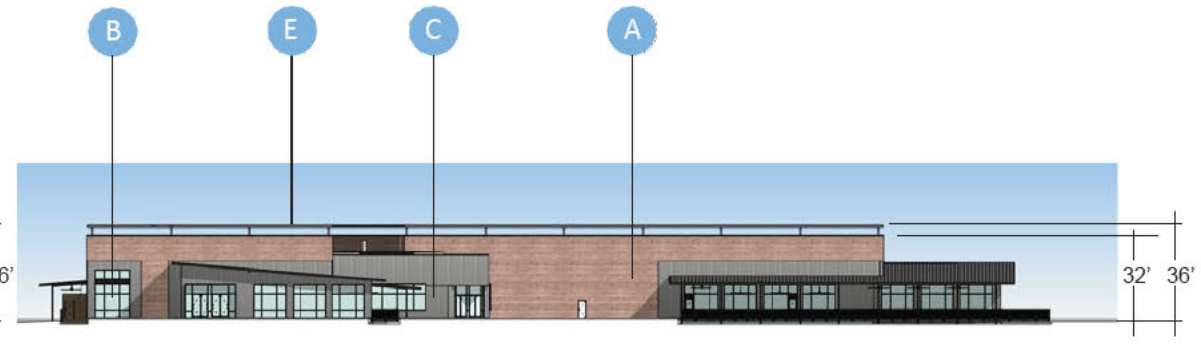
NORTH ELEVATION



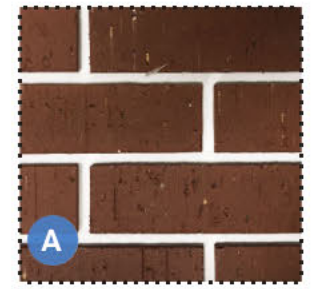
SOUTH ELEVATION



EAST ELEVATION



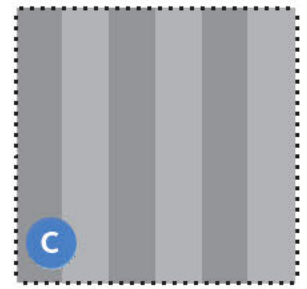
WEST ELEVATION



BR01- RED BRICK



GL01- VISTA GLASS



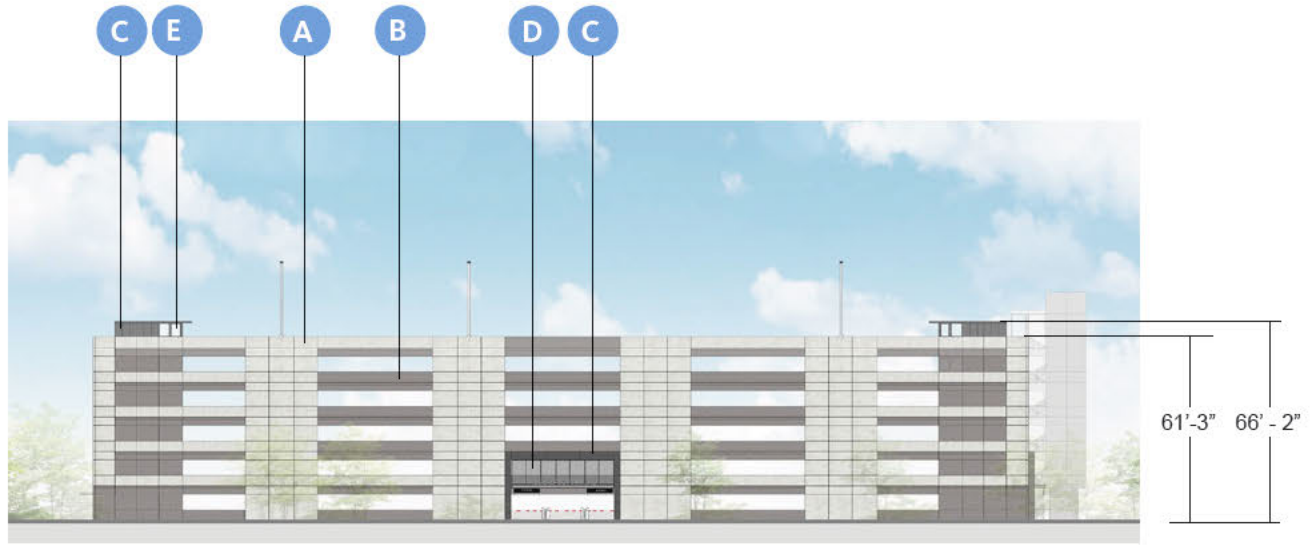
MP01- CONCEALED FASTENER METAL PANEL MINIMUM 24 GAUGE



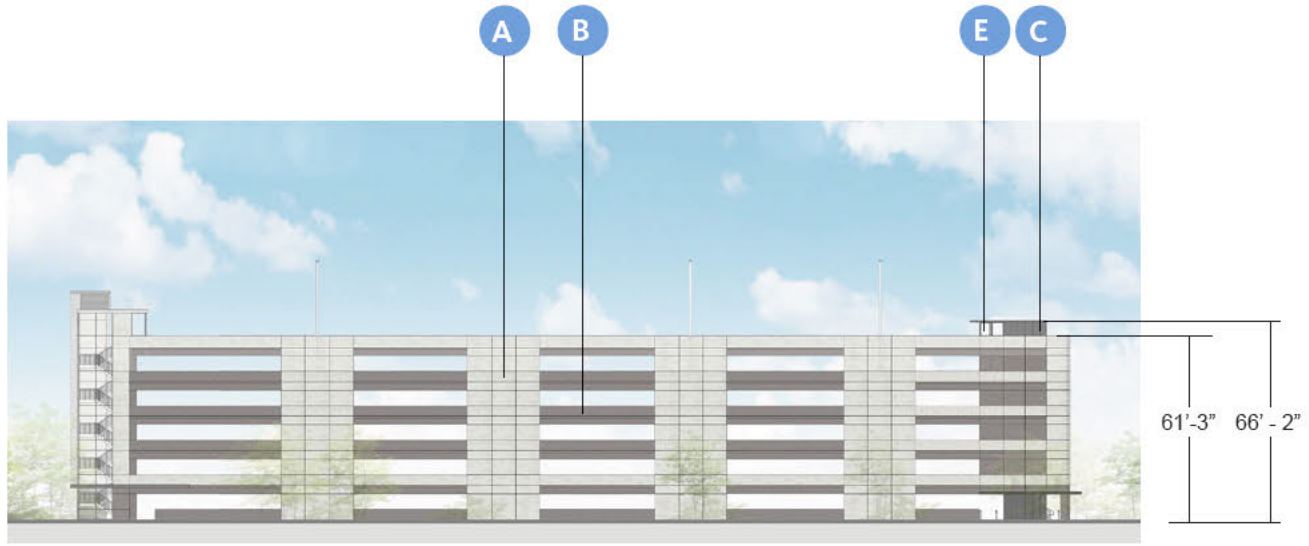
MP02- DARK METAL MINIMUM 24 GAUGE



RS01- DARK BRONZE ALUMINUM ROOF SCREENING



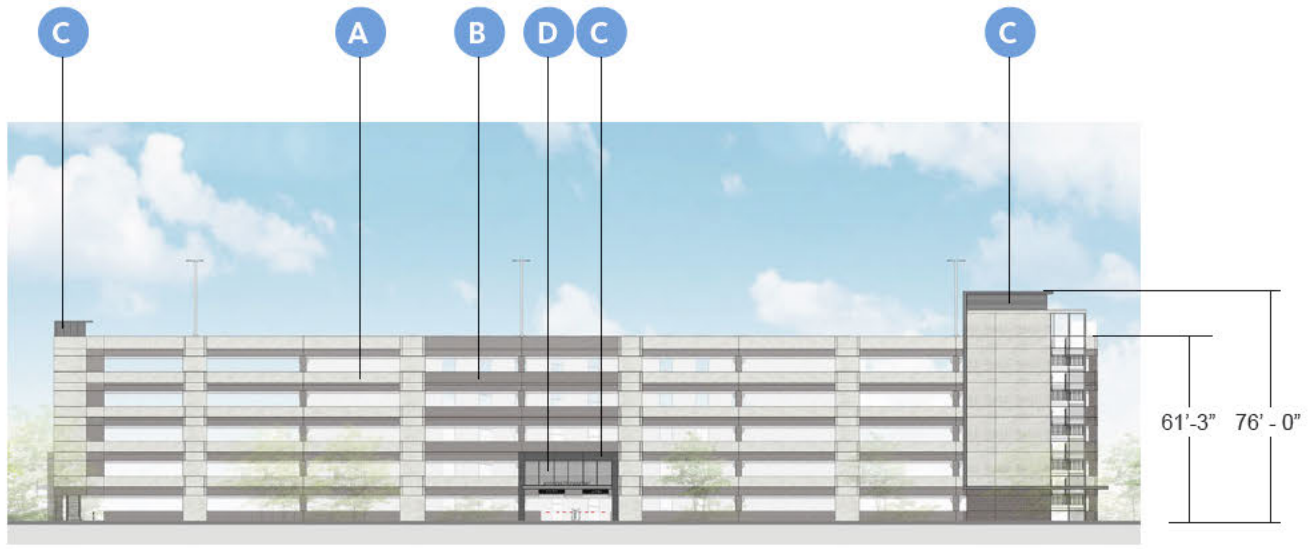
NORTH ELEVATION



SOUTH ELEVATION



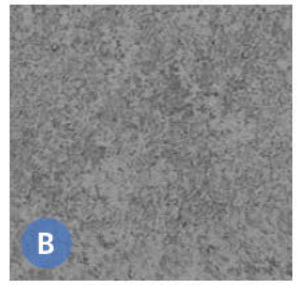
EAST ELEVATION



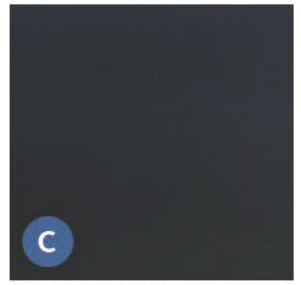
WEST ELEVATION



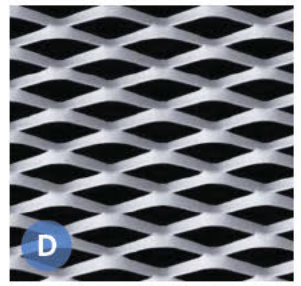
PC01- PRECAST LIGHT



PC02- PRECAST DARK



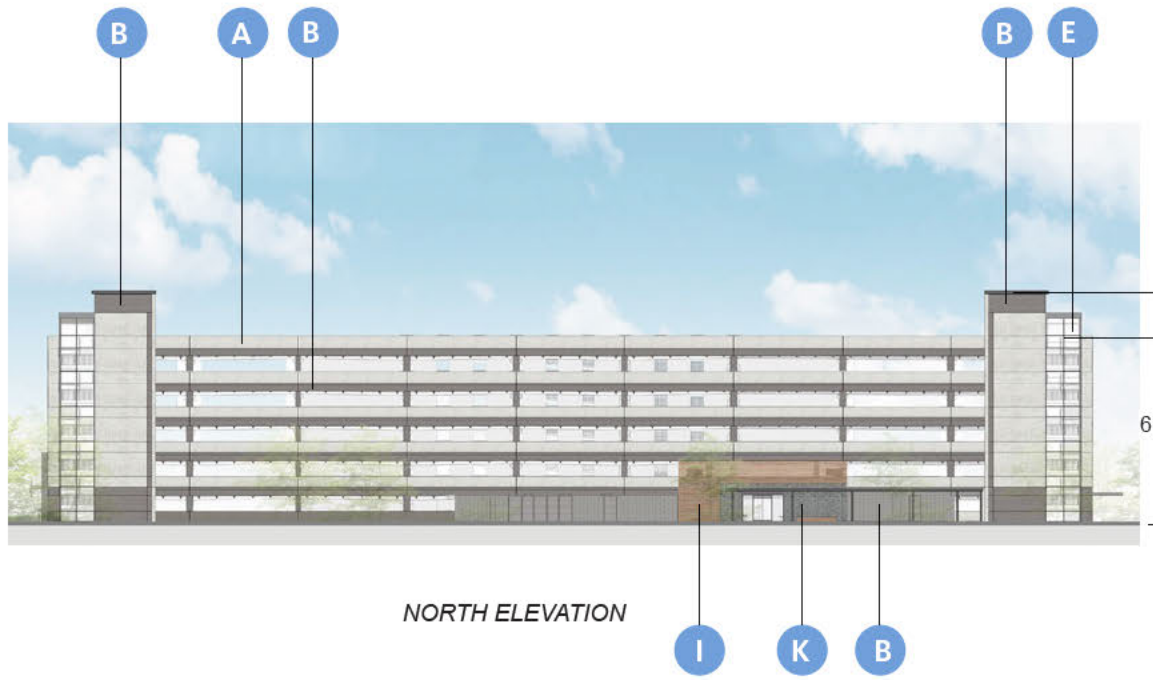
MP03- BLACK METAL
MINIMUM 24 GAUGE



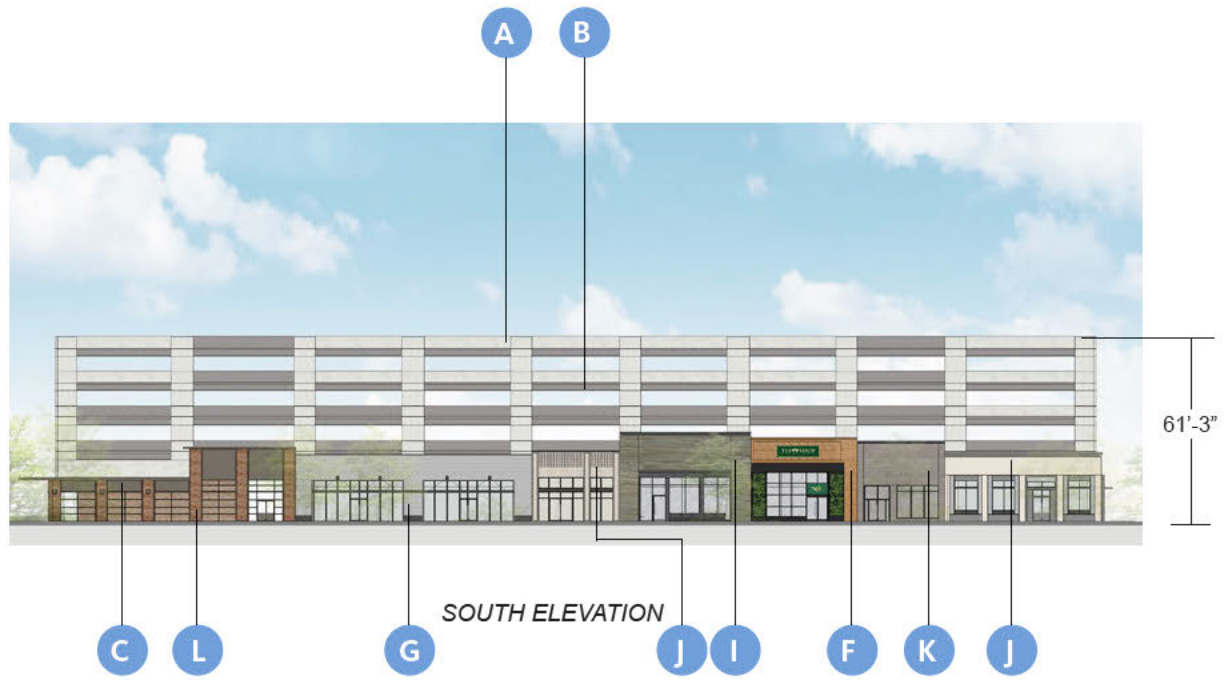
MP06 - EXPANDED METAL
MINIMUM 24 GAUGE



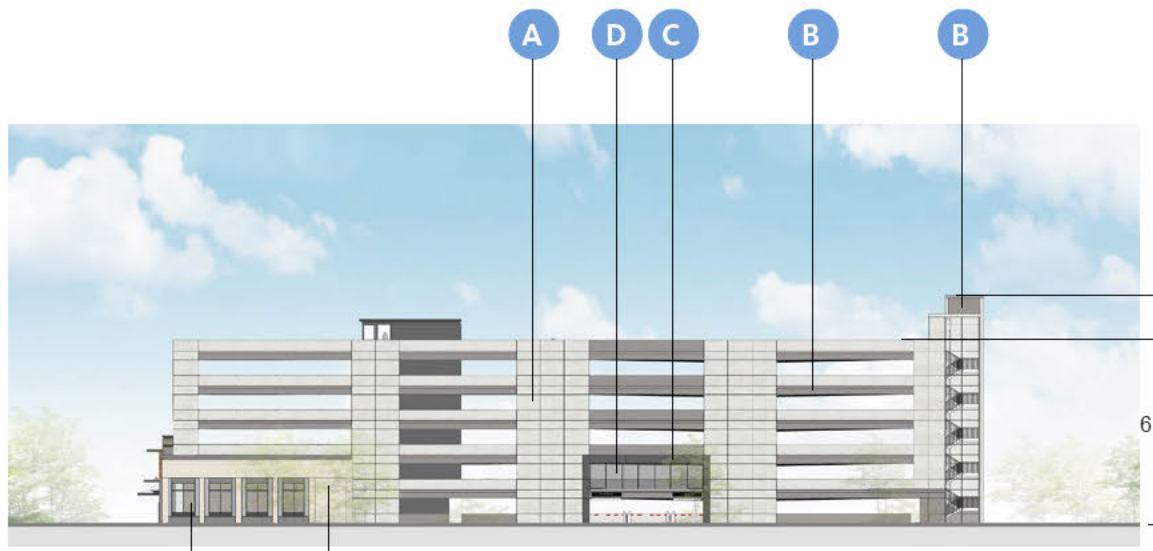
GL01- VISION GLASS



NORTH ELEVATION



SOUTH ELEVATION



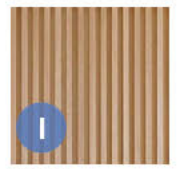
EAST ELEVATION



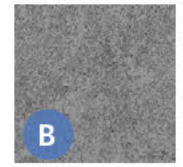
WEST ELEVATION



PC01-
PRECAST LIGHT



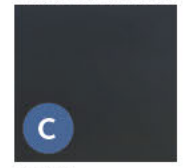
WD02 -
WOOD SLAT



PC02-
PRECAST DARK



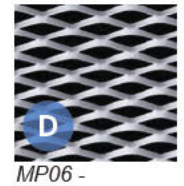
BR02 -
BRICK VENEER



MP03-
BLACK METAL
MINIMUM 24
GAUGE



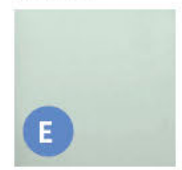
BR03 -
BRICK VENEER



MP06 -
EXPANDED METAL
MINIMUM 24
GAUGE



BR04 -
BRICK VENEER



GL01-
VISION GLASS



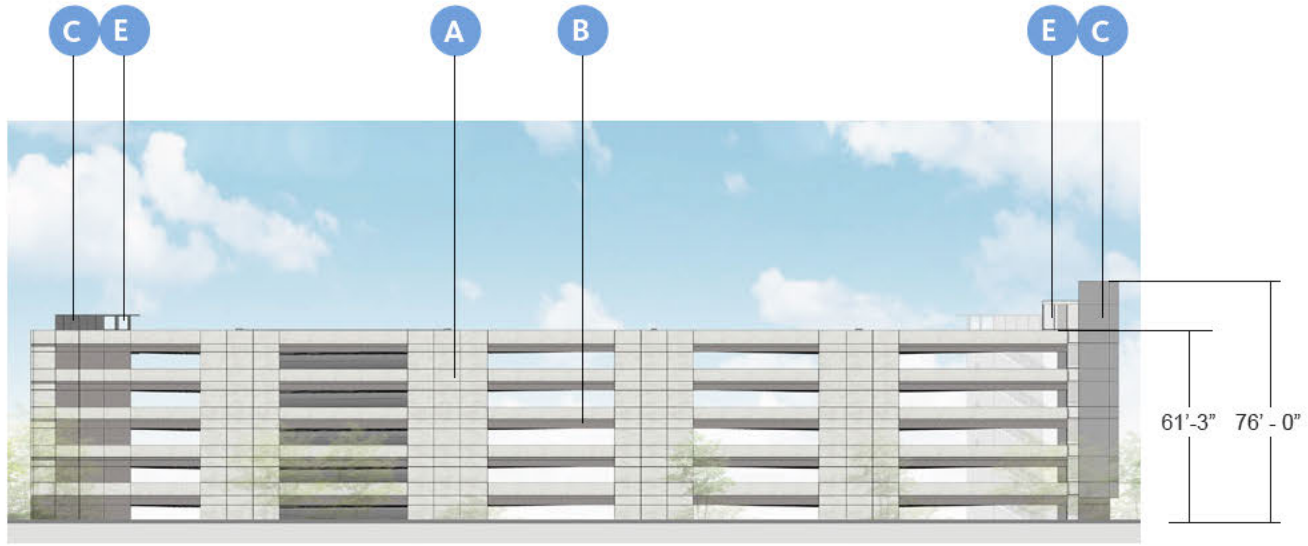
WD01 -
WOOD VENEER



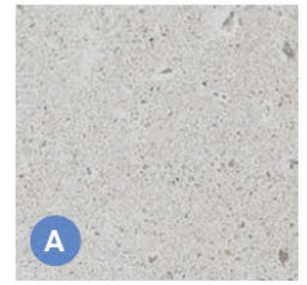
BR01 -
CMU BLOCK



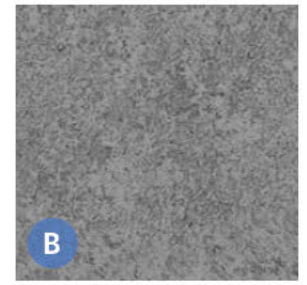
NORTH ELEVATION



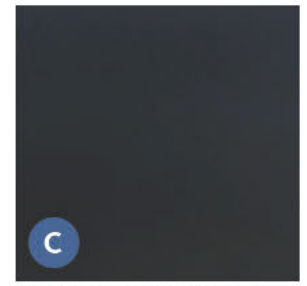
SOUTH ELEVATION



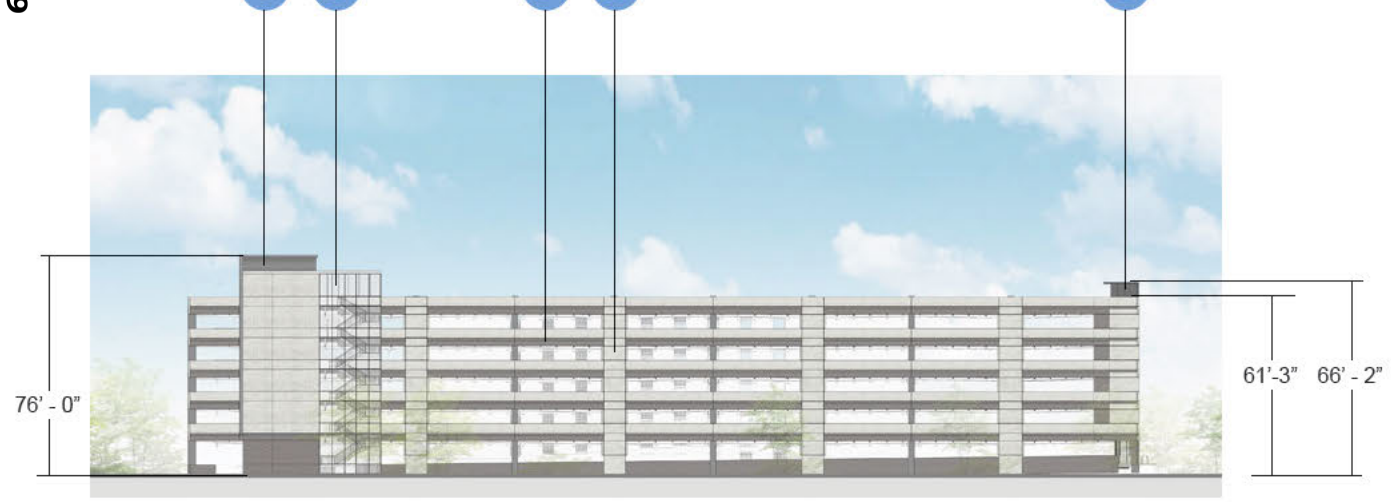
PC01- PRECAST LIGHT



PC02- PRECAST DARK



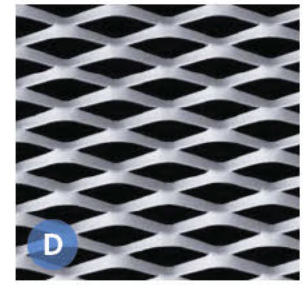
MP03- BLACK METAL
MINIMUM 24 GAUGE



EAST ELEVATION



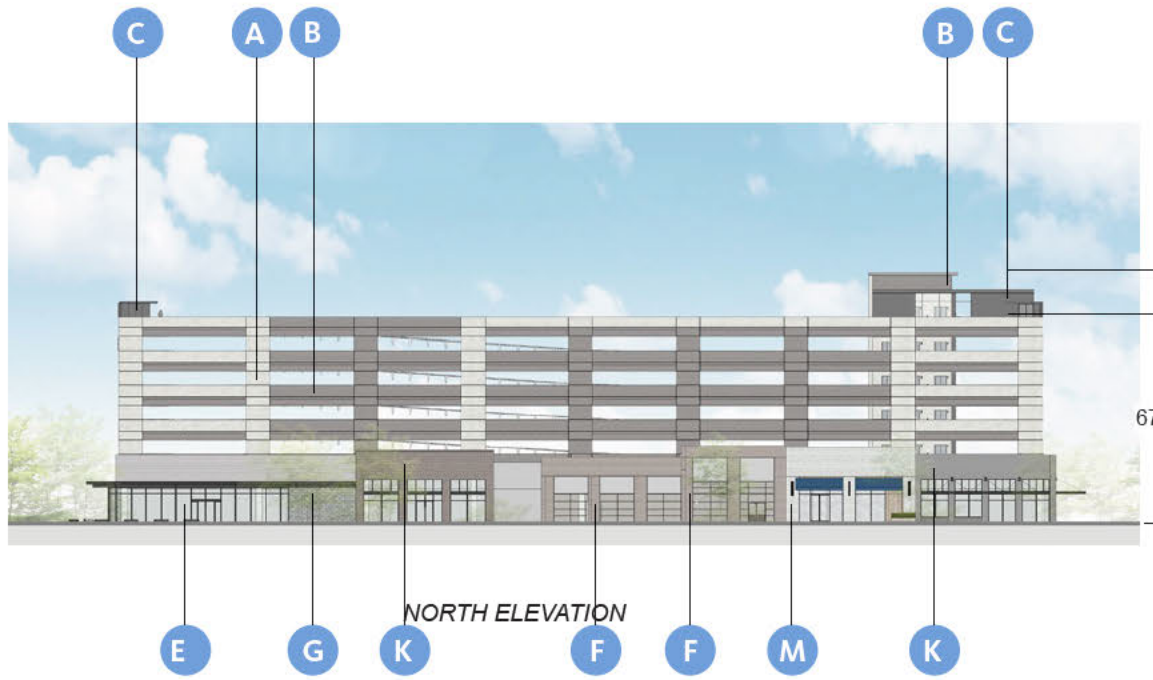
WEST ELEVATION



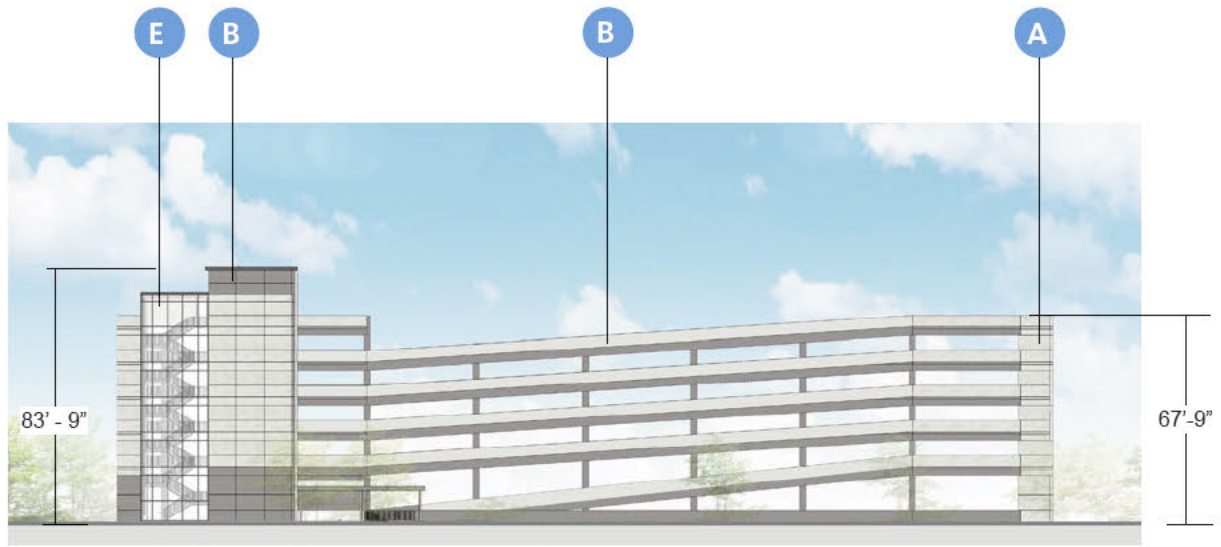
MP06 - EXPANDED METAL
MINIMUM 24 GAUGE



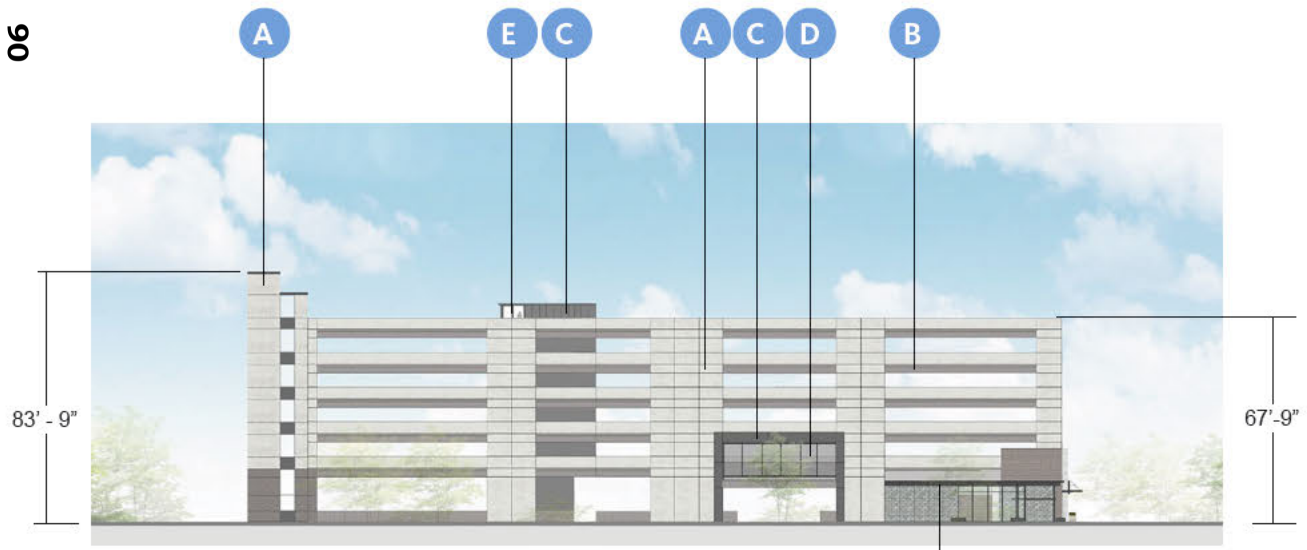
GL01- VISION GLASS



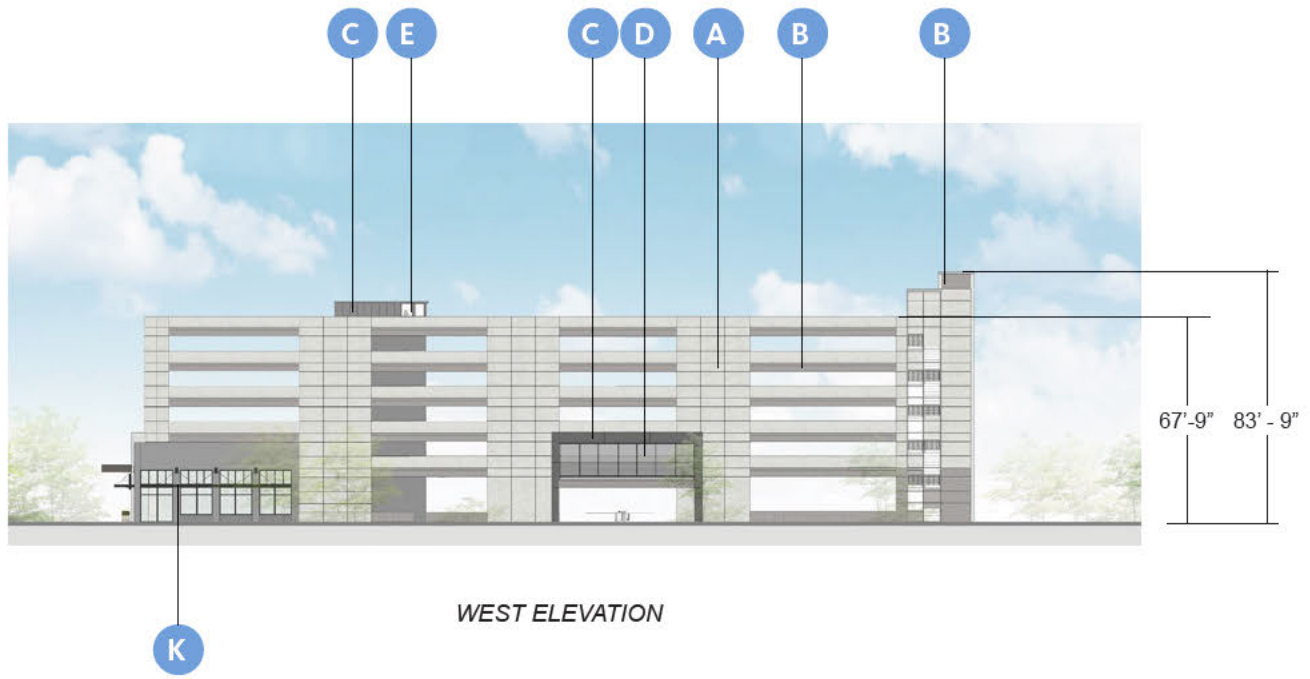
NORTH ELEVATION



SOUTH ELEVATION



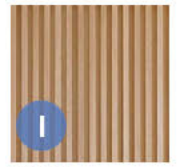
EAST ELEVATION



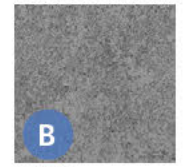
WEST ELEVATION



PC01- PRECAST LIGHT



WD02 - WOOD SLAT



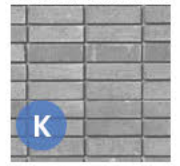
PC02- PRECAST DARK



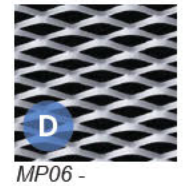
BR02 - BRICK VENEER



MP03- BLACK METAL MINIMUM 24 GAUGE



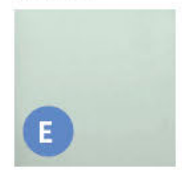
BR03 - BRICK VENEER



MP06 - EXPANDED METAL MINIMUM 24 GAUGE



BR04 - BRICK VENEER



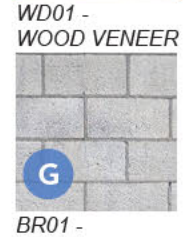
GL01- VISION GLASS



BR05 - BRICK VENEER



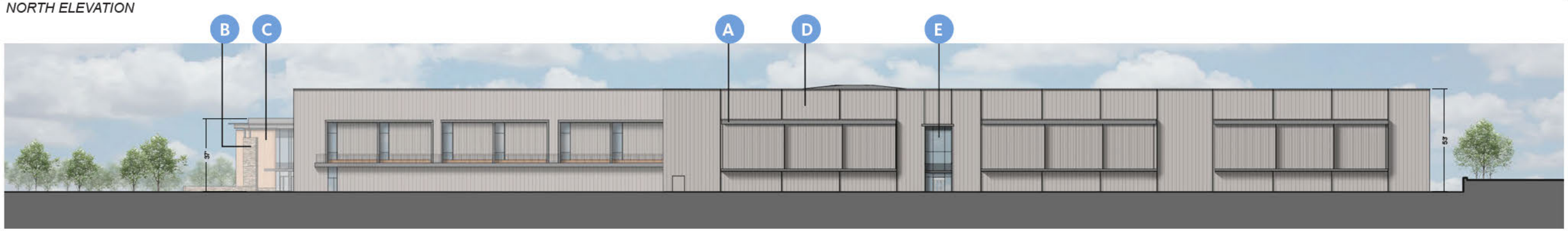
WD01 - WOOD VENEER



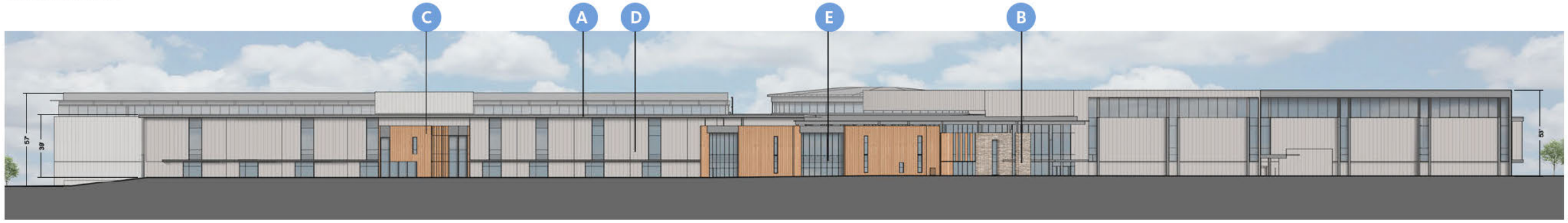
BR01 - CMU BLOCK



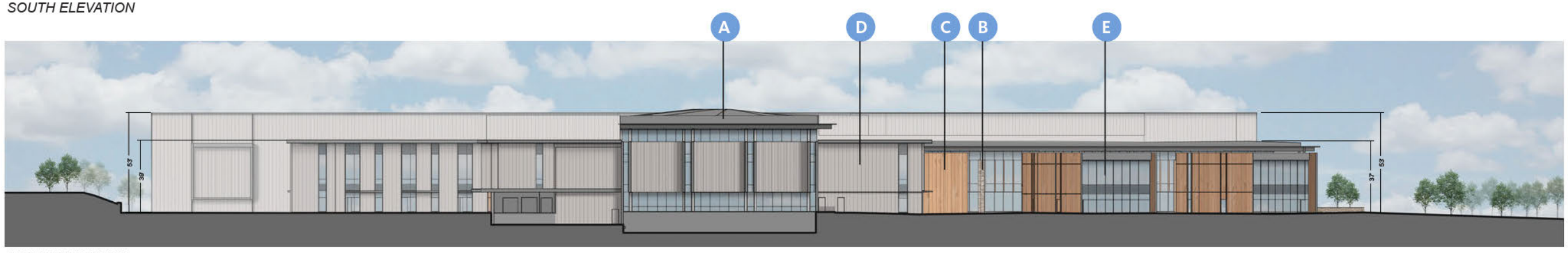
NORTH ELEVATION



EAST ELEVATION



SOUTH ELEVATION



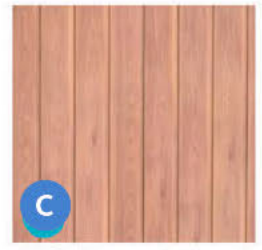
WEST ELEVATION



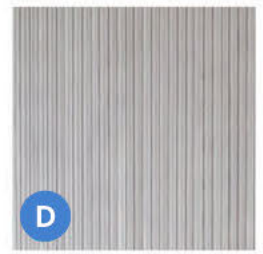
MCM1 - Florupon Classic II



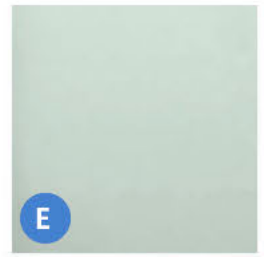
ST1 - Hackett Blue-Brown Multi-Strip



CL7 - Concrete Panel



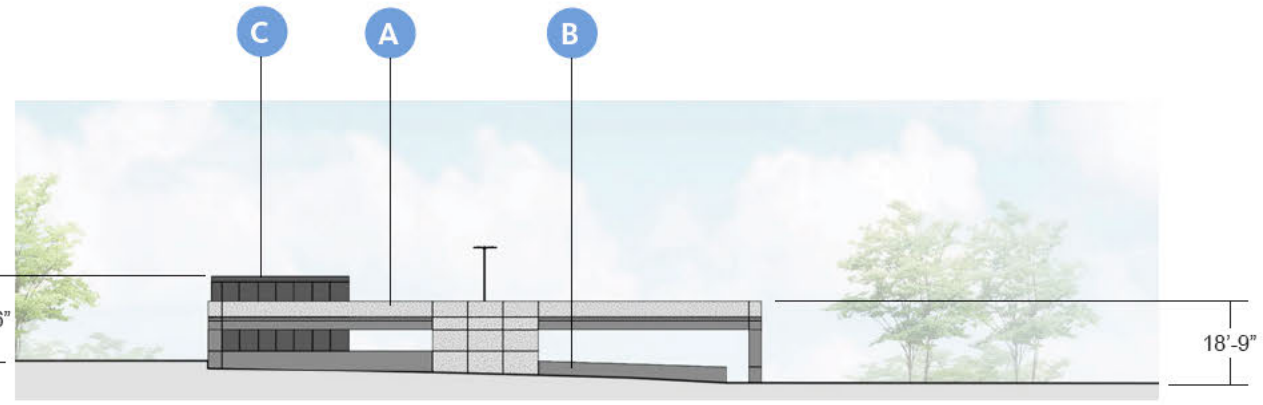
MWP (1,2,3) - Metal Wall Panel, min. 24 ga



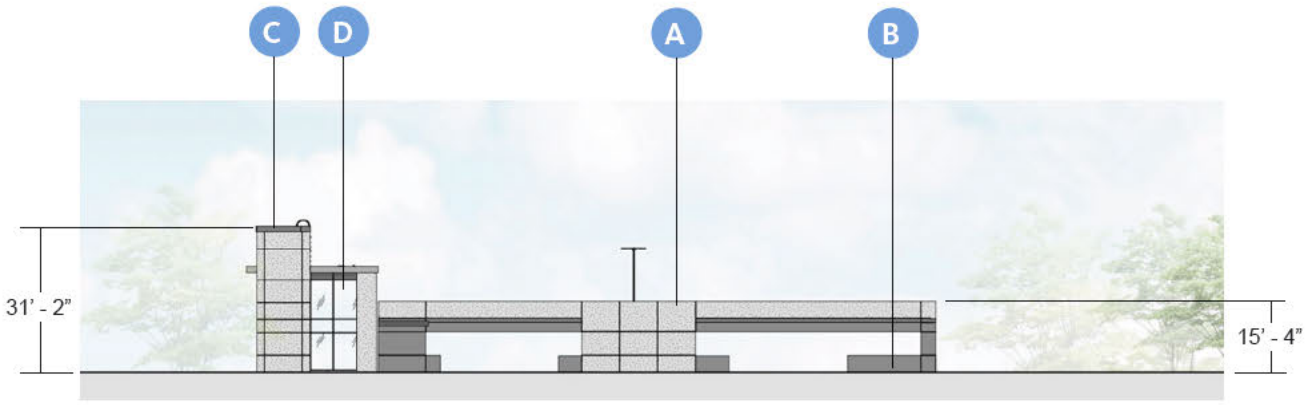
GL1 - Vision Glass



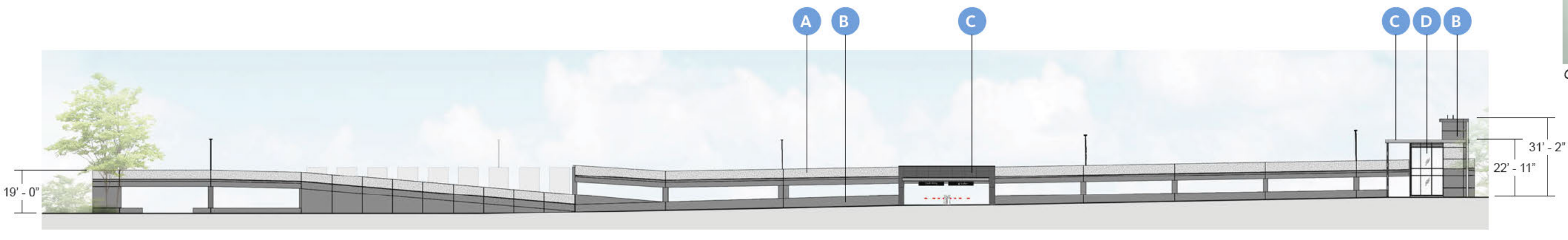
NORTH ELEVATION



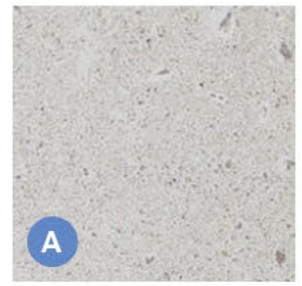
WEST ELEVATION



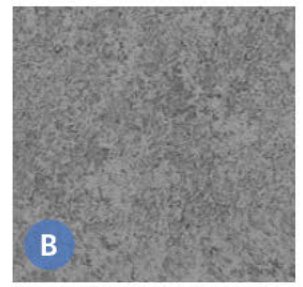
EAST ELEVATION



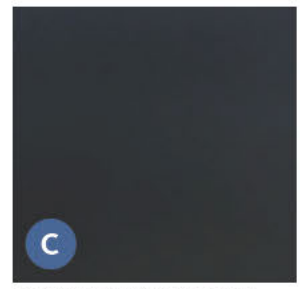
SOUTH ELEVATION



PC01- PRECAST LIGHT



PC02- PRECAST DARK

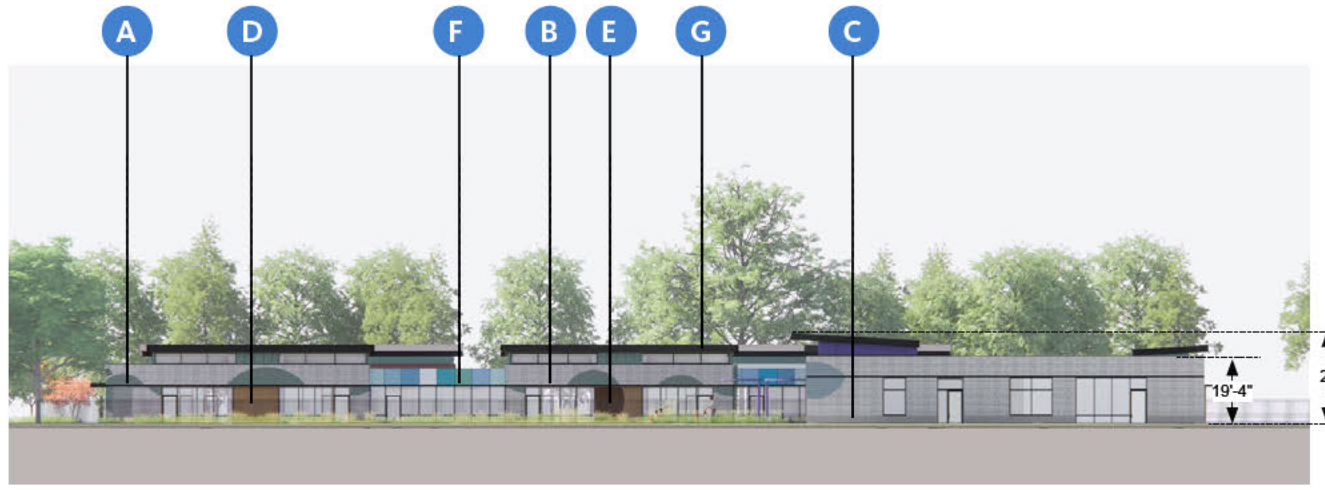


MP03- BLACK METAL MINIMUM 24 GAUGE

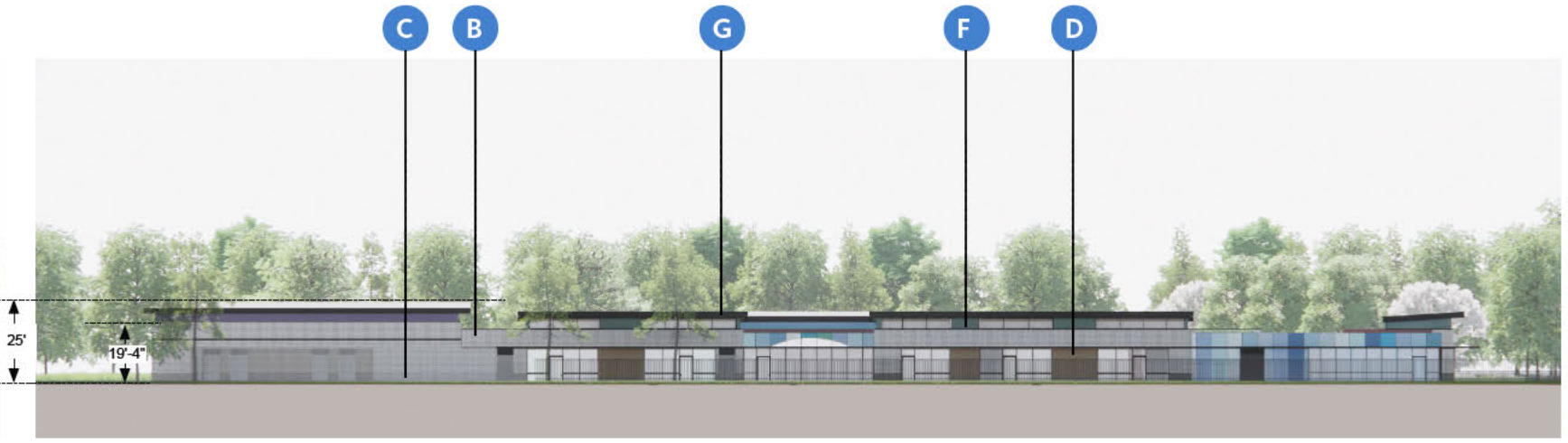


GL01- VISION GLASS

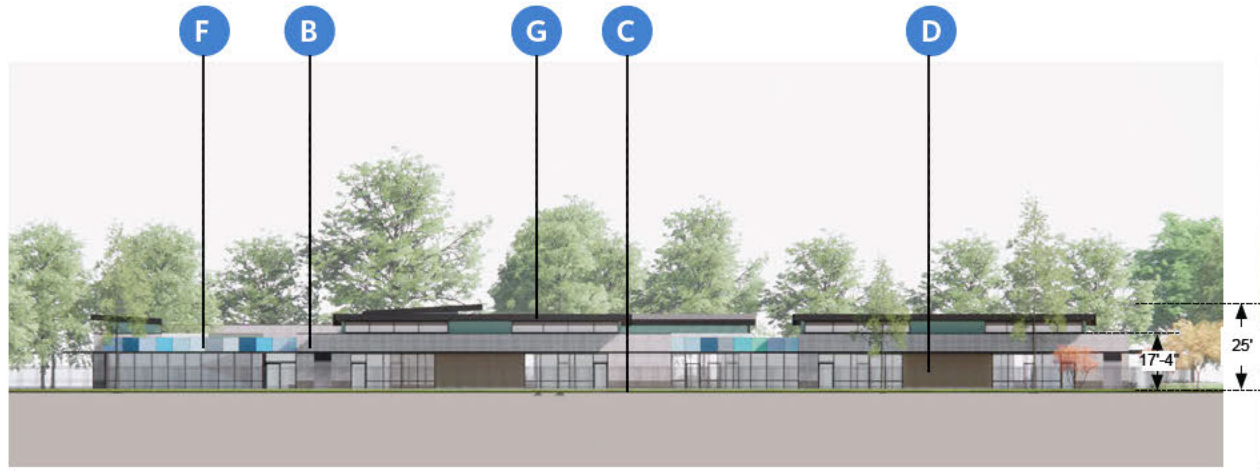
NOTE: Childcare Building I-02 is a mirror image of Childcare Building L-02 (shown below)



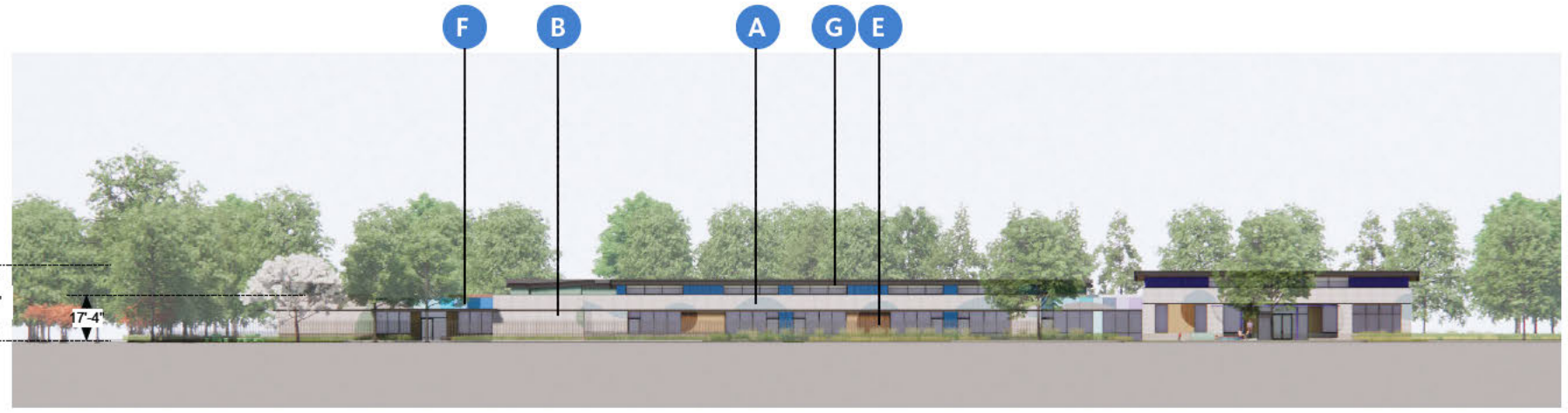
EAST ELEVATION (BUILDING L-02)



NORTH ELEVATION (BUILDING L-02)



WEST ELEVATION (BUILDING L-02)



SOUTH ELEVATION (BUILDING L-02)



A
Brick 01
BRICK 01



B
Brick 02
BRICK 02



C
Burnished Block
BURNISHED BLOCK



D
Wood 01
WOOD 01
(LONGBOARD METAL PANEL)



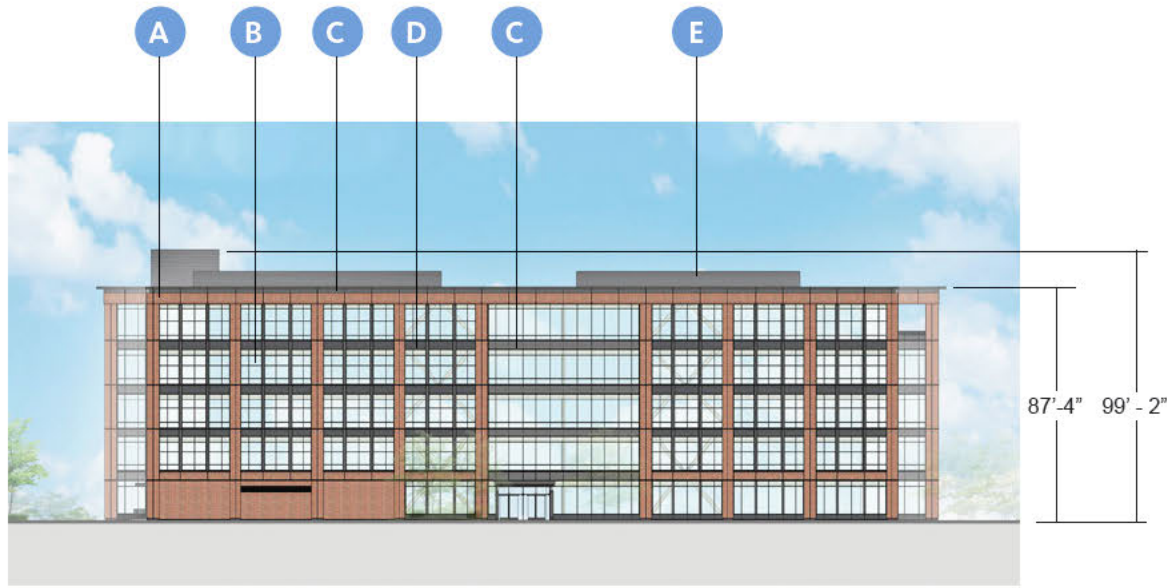
E
Wood 02
WOOD 02
(LONGBOARD METAL PANEL)



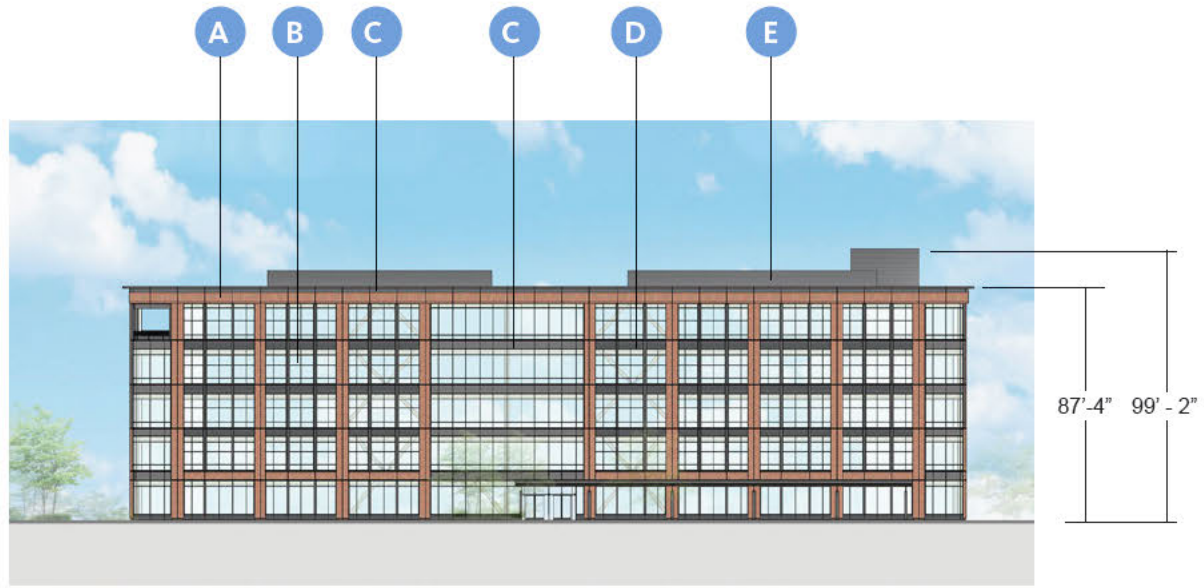
F
Metal Panel
METAL PANEL, MIN. 24 GA



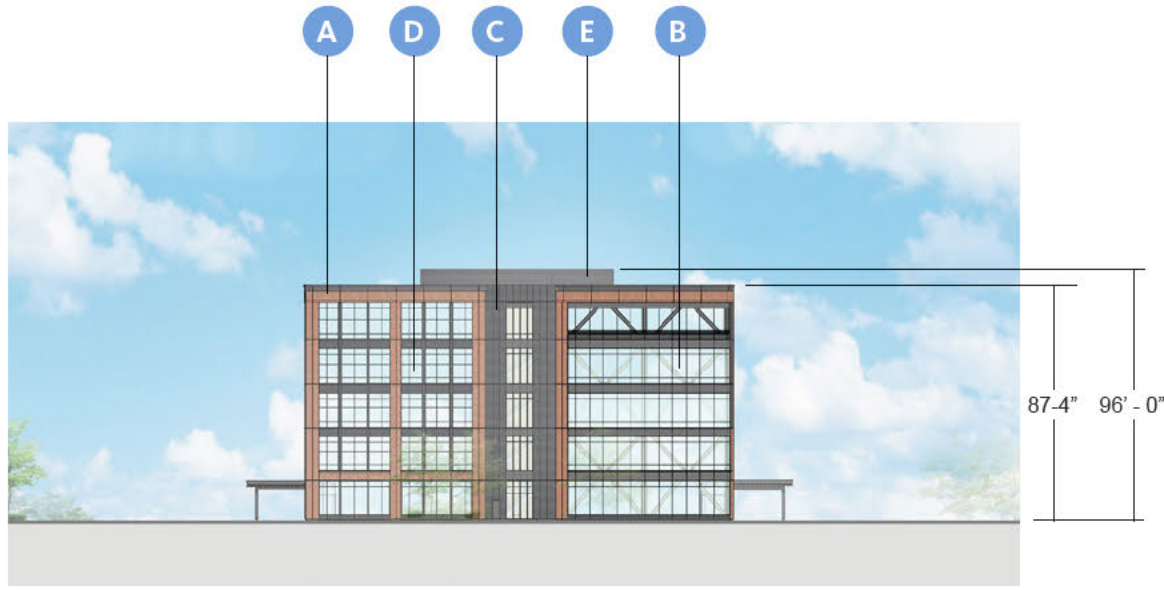
G
Mullion
MULLION



NORTH ELEVATION



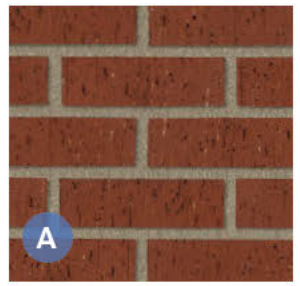
SOUTH ELEVATION



EAST ELEVATION



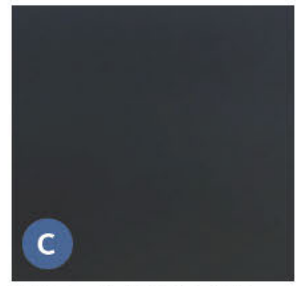
WEST ELEVATION



BR01- RED THIN BRICK



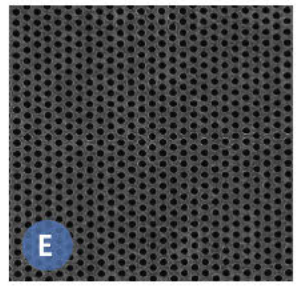
GL01- VISION GLASS



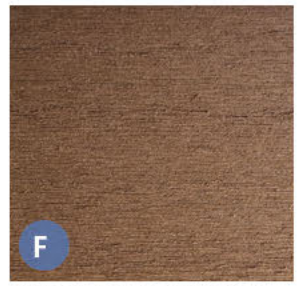
MP03- BLACK METAL MINIMUM 24 GAUGE



MP04- CORRUGATED METAL MINIMUM 24 GAUGE



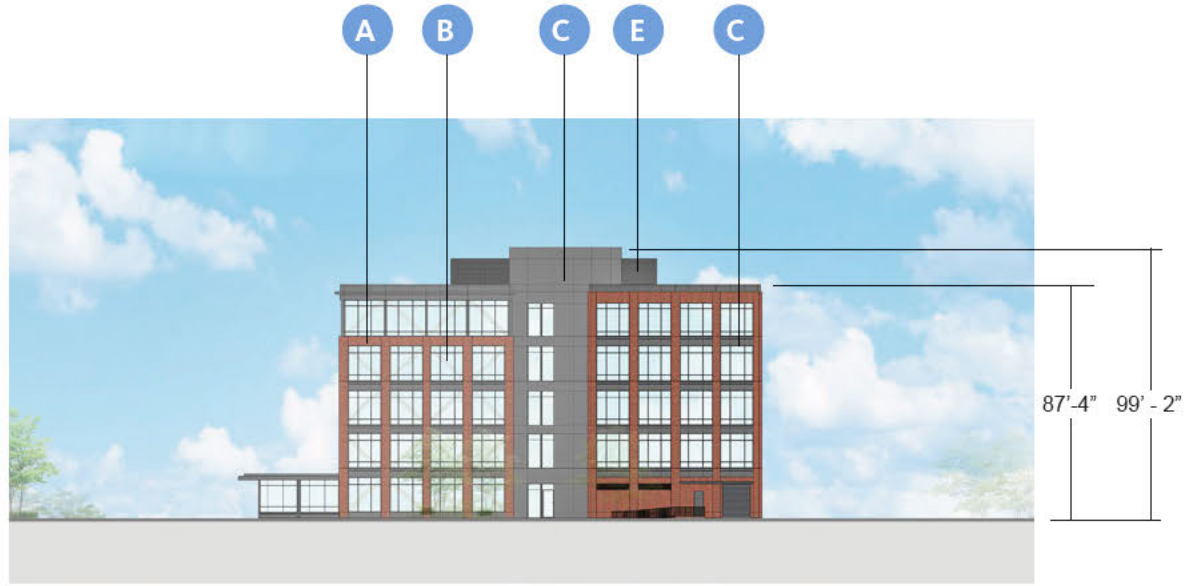
MP05- PERFORATED METAL MINIMUM 24 GAUGE



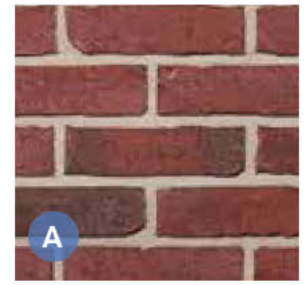
WD01- WOOD FINISH (CANOPY AND TERRACE SOFFITS)



NORTH ELEVATION



SOUTH ELEVATION



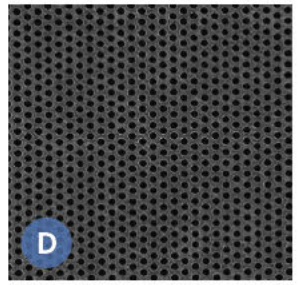
BR01- RED THIN BRICK



GL01- VISION GLASS



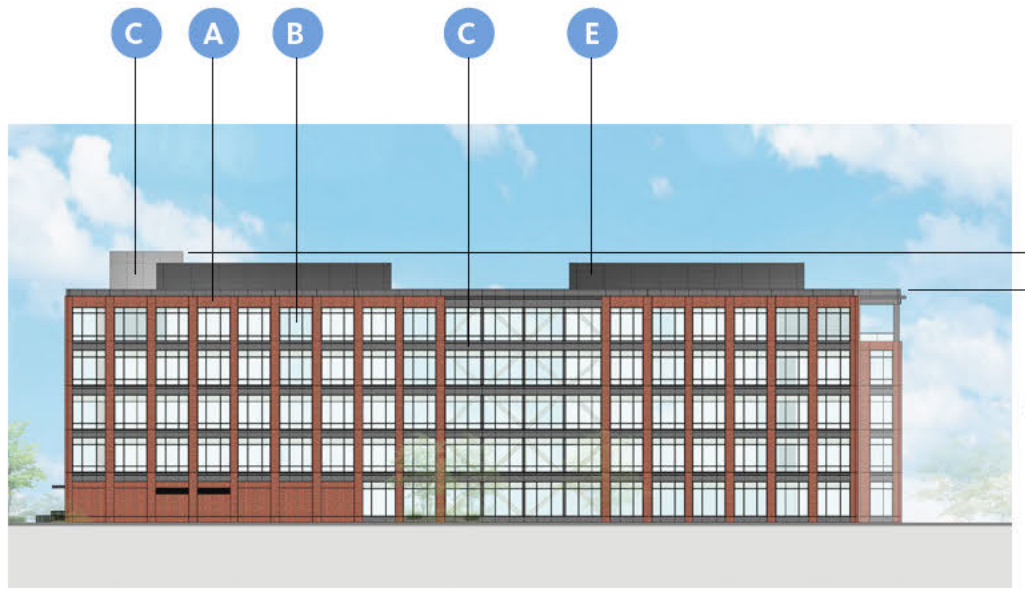
MP01- GRAY METAL MINIMUM 24 GAUGE



MP05- PERFORATED METAL MINIMUM 24 GAUGE



WD01- WOOD FINISH (CANOPY AND TERRACE SOFFITS)



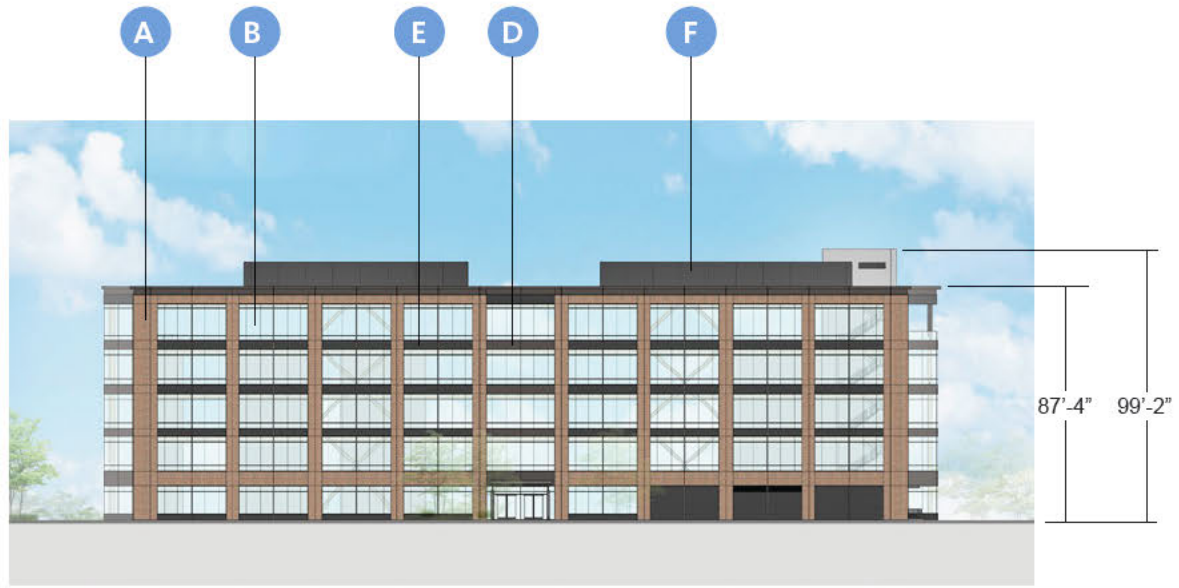
EAST ELEVATION



WEST ELEVATION



NORTH ELEVATION



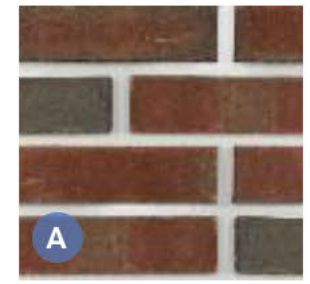
SOUTH ELEVATION



EAST ELEVATION



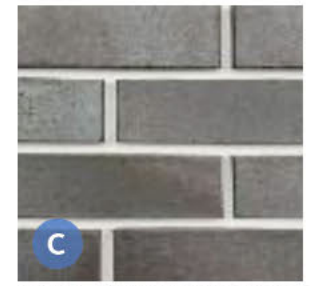
WEST ELEVATION



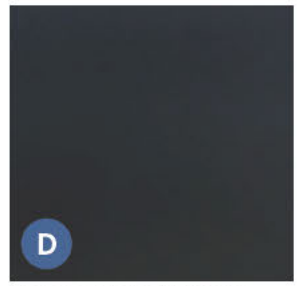
BR02- RED THIN BRICK



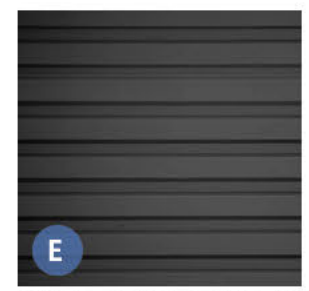
GL01- VISION GLASS



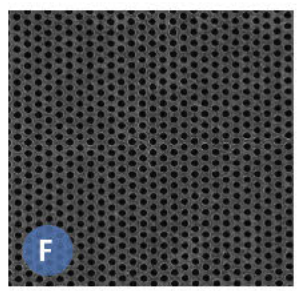
BR04- GRAY THIN BRICK



MP03- BLACK METAL MINIMUM 24 GAUGE



MP04- CORRUGATED METAL MINIMUM 24 GAUGE



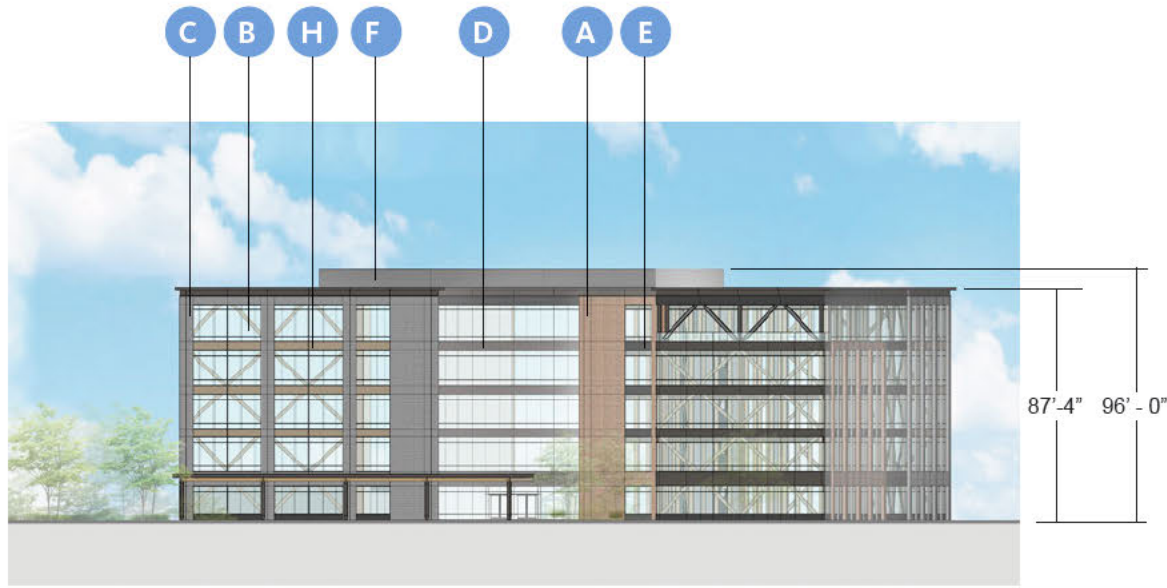
MP05- PERFORATED METAL MINIMUM 24 GAUGE



MP01- GRAY METAL MINIMUM 24 GAUGE



WD01- WOOD FINISH (CANOPY AND TERRACE SOFFITS)



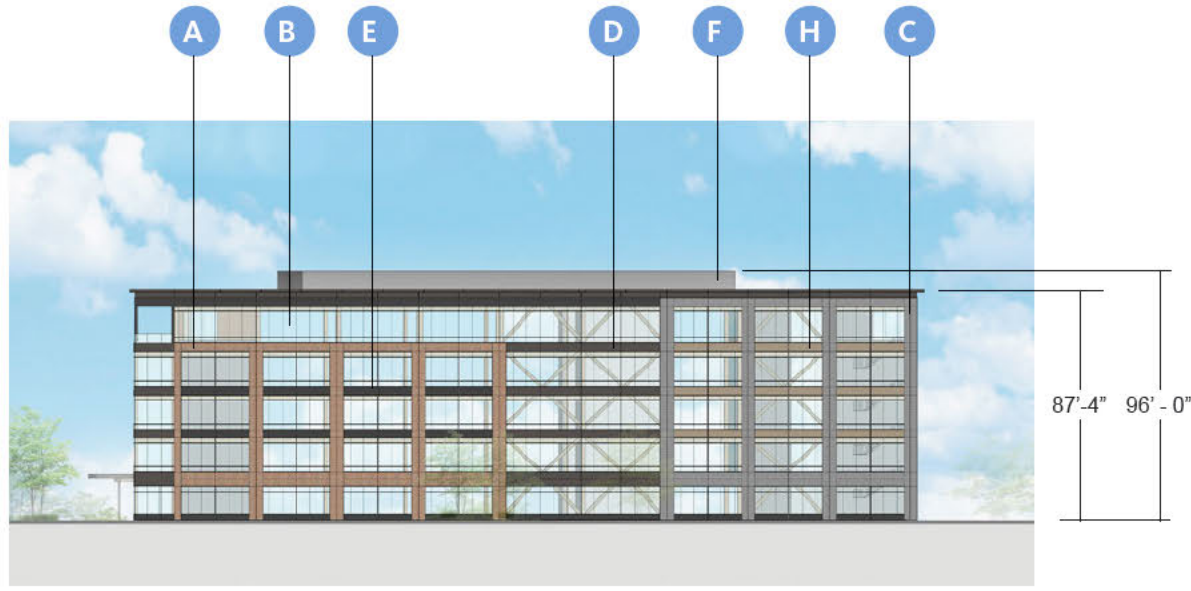
NORTH ELEVATION



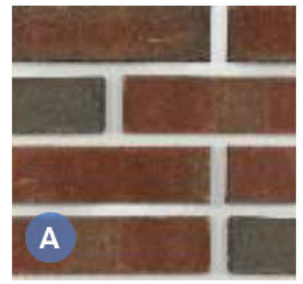
SOUTH ELEVATION



EAST ELEVATION



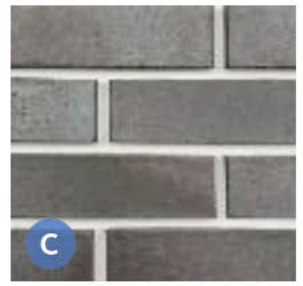
WEST ELEVATION



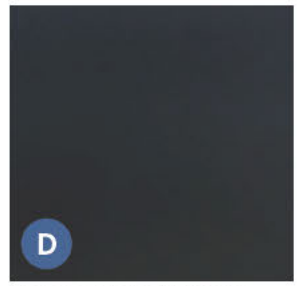
BR02- RED THIN BRICK



GL01- VISION GLASS



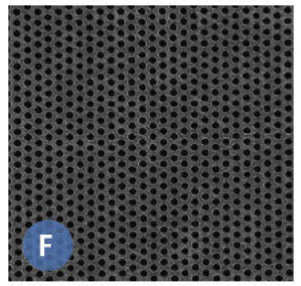
BR04- GRAY THIN BRICK



MP03- BLACK METAL
MINIMUM 24 GAUGE



MP04- CORRUGATED METAL
MINIMUM 24 GAUGE



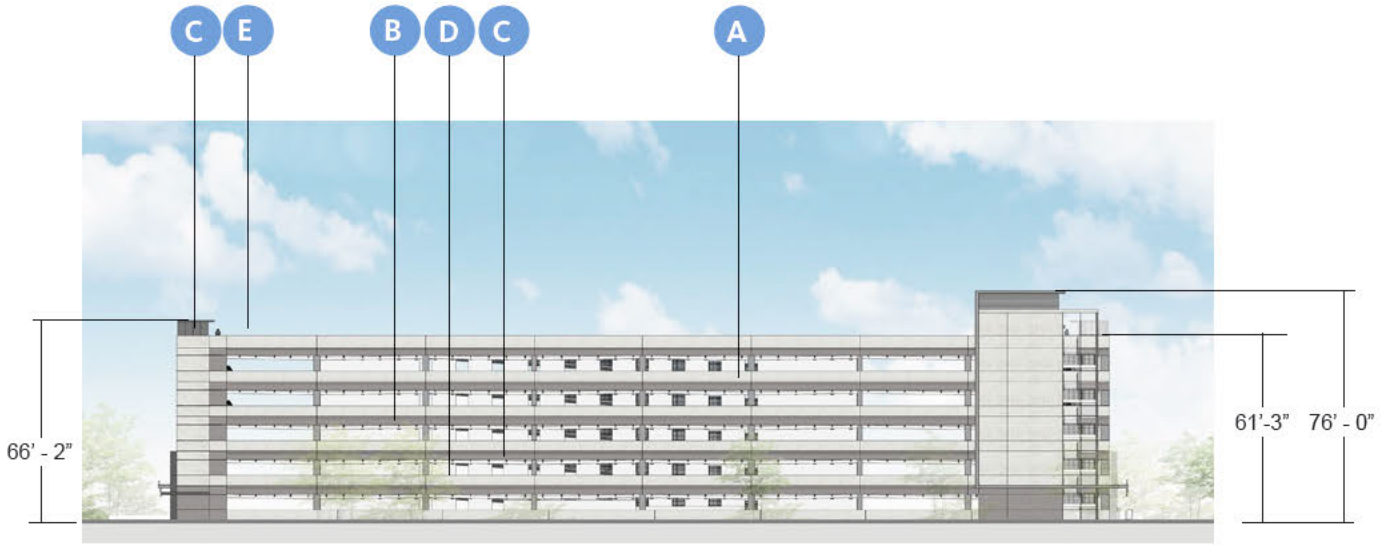
MP05- PERFORATED METAL
MINIMUM 24 GAUGE



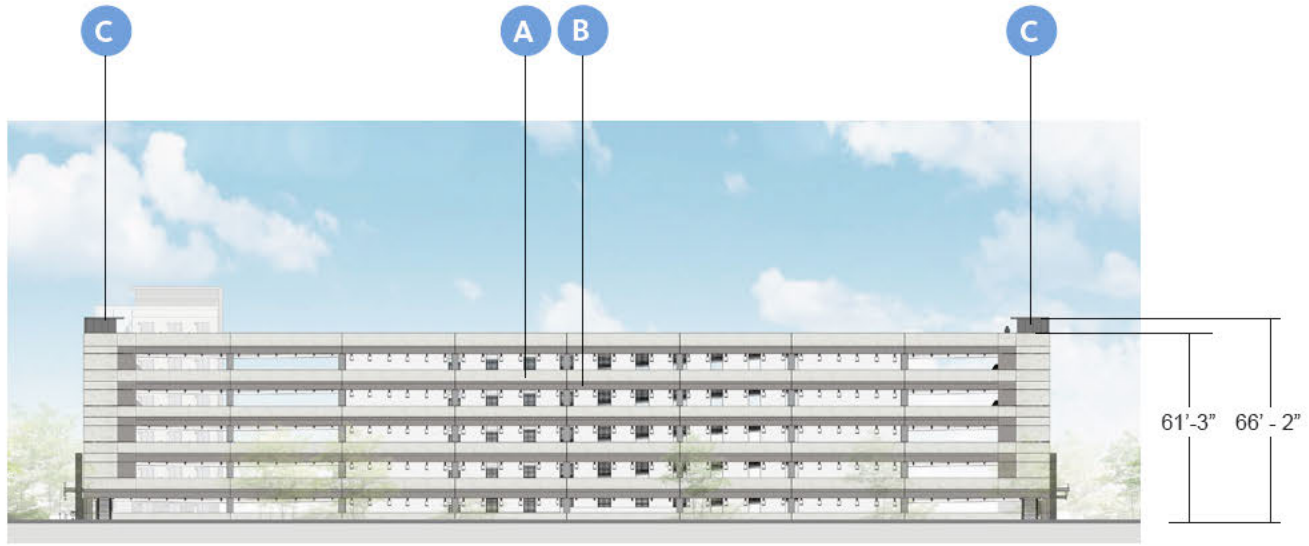
MP01- GRAY METAL
MINIMUM 24 GAUGE



WD01- WOOD FINISH
(CANOPY AND
TERRACE SOFFITS)



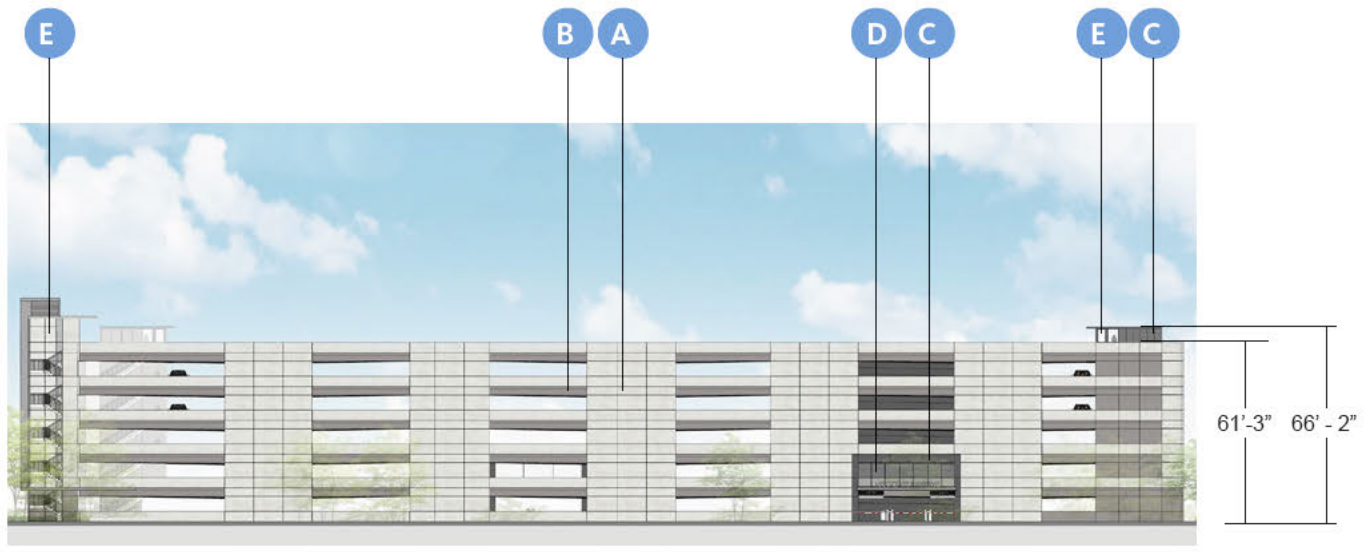
NORTH ELEVATION



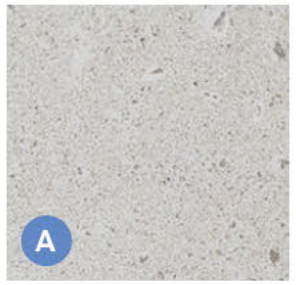
SOUTH ELEVATION



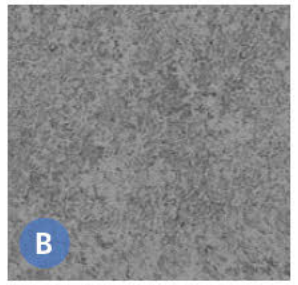
EAST ELEVATION



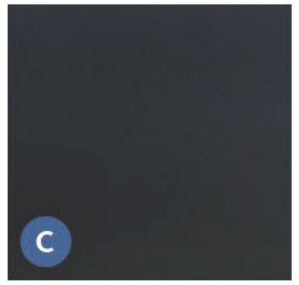
WEST ELEVATION



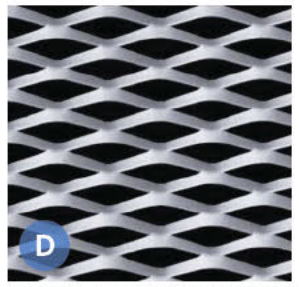
PC01- PRECAST LIGHT



PC02- PRECAST DARK



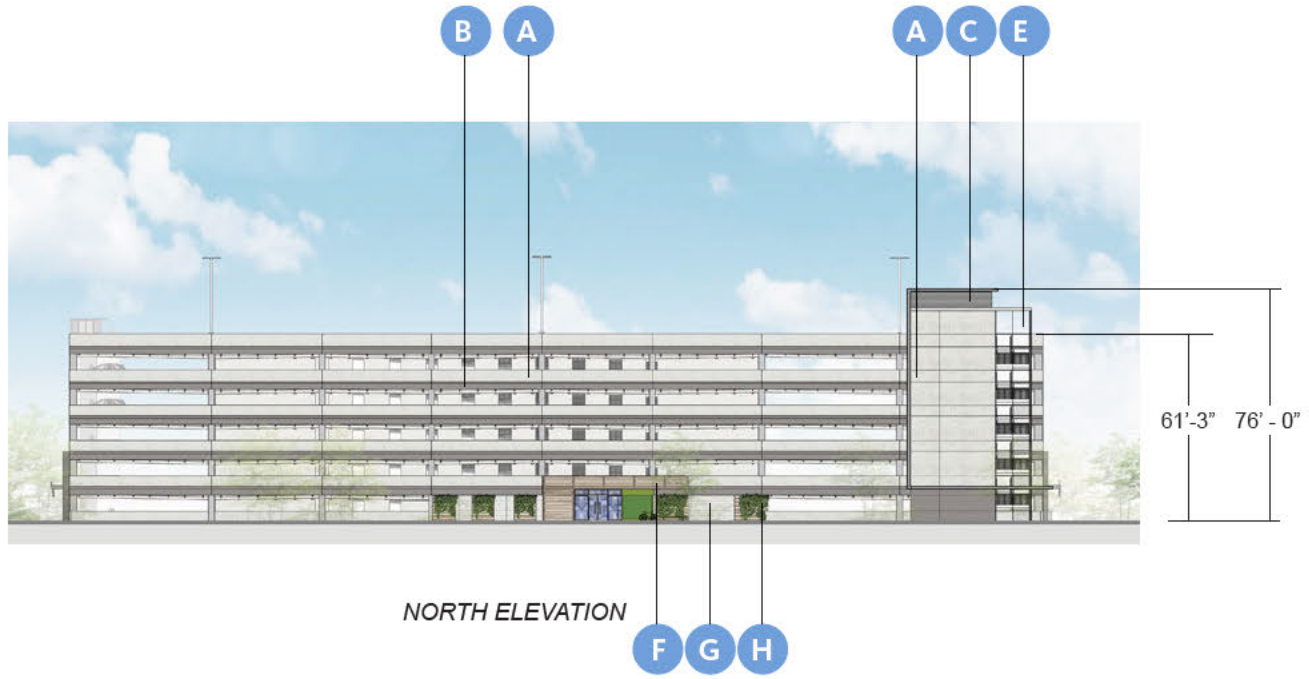
MP03- BLACK METAL
MINIMUM 24 GAUGE



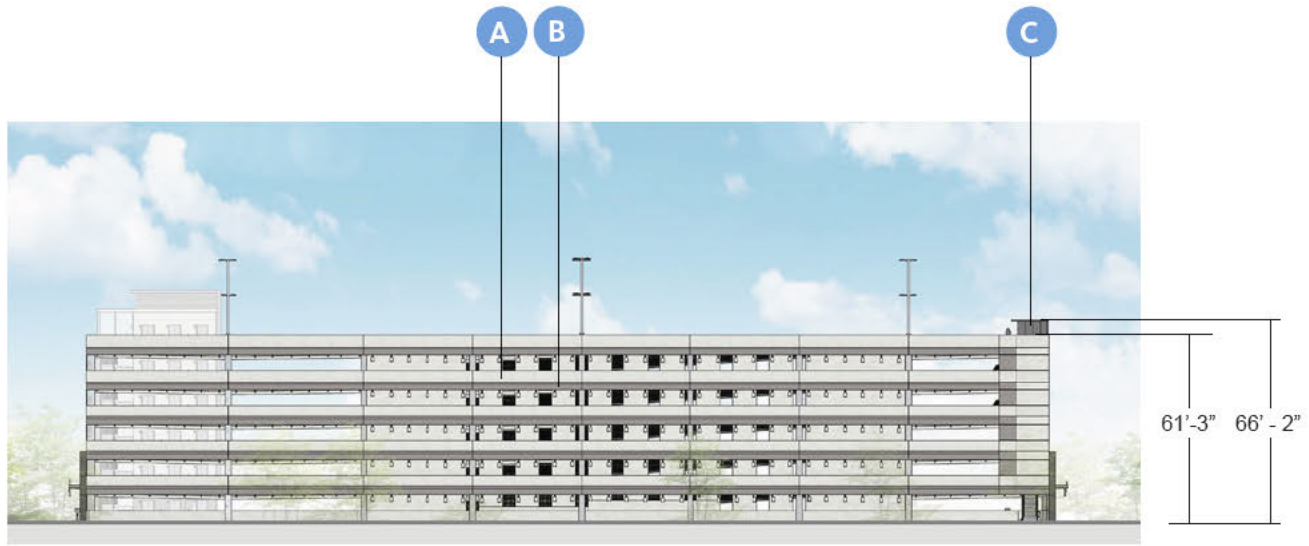
MP06 - EXPANDED METAL
MINIMUM 24 GAUGE



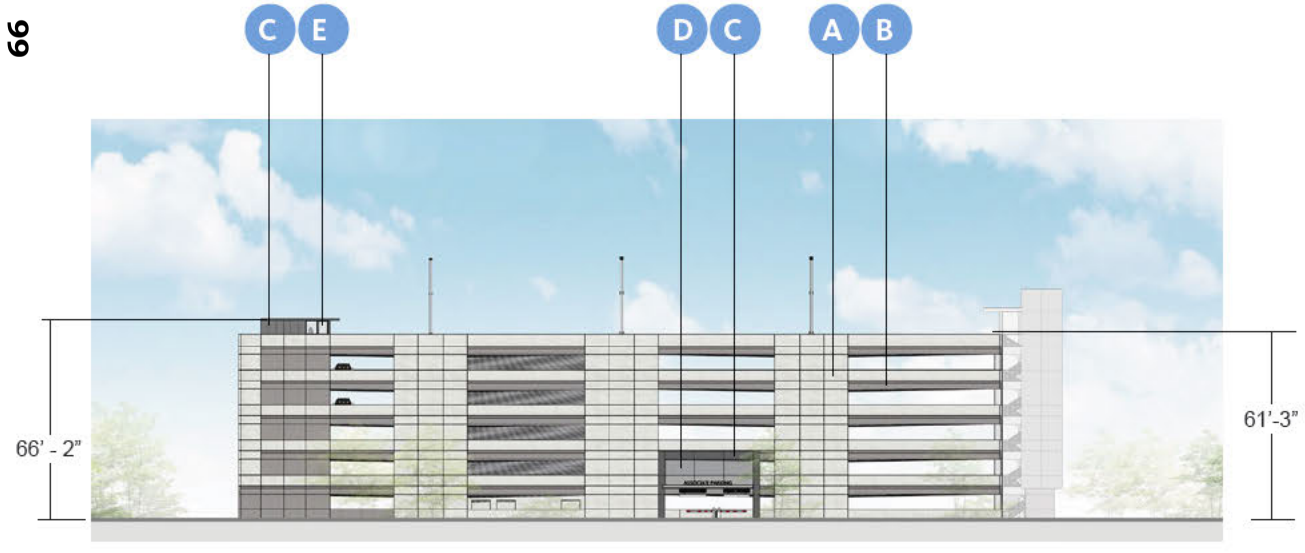
GL01- VISION GLASS



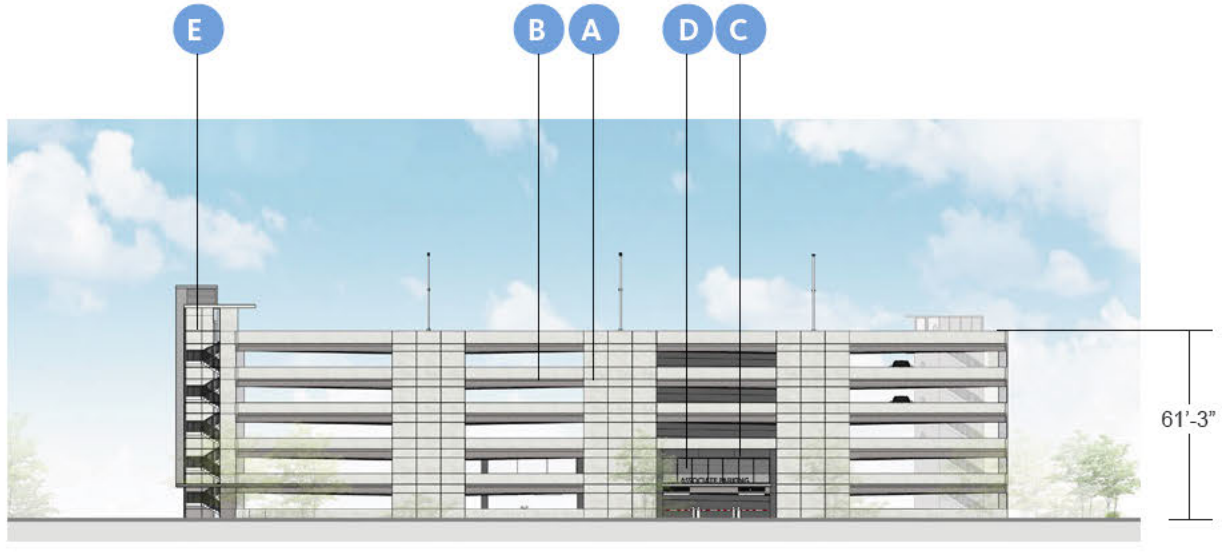
NORTH ELEVATION



SOUTH ELEVATION



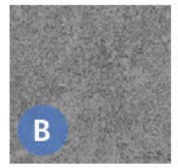
EAST ELEVATION



WEST ELEVATION



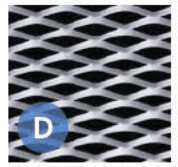
PC01- PRECAST LIGHT



PC02- PRECAST DARK



MP03- BLACK METAL
MINIMUM 24 GAUGE



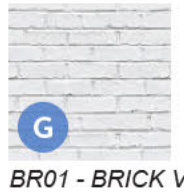
MP06 - EXPANDED METAL
MINIMUM 24 GAUGE



GL01- VISION GLASS



WD01 - WOOD VENEER

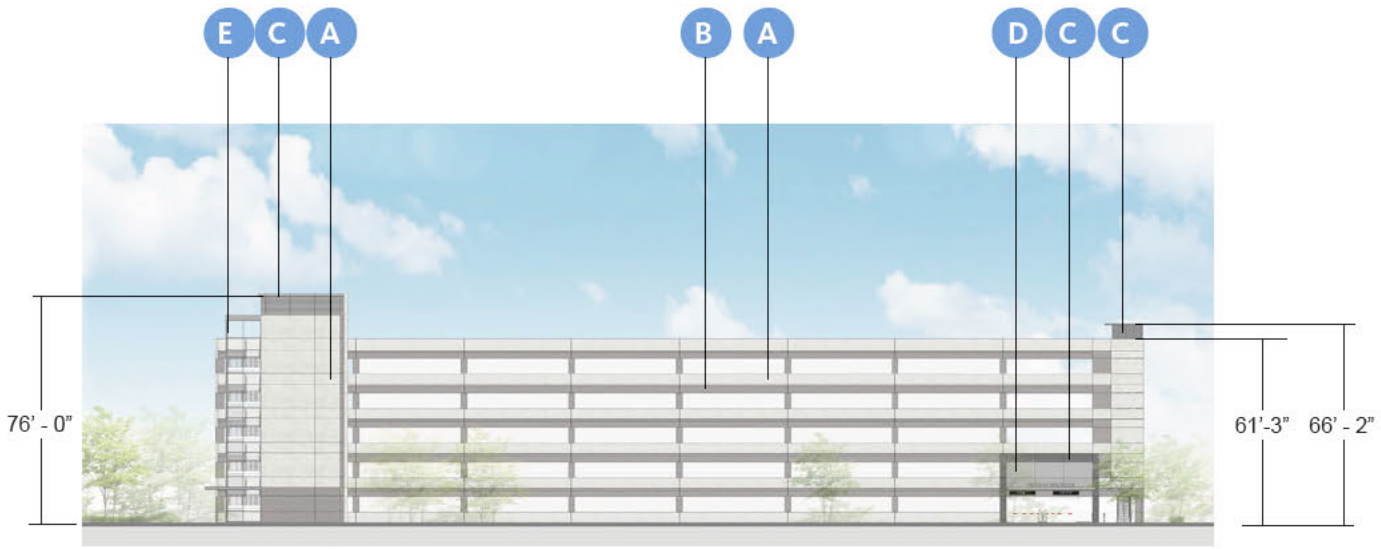


BR01 - BRICK VENEER



WC01 - GREEN WALL

WC01 - GREEN WALL



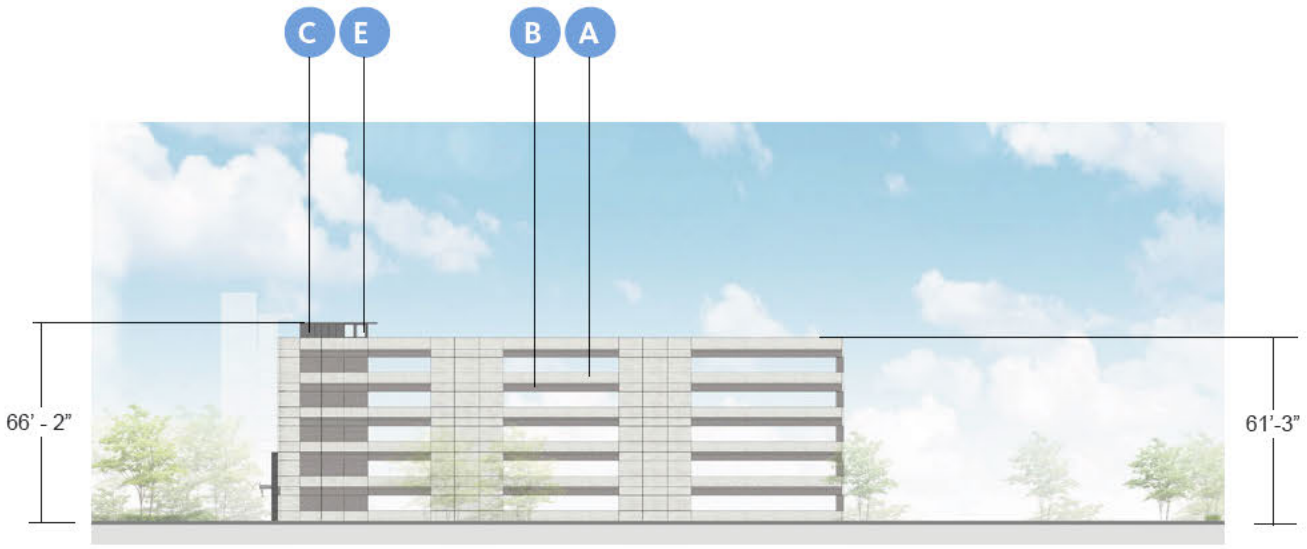
NORTH ELEVATION



SOUTH ELEVATION



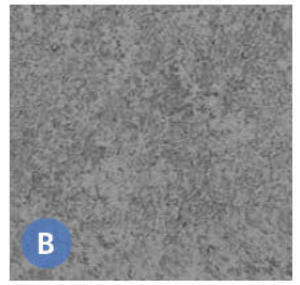
EAST ELEVATION



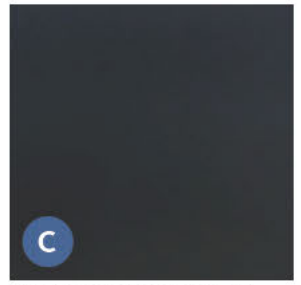
WEST ELEVATION



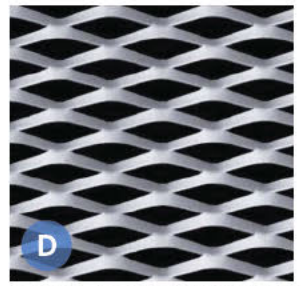
PC01- PRECAST LIGHT



PC02- PRECAST DARK



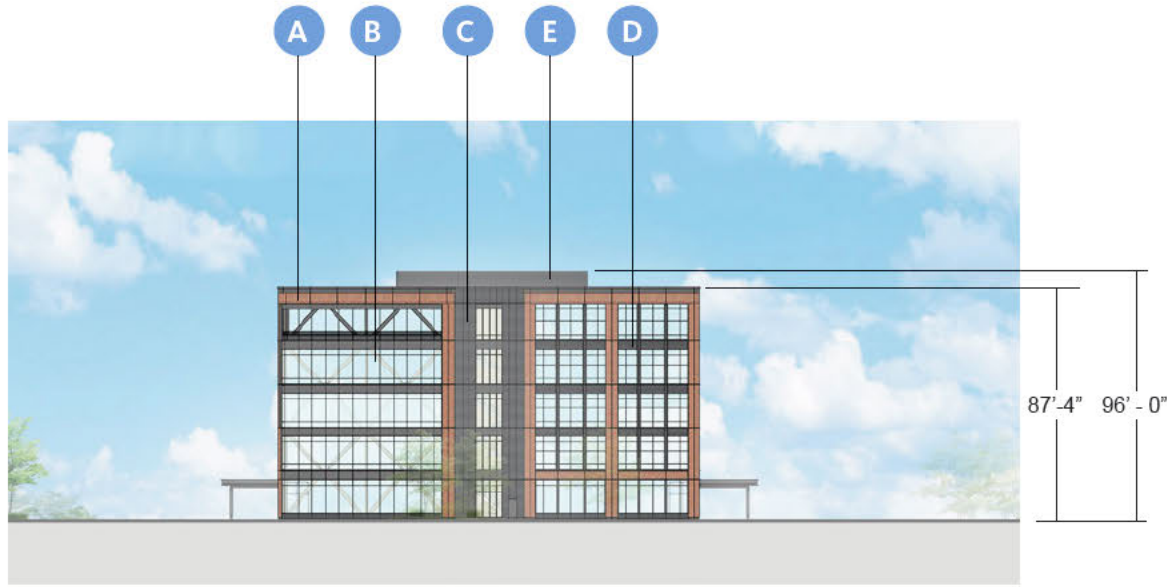
MP03- BLACK METAL
MINIMUM 24 GAUGE



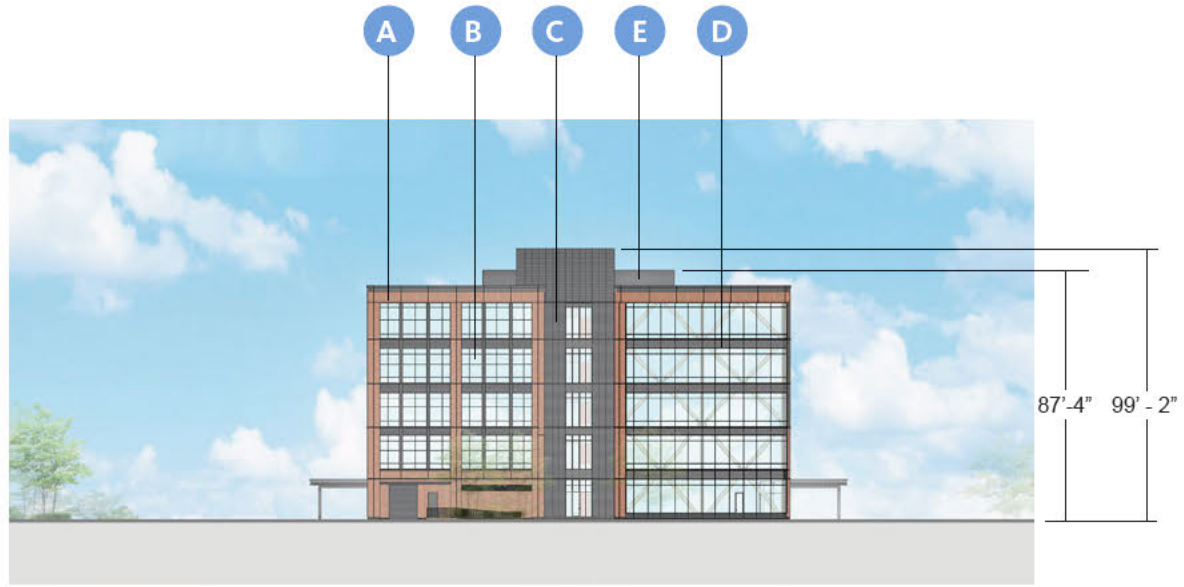
MP06 - EXPANDED METAL
MINIMUM 24 GAUGE



GL01- VISION GLASS



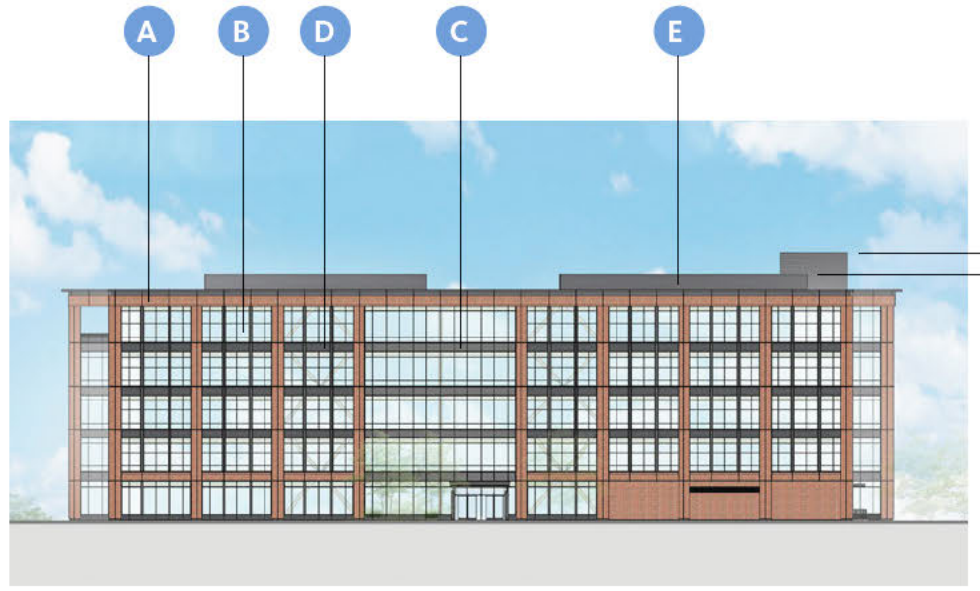
NORTH ELEVATION



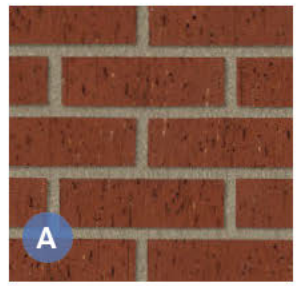
SOUTH ELEVATION



EAST ELEVATION



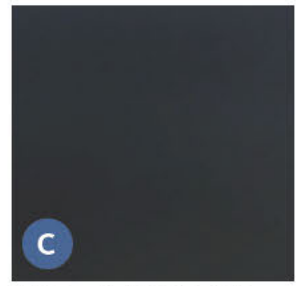
WEST ELEVATION



BR01- RED THIN BRICK



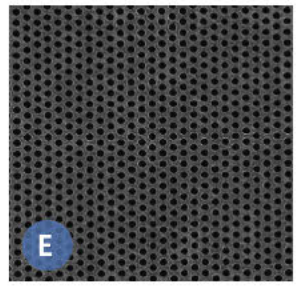
GL01- VISION GLASS



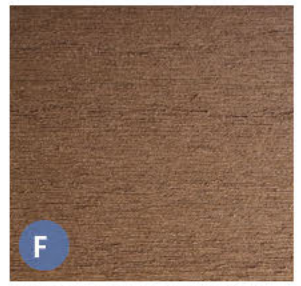
MP03- BLACK METAL
MINIMUM 24 GAUGE



MP04- CORRUGATED METAL
MINIMUM 24 GAUGE



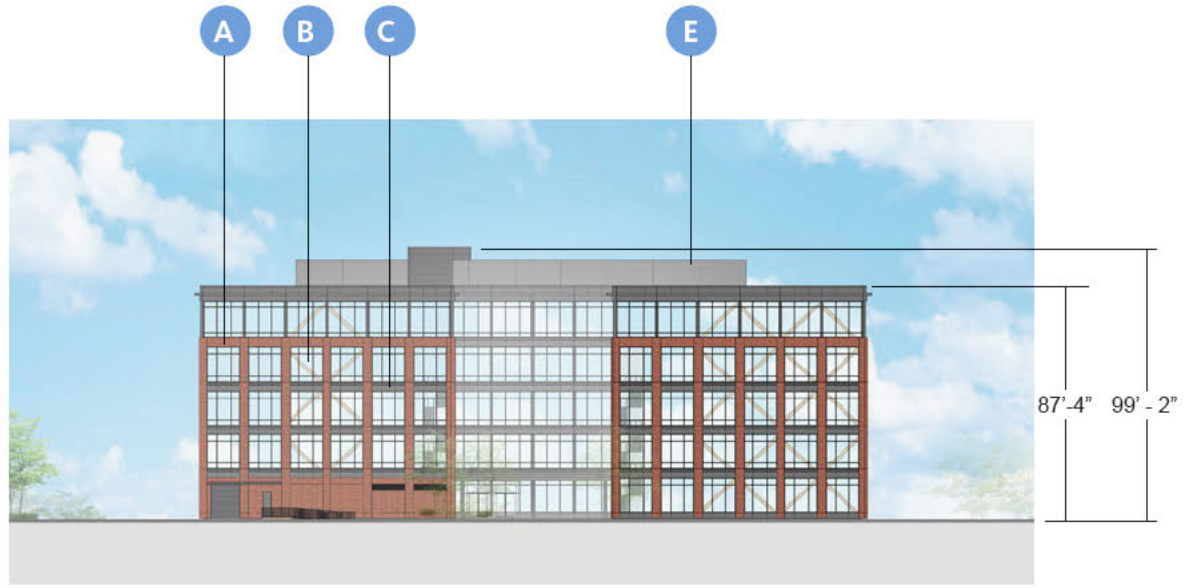
MP05- PERFORATED METAL
MINIMUM 24 GAUGE



WD01- WOOD FINISH
(CANOPY AND
TERRACE SOFFITS)



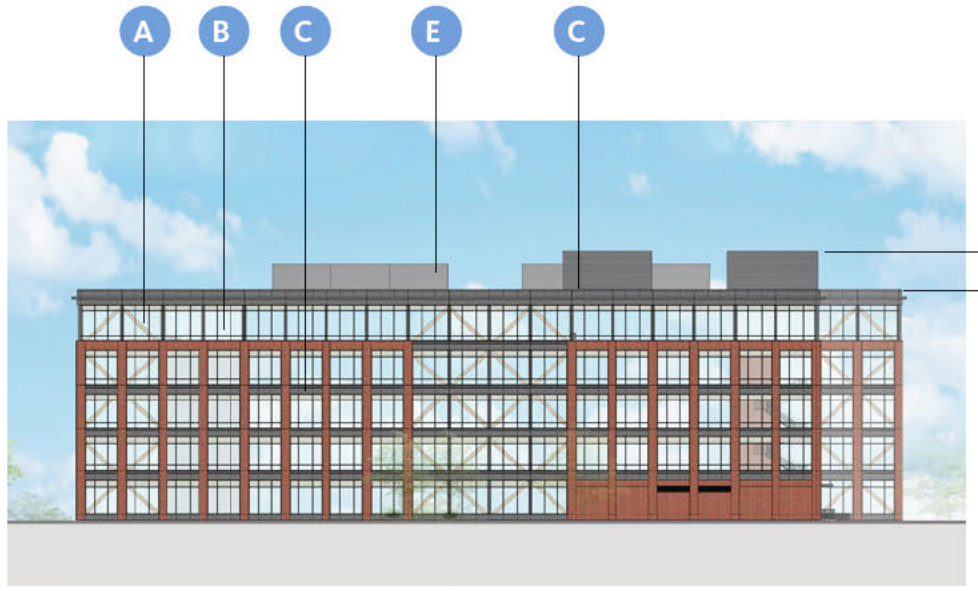
NORTH ELEVATION



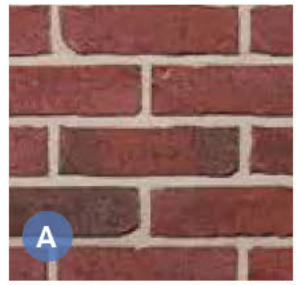
SOUTH ELEVATION



EAST ELEVATION



WEST ELEVATION



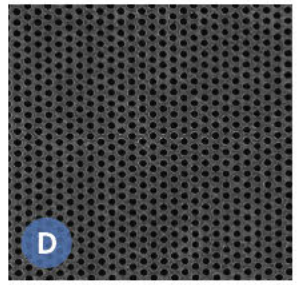
BR01- RED THIN BRICK



GL01- VISION GLASS



MP01- GRAY METAL MINIMUM 24 GAUGE



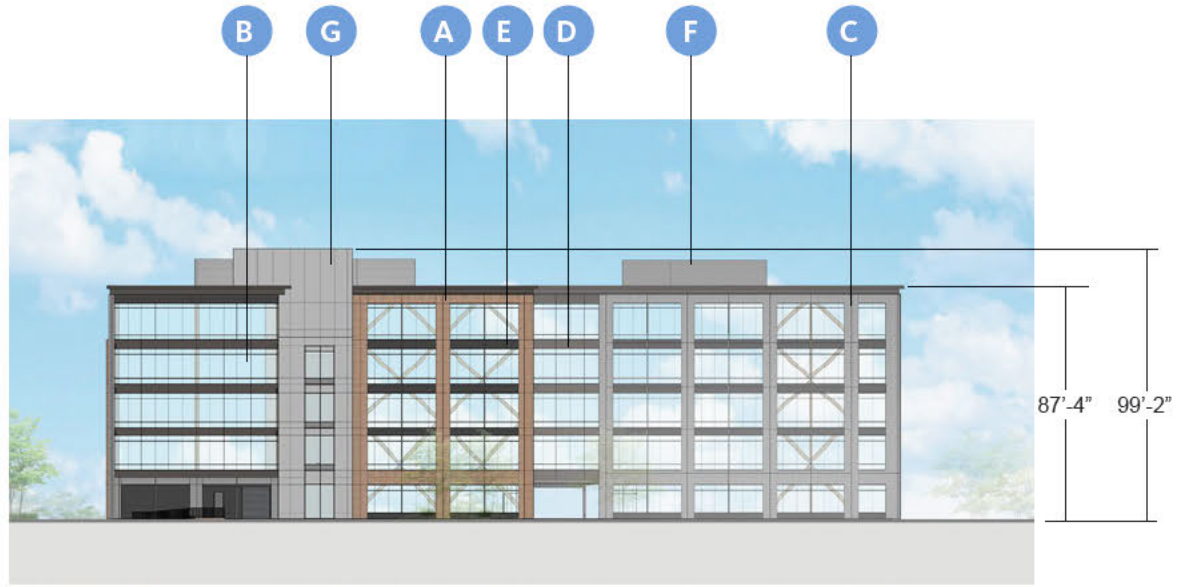
MP05- PERFORATED METAL MINIMUM 24 GAUGE



WD01- WOOD FINISH (CANOPY AND TERRACE SOFFITS)



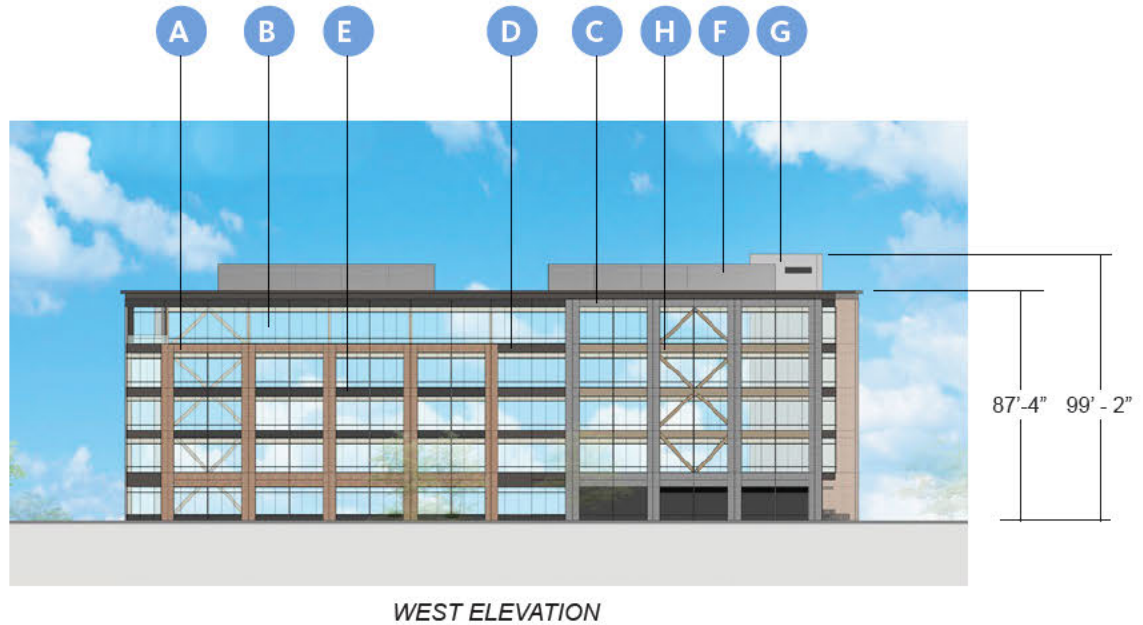
NORTH ELEVATION



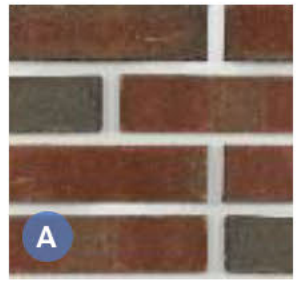
SOUTH ELEVATION



EAST ELEVATION



WEST ELEVATION



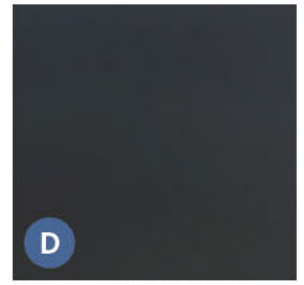
BR02- RED THIN BRICK



GL01- VISION GLASS



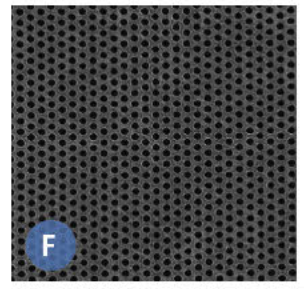
BR04- GRAY THIN BRICK



MP03- BLACK METAL MINIMUM 24 GAUGE



MP04- CORRUGATED METAL MINIMUM 24 GAUGE



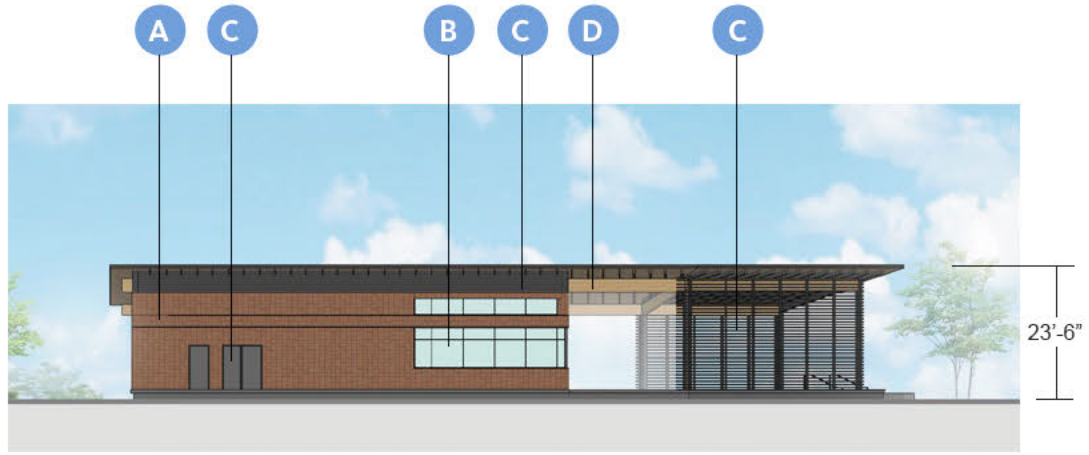
MP05- PERFORATED METAL MINIMUM 24 GAUGE



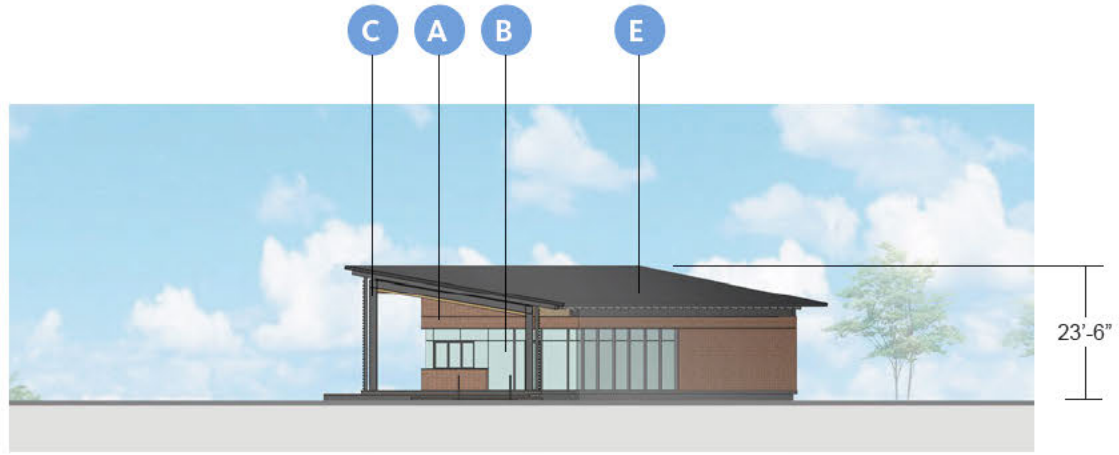
MP01- GRAY METAL MINIMUM 24 GAUGE



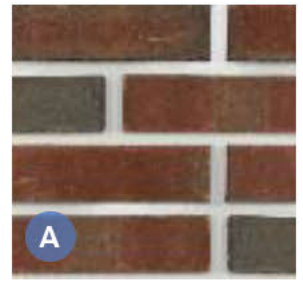
WD01- WOOD FINISH (CANOPY AND TERRACE SOFFITS)



NORTHEAST ELEVATION



NORTHWEST ELEVATION



BR02- RED THIN BRICK



GL01- VISION GLASS



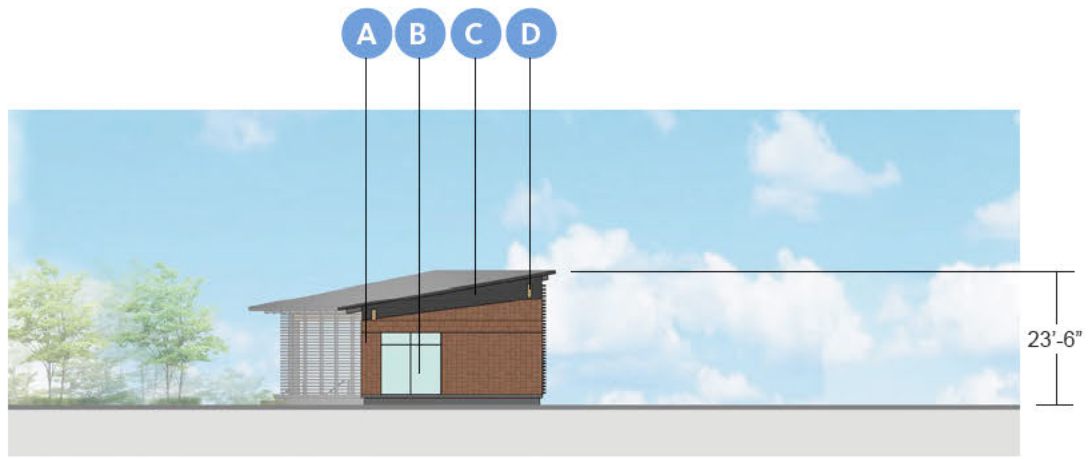
MP01- GRAY METAL
MINIMUM 24 GAUGE



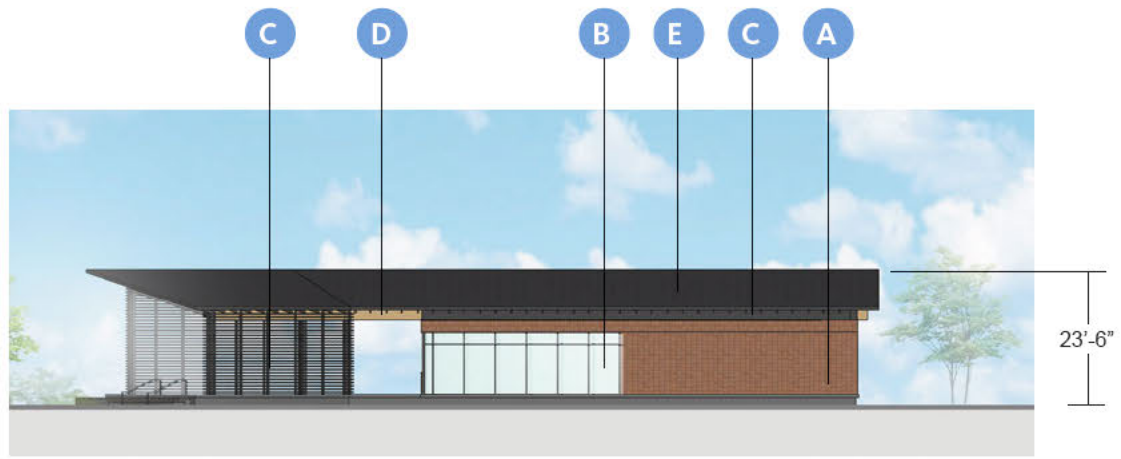
WD01- WOOD FINISH
(CANOPY SOFFITS)



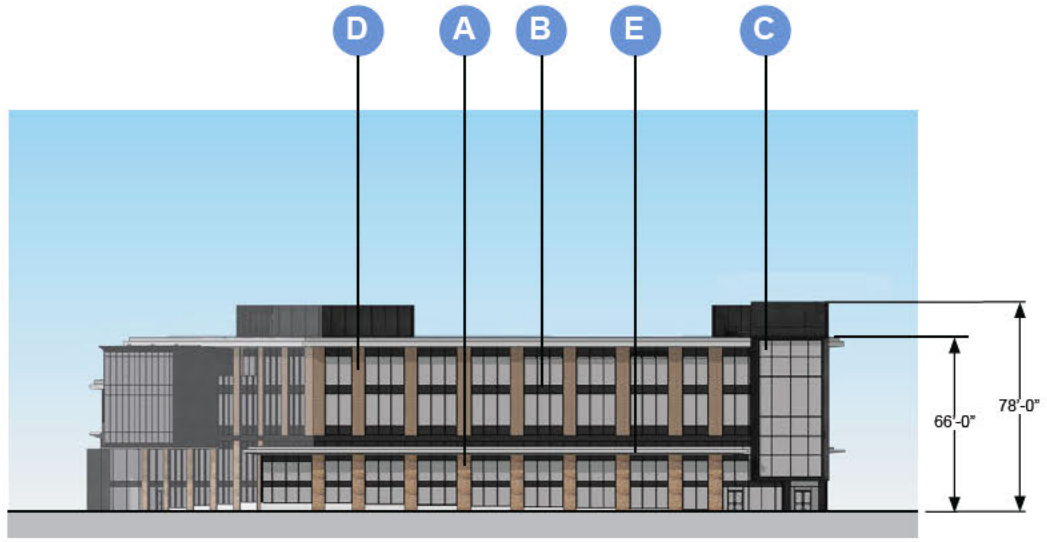
RF01- STANDING SEAM
METAL ROOF
MINIMUM 24 GAUGE



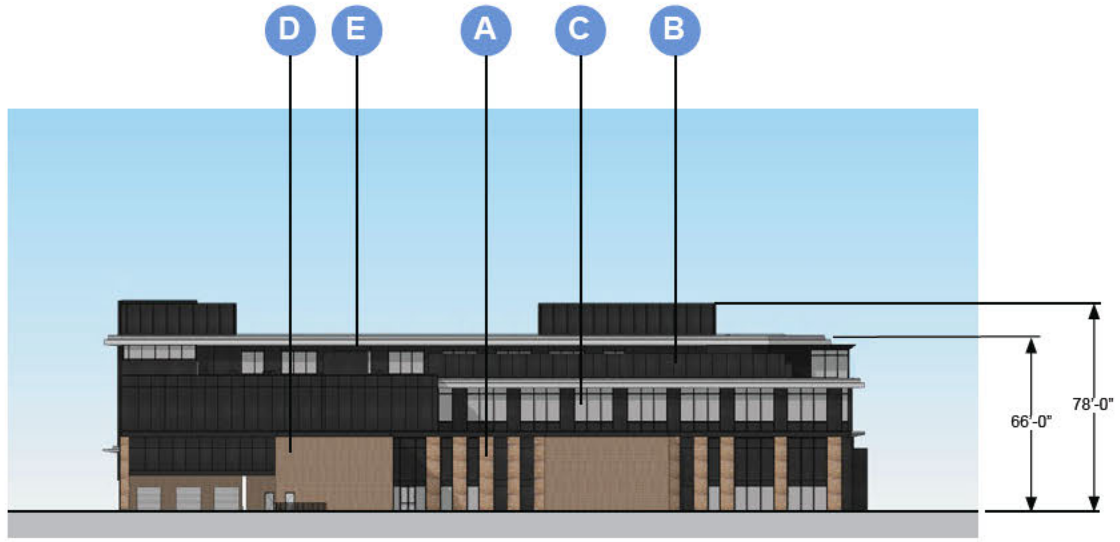
SOUTH ELEVATION



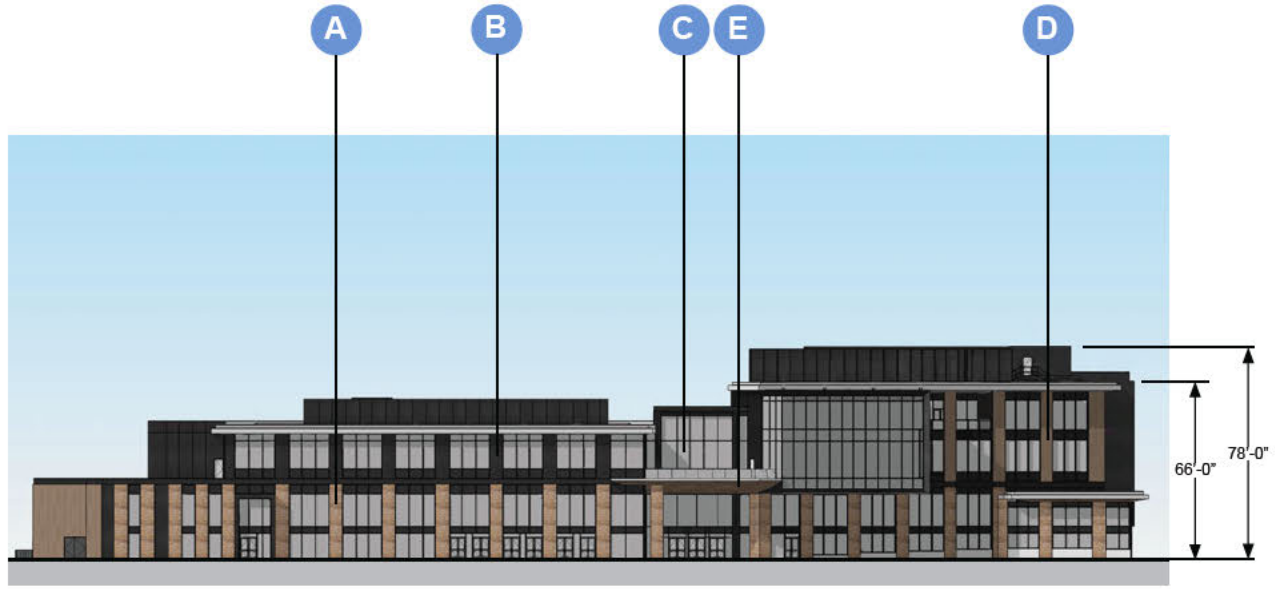
SOUTHWEST ELEVATION



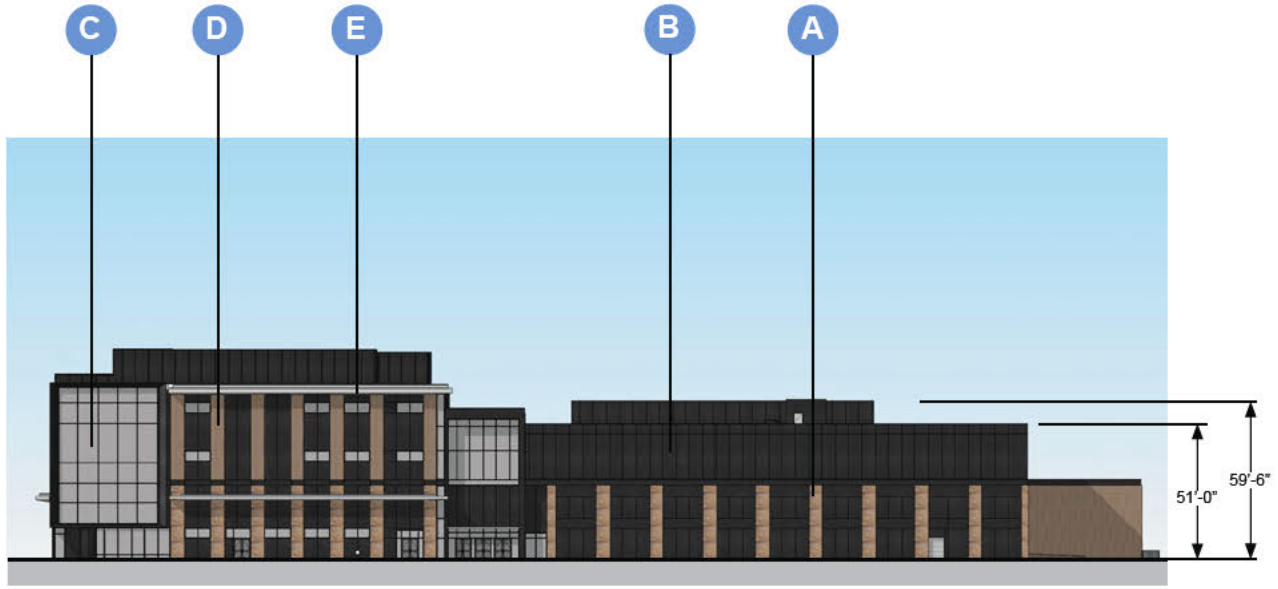
NORTH ELEVATION



SOUTH ELEVATION



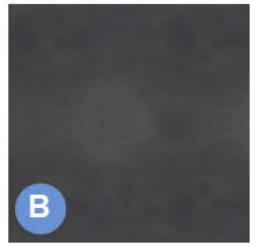
EAST ELEVATION



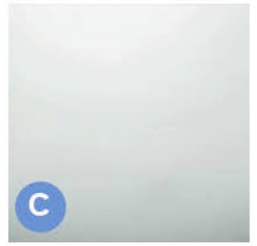
WEST ELEVATION



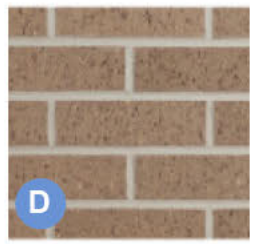
ST9 STONE VENEER



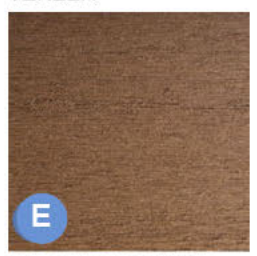
MP9 ANODIZED ALUMINUM PANEL, MIN. 24 GAUGE



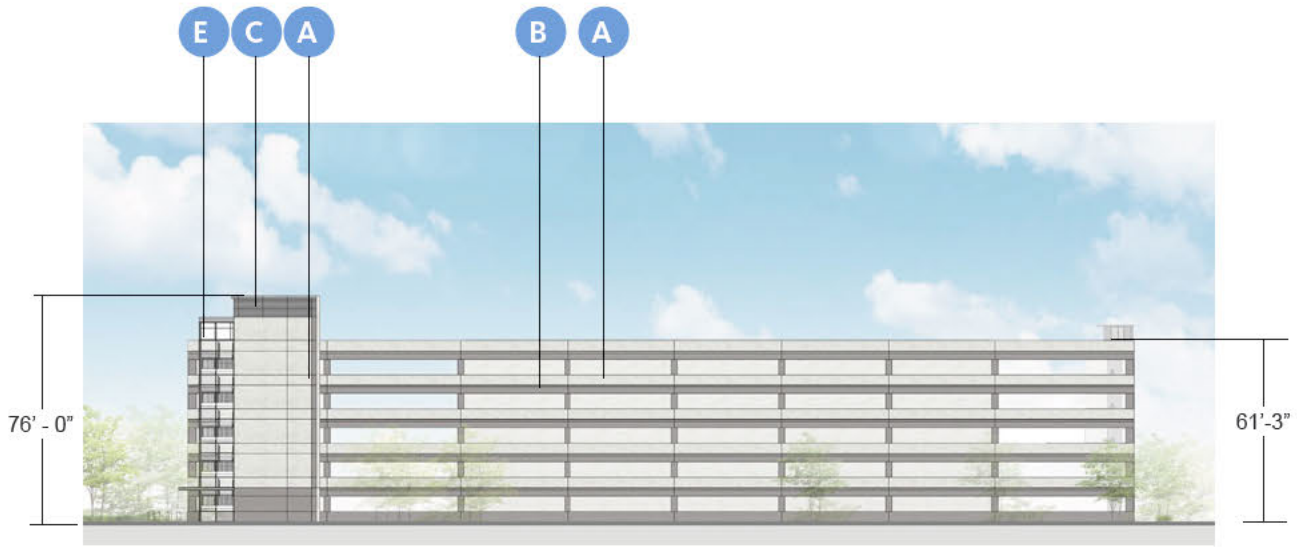
GL9 VISION GLASS



BR9 MODULAR BRICK VENEER



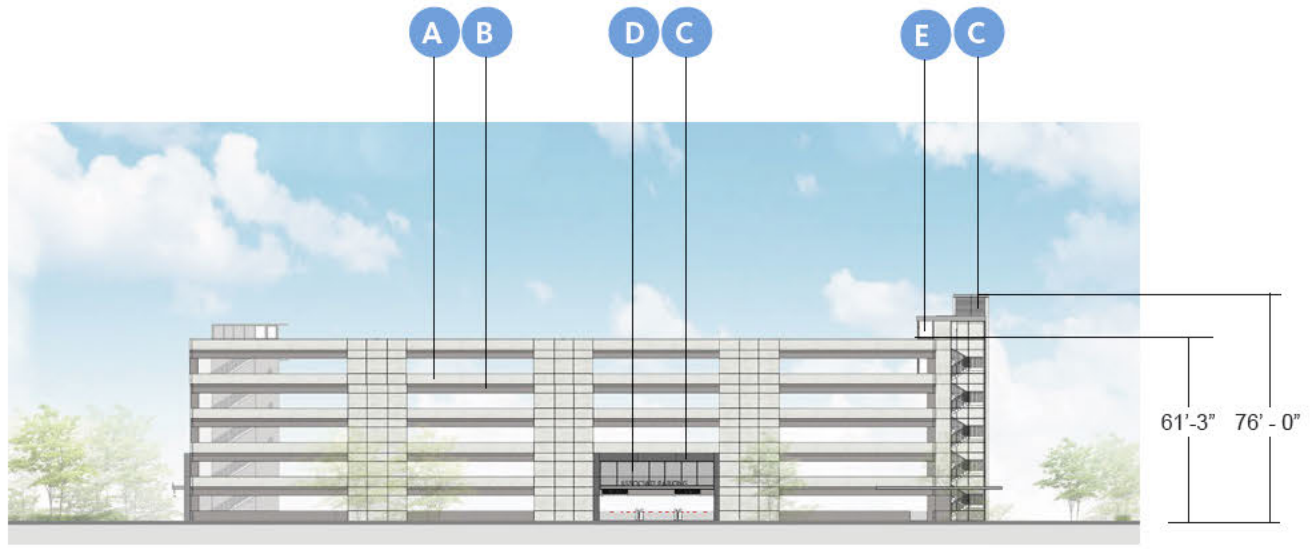
WD9 WOOD FINISH ALUMINUM SOFFIT



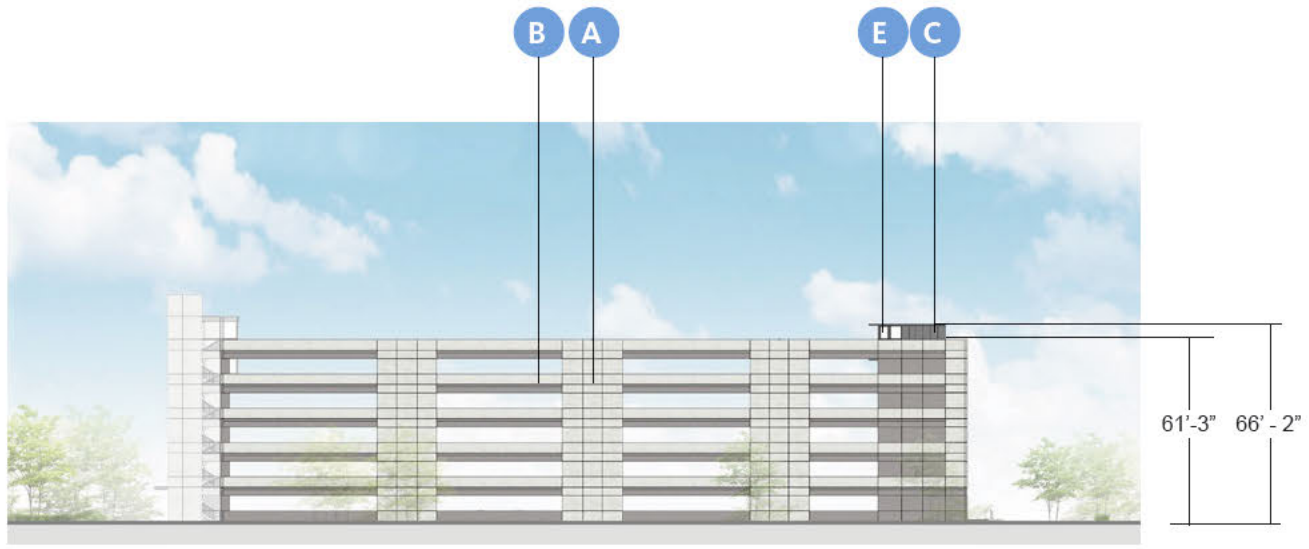
NORTH ELEVATION



SOUTH ELEVATION



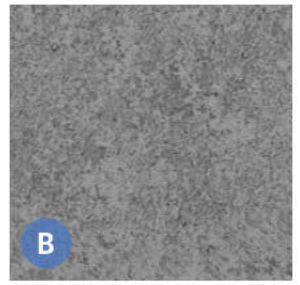
EAST ELEVATION



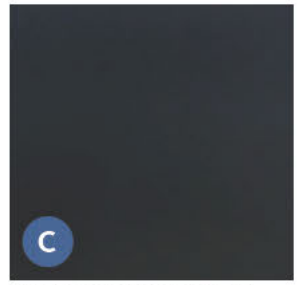
WEST ELEVATION



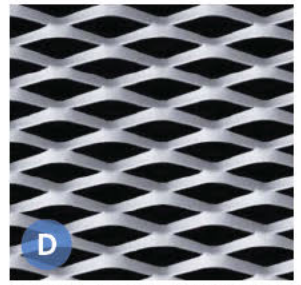
PC01- PRECAST LIGHT



PC02- PRECAST DARK



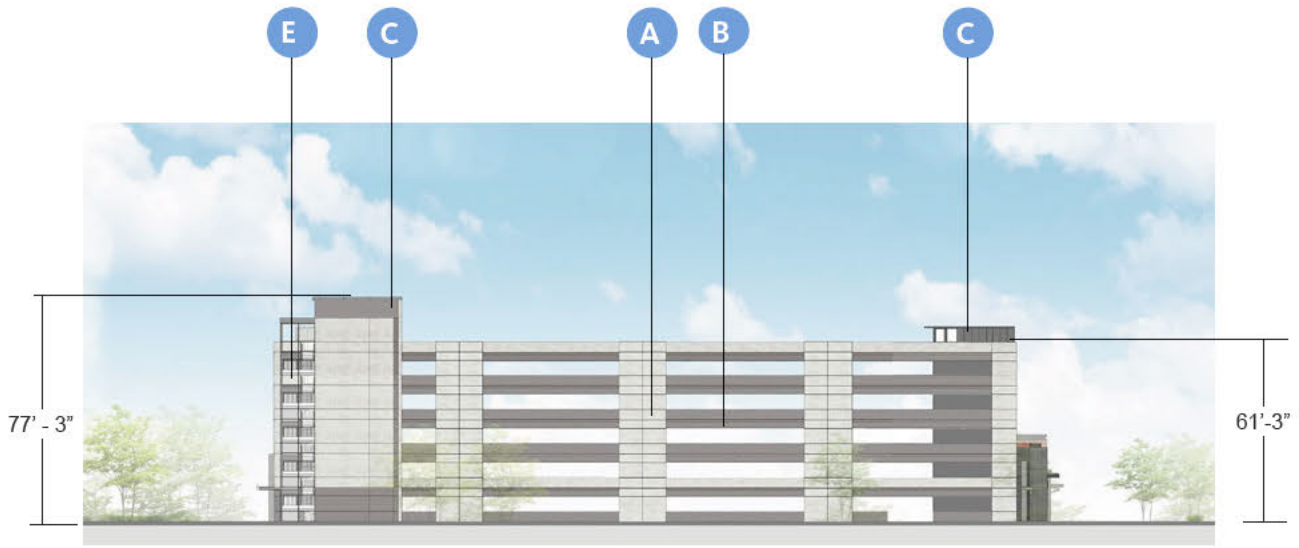
MP03- BLACK METAL MINIMUM 24 GAUGE



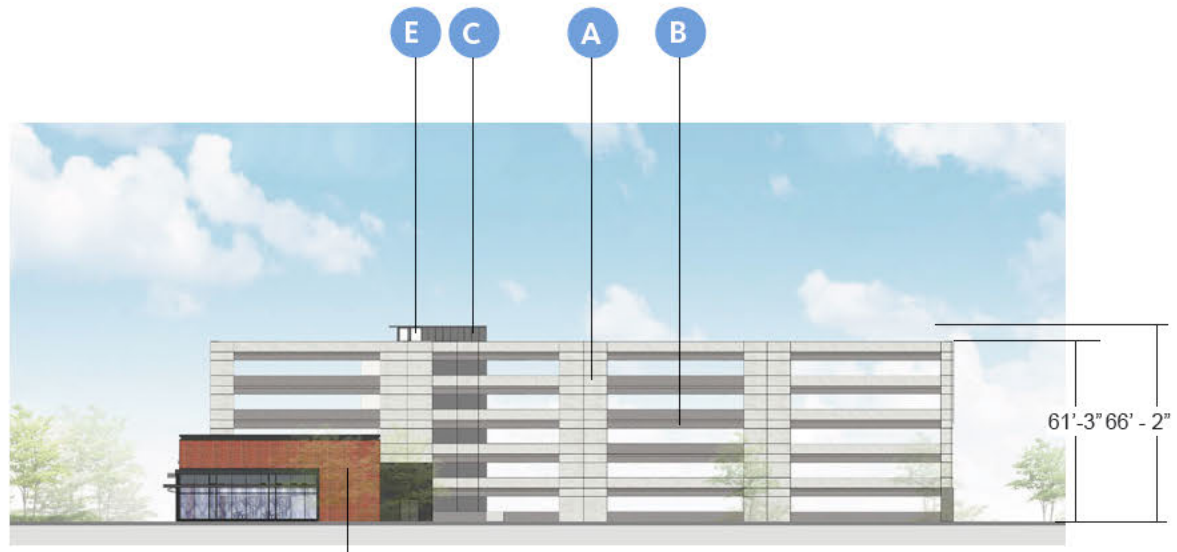
MP06 - EXPANDED METAL MINIMUM 24 GAUGE



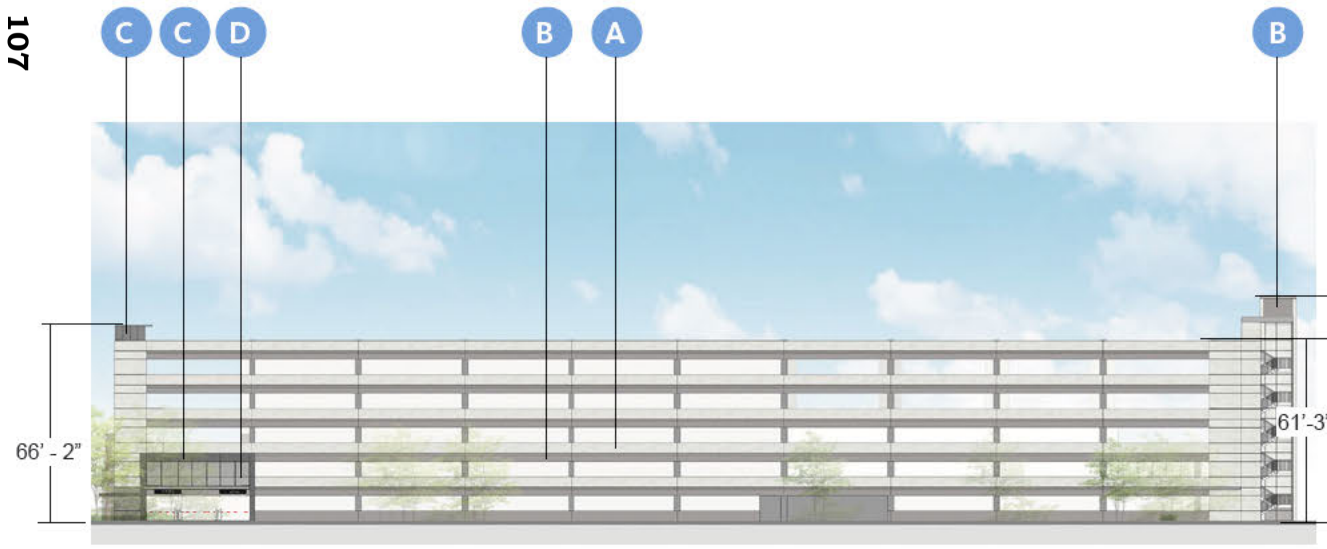
GL01- VISION GLASS



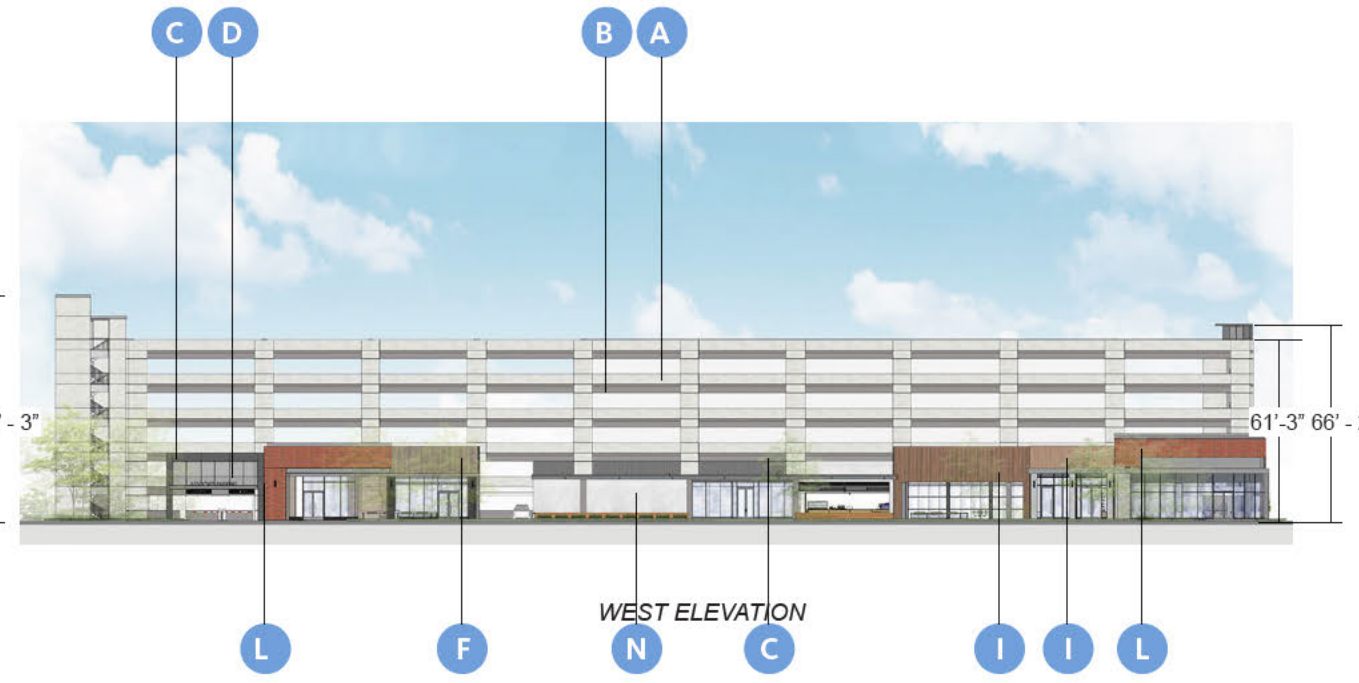
NORTH ELEVATION



SOUTH ELEVATION



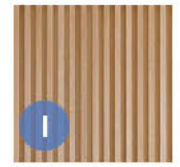
EAST ELEVATION



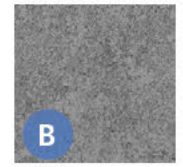
WEST ELEVATION



PC01- PRECAST LIGHT



WD02 - WOOD SLAT



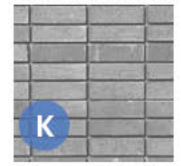
PC02- PRECAST DARK



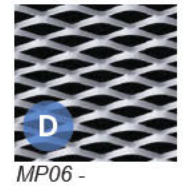
BR02 - BRICK VENEER



MP03- BLACK METAL MINIMUM 24 GAUGE



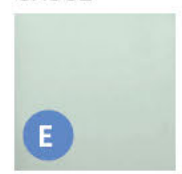
BR03 - BRICK VENEER



MP06 - EXPANDED METAL MINIMUM 24 GAUGE



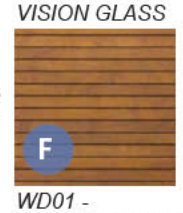
BR04 - BRICK VENEER



GL01- VISION GLASS



BR05 - BRICK VENEER



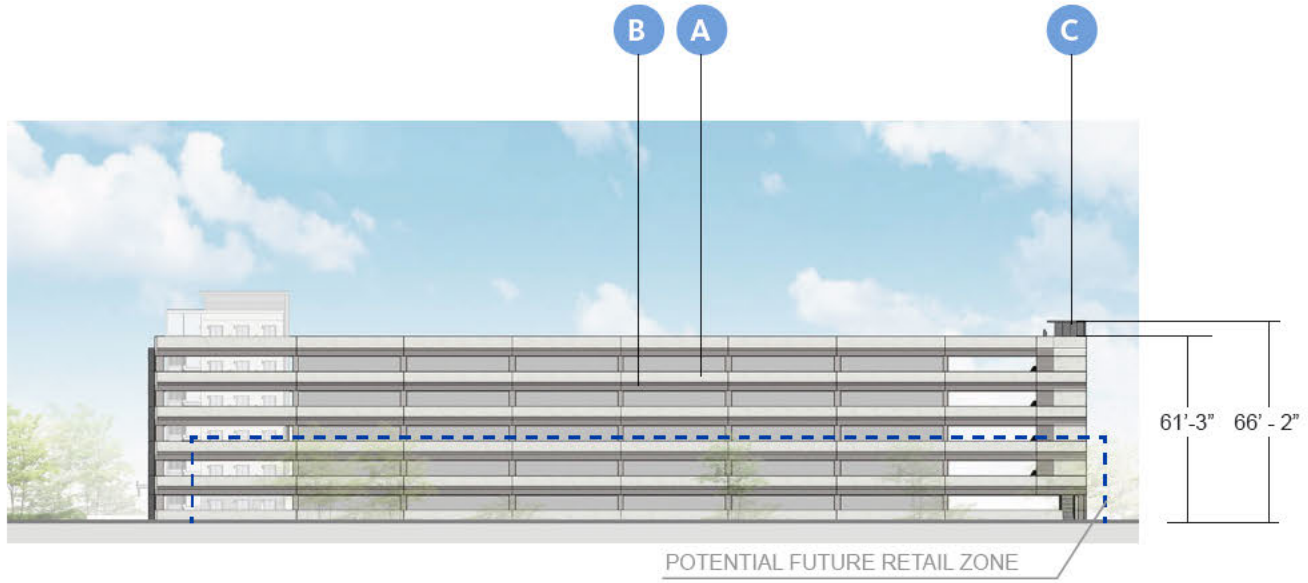
WD01 - WOOD VENEER



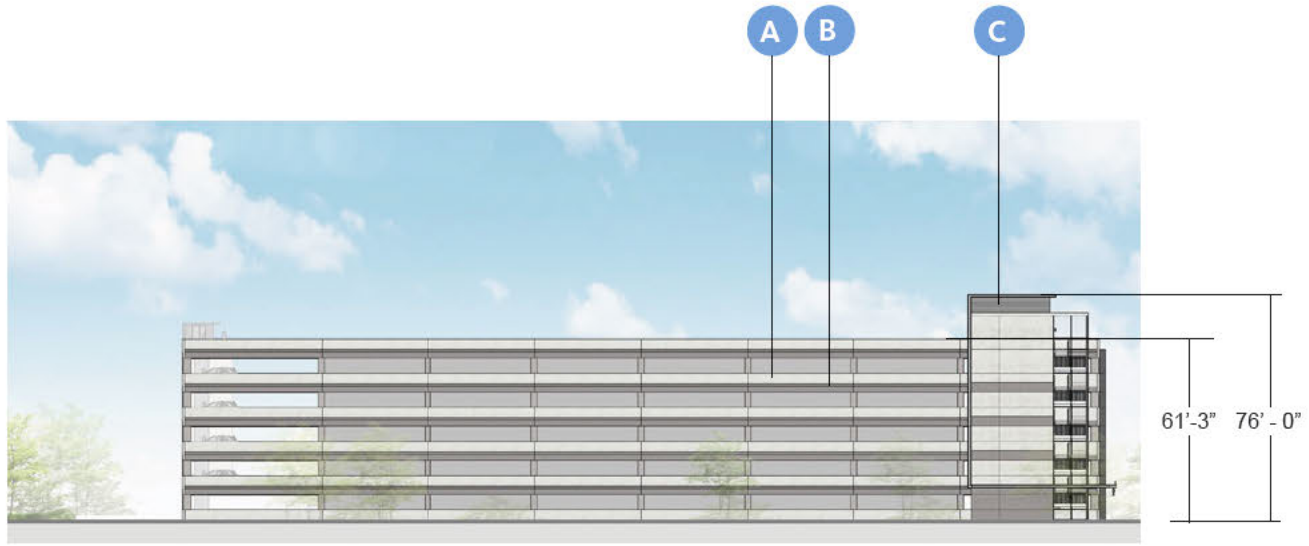
GR01 - GRAPHIC WALL



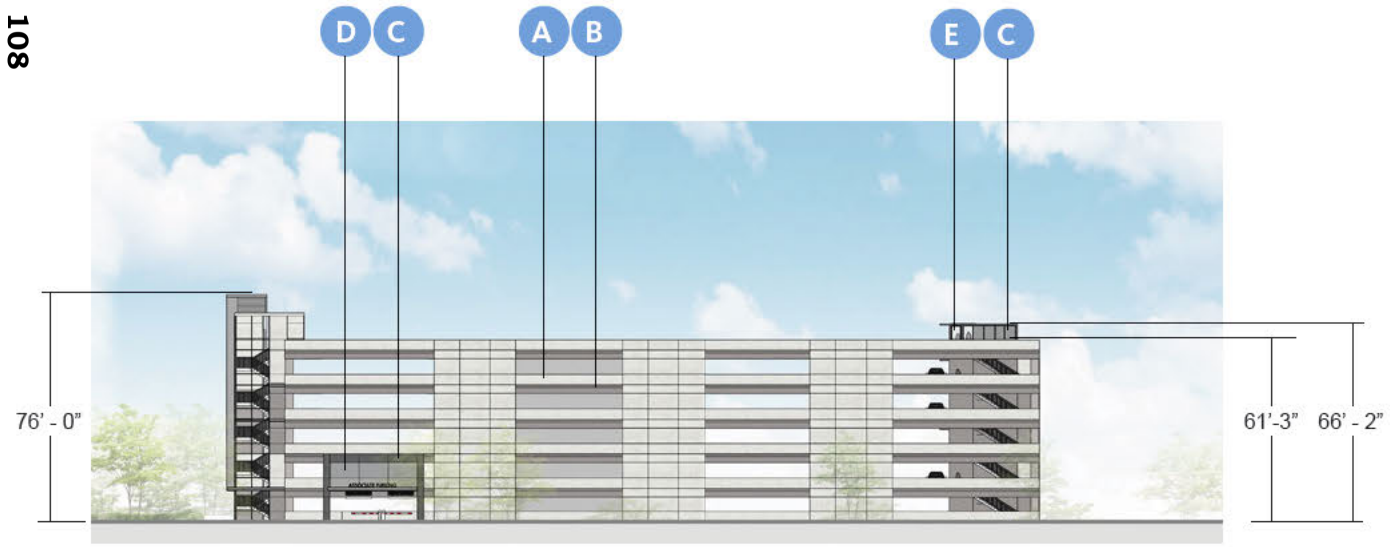
BR01 - CMU BLOCK



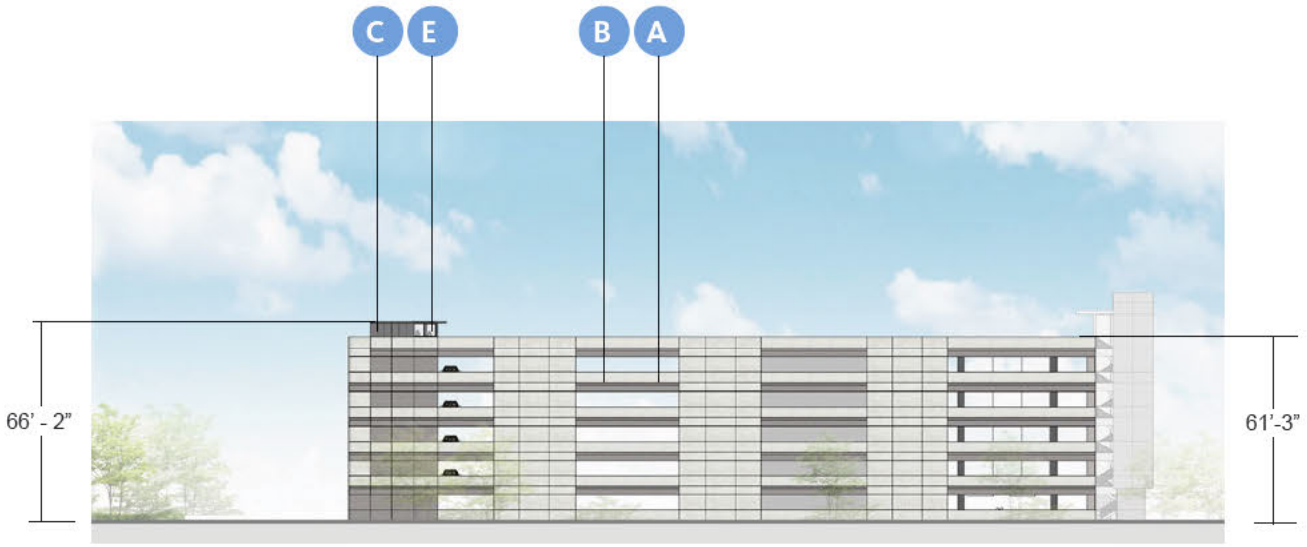
NORTH ELEVATION



SOUTH ELEVATION



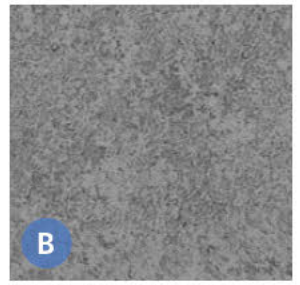
EAST ELEVATION



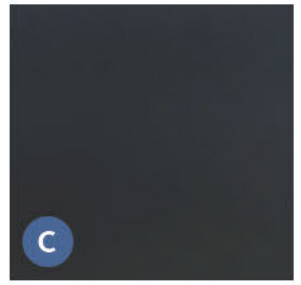
WEST ELEVATION



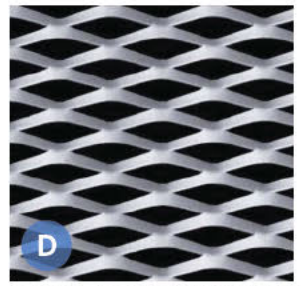
PC01- PRECAST LIGHT



PC02- PRECAST DARK



MP03- BLACK METAL
MINIMUM 24 GAUGE



MP06 - EXPANDED METAL
MINIMUM 24 GAUGE



GL01- VISION GLASS

ORDINANCE NO. _____

AN ORDINANCE CHANGING REAL ESTATE IN THE CITY OF BENTONVILLE, ARKANSAS, FROM ITS PRESENT ZONING CLASSIFICATION OF R-1, SINGLE FAMILY RESIDENTIAL AND PUD, PLANNED UNIT DEVELOPMENT TO PUD, PLANNED UNIT DEVELOPMENT (PROJECT NUMBER: PUD20-0002).

WHEREAS, Wal-Mart Stores, Inc. duly filed a petition with the Planning Commission requesting that the hereinafter described property situated in Benton County, Arkansas, be changed from its present zoning classification of R-1, Single-Family Residential and PUD, Planned Unit Development to PUD, Planned Unit Development to be used in accordance with city zoning laws and state laws, which property is described as follows:

A TRACT OF LAND SITUATED IN THE EAST HALF OF SECTION 32, TOWNSHIP 20N, RANGE 30W, BENTON COUNTY, ARKANSAS, BEING PART OF TRACT RR, JOB 090218 IN DOCUMENT CV-2015-1895-5 IN THE PUBLIC RECORDS OF BENTON COUNTY, ARKANSAS, AND BEING DESCRIBED BY METES AND BOUNDS FROM AN ON-THE-GROUND SURVEY BASED ON BEARINGS ESTABLISHED USING NAD83 PERFORMED ON MAY 28, 2020 BY CEI ENGINEERING ASSOCIATES, INC. AS FOLLOWS:

COMMENCING AT A FOUND RAIL ROAD SPIKE BEING THE NORTHWEST CORNER OF THE NORTHEAST QUARTER (NE/4) OF THE SOUTHEAST QUARTER (SE/4) OF SECTION 32, TOWNSHIP 20 NORTH, RANGE 30 WEST;

THENCE SOUTH 87°02'52" EAST ALONG THE NORTH LINE OF SAID NE/4, SE/4, A DISTANCE OF 470.15 FEET TO A FOUND MAG NAIL BEING THE POINT OF BEGINNING;

THENCE LEAVING SAID NORTH LINE, NORTH 65°46'16" WEST ALONG THE SOUTH RIGHT-OF-WAY OF SAID TRACT RR, 83.84 FEET;

THENCE CONTINUING ALONG SAID SOUTH RIGHT OF WAY, NORTH 64°06'14" WEST, 121.95 FEET;

THENCE NORTH 64°05'30" WEST, 268.96 FEET TO THE EAST RIGHT OF WAY OF SOUTHEAST P STREET;

THENCE ALONG SAID EAST RIGHT OF WAY, NORTH 01°51'25" EAST, 65.70 FEET;

THENCE ALONG THE NORTH RIGHT OF WAY OF AFOREMENTIONED TRACT RR THE FOLLOWING SEVEN (7) COURSES;

1. SOUTH 64°05'38" EAST, 416.79 FEET
2. SOUTH 65°47'26" EAST, 21.66 FEET
3. SOUTH 65°47'26" EAST, 59.97 FEET; ON A NON-TANGENT CURVE TO THE LEFT;
4. ALONG THE ARC OF SAID CURVE 146.51 FEET, HAVING A RADIUS OF 1,418.26 FEET, THROUGH A CENTRAL ANGLE OF 05°55'08", HAVING A CHORD WHICH BEARS SOUTH 69°08'38" EAST, 146.44 FEET
5. SOUTH 71°18'56" EAST, 27.83 FEET
6. SOUTH 71°14'16" EAST, 116.71 FEET
7. SOUTH 71°09'20" EAST, 569.09 FEET

THENCE LEAVING SAID NORTH RIGHT OF WAY, SOUTH 02°32'15" WEST, 60.71 FEET TO THE AFOREMENTIONED SOUTH RIGHT OF WAY OF SAID TRACT RR ALSO BEING THE MOST NORTHERNLY CORNER OF DEED BOOK 642, PAGE 568;

THENCE NORTH 71°19'01" WEST ALONG THE BOUNDARY OF SAID, 730.51 FEET TO A FOUND 5/8" REBAR CAP 391;

POINT OF CURVATURE TO THE RIGHT;

THENCE ALONG THE ARC OF SAID CURVE 64.50 FEET, HAVING A RADIUS OF 1,966.07 FEET, THROUGH A CENTRAL ANGLE OF 01°52'47", HAVING A CHORD BEARING AND DISTANCE OF NORTH 70°22'14" WEST, 64.50 FEET TO A FOUND RBF 5/8" BEING CORNER ON A NON-TANGENT CURVE TO THE RIGHT;

THENCE ALONG THE ARC OF SAID CURVE 86.44 FEET, HAVING A RADIUS OF 2,034.05 FEET, THROUGH A CENTRAL ANGLE OF 02°26'06", HAVING A CHORD WHICH BEARS NORTH 68°11'34" WEST, 86.43 FEET THE POINT OF

BEGINNING; CONTAINING 80,891 SQUARE FEET OR 1.86 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 October 5, 2021 in the Council Chambers of the City of Bentonville; and,

WHEREAS, public notice of said hearing having been published in the Northwest Arkansas Democrat-Gazette for the time and in the manner required by law; and,

WHEREAS, the Planning Commission voted to recommend to the City Council that the petition be approved and that said property be rezoned from its present classification of R-1, Single-Family Residential and PUD, Planned Unit Development to PUD, Planned Unit Development to PUD, Planned Unit Development.

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

Section 1: That the above described real property is hereby changed from its present zoning classification of R-1, Single-Family Residential and PUD, Planned Unit Development to PUD, Planned Unit Development to PUD, Planned Unit Development to be used in accordance with the city zoning laws and state laws.

PASSED AND APPROVED this_____ day of _____, 2020.

APPROVED:

_____
Stephanie Orman, Mayor

ATTEST:

_____
Kirby Romines, City Clerk

Consent Agenda Items

For the Planning Commission meeting of October 5, 2021

Reviewer: Tyler Overstreet, Planning Services Manager, AICP

- At the Technical Review meeting held on September 28, 2021 the Planning Commission requested these items be placed on the consent agenda. The descriptions below shall serve as the staff report for each of the consent agenda items.

Lot Split: Lots 23-26, Faircole Block Addition, 404 GLV, LLC, SW Glover Street, DN-2, Downtown Medium Density Residential, *LS20-0065*

The property is currently zoned DN-2, Downtown Medium Density Residential. A lot split of all of existing Lots 9 & 19, creating new Lot 23 (+/- 0.16 acres), Lot 24 (+/- 0.16 acres), Lot 25 (+/- 0.14 acres), and Lot 26 (+/-0.17 acres) of Faircole Block Addition. The plat dedicates various easements to serve the new lots and also dedicates a right-of-way along SW Glover Street per the Master Street Plan requirements. Additionally, the plat dedicates a 12' wide shared public access easement between new Lots 25 & 26.

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

Lot Split: Lots 11 & 12, Polson's Subdivision, Seventh Living, LLC, 203, 207, and 209 SE 7th Street, DE, Downtown Edge, *LS21-0043*

The property is currently zoned D-E, Downtown Edge. A lot split of all of existing Lots 7 & 8, and part of Lot 2, creating new Lot 11 (+/- 0.33 acres) and Lot 12 (+/- 0.34 acres) of Polson's Subdivision. The plat dedicates various utility and drainage easements to serve the new lots and also dedicates a right-of-way along SE B Street per the Master Street Plan requirements.

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

Lot Split: Lots 13 & 14, Osage Hills Subdivision, Route 71 Construction Company, LLC, Ginn Road, R-2, Medium Density Two-Family Residential, *LS21-0050*

A lot split of all of existing Lot 8, creating new Lot 13 (+/- 22.63 acres) and Lot 14 (+/- 12.51 acres) of Osage Hills Subdivision. The plat dedicates right-of-way for a future collector street along the southern lot line of new Lot 14 per the Master Street Plan requirements.

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

Property Line Adjustment: Lots 30-32, Block 6, W.A. Burk's Addition, Thomas Jr. and Judith Terrell, 1111, 1113, & 1115 NE Monroe Street, R-1, Low Density Single-Family Residential, *PLA21-0033*

A property line adjustment of all of existing Lots 19, 20, 21 and part of existing Lot 22, Block 6, creating new Lot 30 (+/- 0.21 acres), Lot 31 (+/- 0.19 acres), and Lot 32 (+/- 0.19 acres) of W.A. Burk's Addition. The plat dedicates various utility easements to serve the new lots and also dedicates a small portion of right-of-way in the southeast corner of new Lot 30 for NE Monroe Street per the Master Street Plan requirements.

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

Property Line Adjustment: Lots 20 & 21, Block 5, Clark's Second Addition, David and Alyson Brittain, Karen Mahan Trust, 307 SW E Street, R-1, Low Density Single-Family Residential, *PLA21-0034*

A lot split of all of existing Lots 13 & 15, Block 5, creating new Lot 20 (+/- 0.21 acres), Lot 21 (+/- 0.47 acres), and Lot 32 (+/- 0.51 acres) of Clark's Second Addition. The plat dedicates various utility easements to serve the new lots. Right-of-way for SW E Street, SW 4th Street, and SW D Street are all in compliance with the current Master Street Plan.

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

Preliminary Plat: Aurora Subdivision, Aurora Development Company, LLC, S Morning Star Road, PRD, Planned Residential Development, *PP18-0012*

Note: This is a major amendment to a previously approved Preliminary Plat.
All non-bondable items and guarantees of improvements must be complete and a final inspection performed and approved before Planning Commission approval. The applicant requests that Aurora Subdivision be constructed in three phases. Phases I and II will be constructed per the original preliminary plat. Phase III is the improvements to S Morning Star Road.

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

Final Plat: Aurora Subdivision Phase II, Aurora Development Company, LLC, S Morning Star Road, PRD, Planned Residential Development, *FP21-0005*

The subdivision consists of 29 total lots. 28 are single-family residential lots and one lot will be utilized as a common lot. The applicant must dedicate all private access easements before this plat can be filed with the county. All non-bondable items and guarantees of improvements must be complete and a final inspection performed and approved before Planning Commission approval.

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

Large-Scale Development: Walmart Campus Zone 04 Phase 2, Walmart Stores, Inc., 1600 SE 8th Street, PUD, Planned Unit Development, *LSD21-0047*

The subject property is currently zoned PUD, Planned Unit Development. The proposed development aligns with the previously approved Walmart Campus PUD. Zone 04 Phase 2 includes the construction of an auditorium and an amphitheater to service the new Walmart Home Office Campus. The architectural elevations depict glass, architectural metal panel, modular brick, and aluminum composite panel as the primary materials on the building.

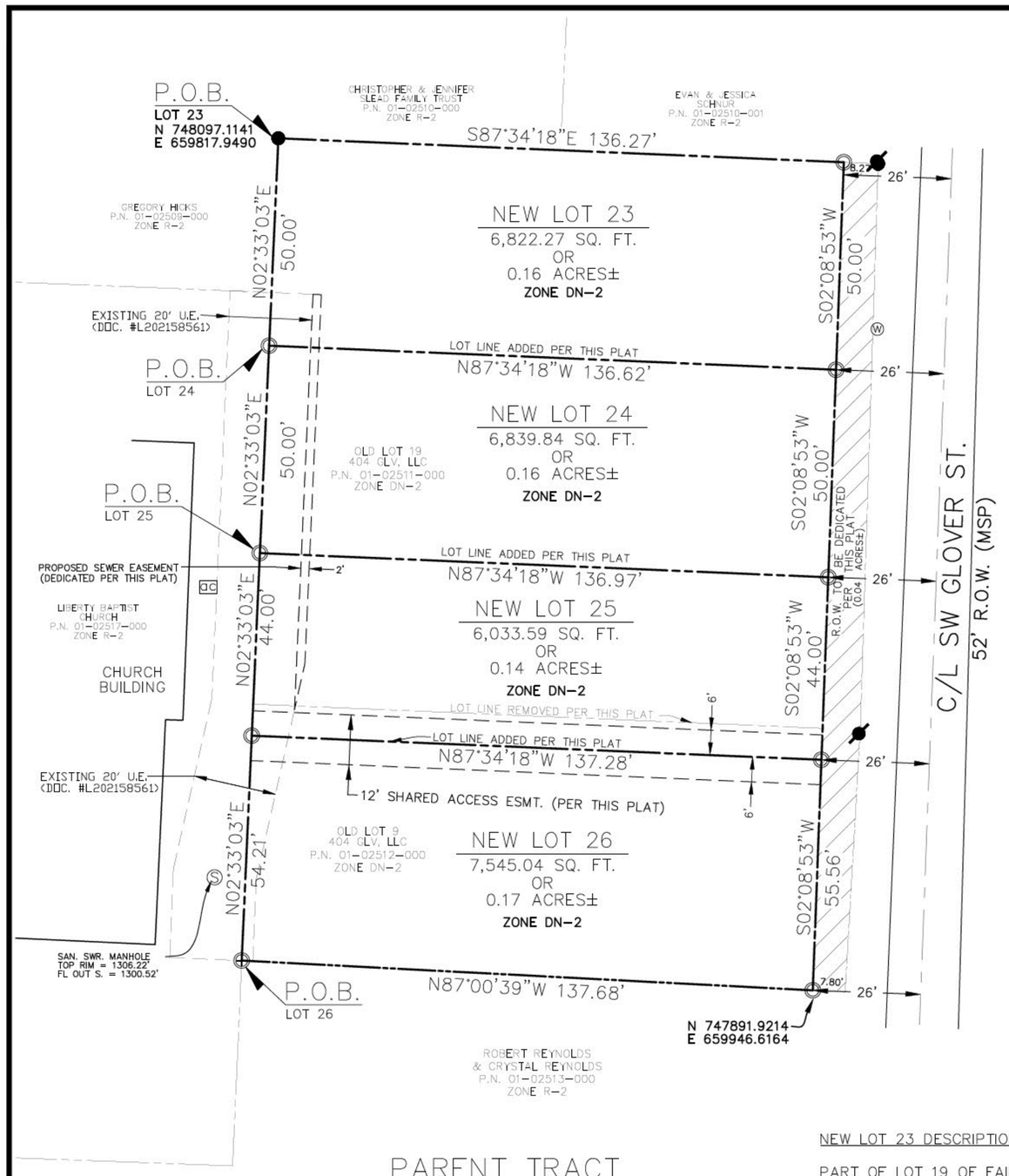
(Please click on this link to access the vicinity map for this item: https://arcg.is/08HvK8)



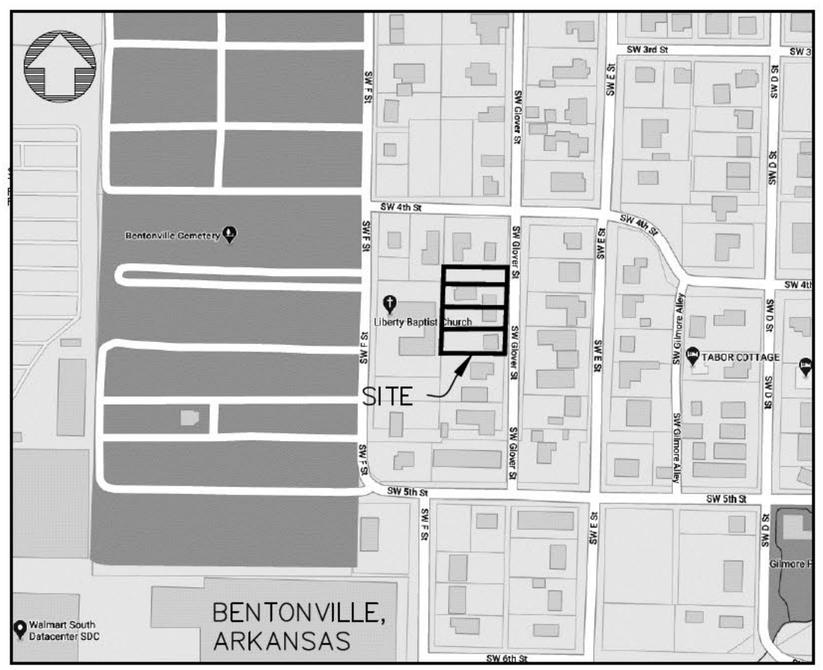
N
W E
S

1 inch = 98 feet

LS20-0065
LOT SPLIT
FAIRCLO BLOCK ADDITION
LOT 19 CREATING LOTS 23-25



PARENT TRACT
(ORIGINAL LOTS 9 & 19)
0.63 ACRES±
P.N. 01-02511-000
& P.N. 01-02512-000
ZONE DN-2



VICINITY MAP
(N.T.S.)

NOTES:

1. EXCEPT AS SPECIFICALLY STATED OR SHOWN ON THIS PLAT, THIS SURVEY DOES NOT PURPORT TO REFLECT ANY OF THE FOLLOWING WHICH MAY BE APPLICABLE TO THE SUBJECT REAL ESTATE: EASEMENTS, OTHER THAN POSSIBLE EASEMENTS WHICH WERE VISIBLE AT THE TIME OF MAKING OF THIS SURVEY; BUILDING SETBACK LINES; RESTRICTIVE COVENANTS; SUBDIVISION RESTRICTIONS; ZONING OR OTHER LAND-USE REGULATIONS, AND ANY OTHER FACTS WHICH AN ACCURATE AND CURRENT TITLE COMMITMENT MAY DISCLOSE.

2. BASIS OF BEARINGS: ARKANSAS STATE PLANE COORDINATE SYSTEM, NORTH ZONE.

3. DECLARATION IS MADE TO ORIGINAL PURCHASER OF THE SURVEY. IT IS NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS.

4. THIS SURVEY IS VALID ONLY IF THE DRAWING INCLUDES THE SEAL AND SIGNATURE OF THE SURVEYOR.

5. SETBACKS SHALL BE PER THE CURRENT ZONING DISTRICT AS STATED IN THE MOST RECENT CITY OF BENTONVILLE ZONING CODE.

6. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS OF RECORD, ENCUMBRANCES, RESTRICTIVE COVENANTS, OWNERSHIP, TITLE EVIDENCE, OR ANY OTHER FACTS WHICH AN ACCURATE AND CURRENT TITLE COMMITMENT MAY DISCLOSE.

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

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

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

10. BEFORE ANY WORK IN THE RIGHT-OF-WAY COMMENCES, CONTRACTOR AND/OR OWNER IS TO CONTACT THE CITY OF BENTONVILLE ENGINEERING AND TRANSPORTATION AND NOTIFY SAID DEPARTMENTS OF THE INTENT AND TYPE OF WORK THAT WILL TAKE PLACE WITHIN THE R.O.W.

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

PARENT TRACT:

LOT 19 OF FAIRCLOE BLOCK ADDITION, CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT BOOK 8, PAGE 104, AND LOT 9 OF FAIRLCOE BLOCK ADDITION, AS RECORDED IN THE BENTON COUNTY RECORDS.

NEW LOT 23 DESCRIPTION:

PART OF LOT 19 OF FAIRCLOE BLOCK ADDITION, CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT BOOK 8, PAGE 104 OF THE BENTON COUNTY RECORDS, AND BEING MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT THE NW CORNER OF SAID LOT 19; THENCE S87°34'18"E 136.27 FEET TO THE WEST RIGHT-OF-WAY LINE OF SW GLOVER STREET; THENCE ALONG SAID WEST RIGHT-OF-WAY LINE S02°08'53"W 50.00 FEET; THENCE LEAVING SAID WEST RIGHT-OF-WAY LINE N87°34'18"W 136.62 FEET; THENCE N02°33'03"E 50.00 FEET TO THE POINT OF BEGINNING, CONTAINING 6,822.27 SQUARE FEET OR 0.16 ACRES, MORE OR LESS, AND SUBJECT TO ALL RIGHTS-OF-WAY, EASEMENTS AND RESTRICTIVE COVENANTS OF RECORD OR FACT.

NEW LOT 24 DESCRIPTION:

PART OF LOT 19 OF FAIRCLOE BLOCK ADDITION, CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT BOOK 8, PAGE 104 OF THE BENTON COUNTY RECORDS, AND BEING MORE PARTICULARLY DESCRIBED AS:

COMMENCING AT THE NW CORNER OF SAID LOT 19; THENCE S02°33'03"W 50.00 FEET TO THE POINT OF BEGINNING; THENCE S87°34'18"E 136.62 FEET TO THE WEST RIGHT-OF-WAY LINE OF SW GLOVER STREET; THENCE ALONG SAID WEST RIGHT-OF-WAY LINE S02°08'53"W 50.00 FEET; THENCE LEAVING SAID WEST RIGHT-OF-WAY LINE N87°52'20"W 136.97 FEET; THENCE N02°33'03"E 50.00 FEET TO THE POINT OF BEGINNING, CONTAINING 6,839.84 SQUARE FEET OR 0.16 ACRES, MORE OR LESS, AND SUBJECT TO ALL RIGHTS-OF-WAY, EASEMENTS AND RESTRICTIVE COVENANTS OF RECORD OR FACT.

FLOOD CERTIFICATION:

I CERTIFY THAT I HAVE EXAMINED THE OFFICIAL FLOOD INSURANCE HAZARD RATE MAP PANEL NO. 05007C0255K (EFFECTIVE DATE JUNE 5, 2012) AND FOUND THE DESCRIBED PROPERTY HEREON LIES IN ZONE "X", AN AREA HAVING NO SPECIAL FLOOD HAZARDS.

NEW LOT 25 DESCRIPTION:

PART OF LOT 19 OF FAIRCLOE BLOCK ADDITION, CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT BOOK 8, PAGE 104, AND PART OF LOT 9 OF FAIRCLOE BLOCK ADDITION OF THE BENTON COUNTY RECORDS, AND BEING MORE PARTICULARLY DESCRIBED AS:

COMMENCING AT THE NW CORNER OF SAID LOT 19; THENCE S02°33'03"W 100.00 FEET TO THE POINT OF BEGINNING; THENCE S87°34'18"E 136.97 FEET TO THE WEST RIGHT-OF-WAY LINE OF SW GLOVER STREET; THENCE ALONG SAID WEST RIGHT-OF-WAY LINE S02°08'53"W 44.00 FEET; THENCE LEAVING SAID WEST RIGHT-OF-WAY LINE N87°34'18"W 137.28 FEET; THENCE N02°33'03"E 44.00 FEET TO THE POINT OF BEGINNING, CONTAINING 6,033.59 SQUARE FEET OR 0.14 ACRES, MORE OR LESS, AND SUBJECT TO ALL RIGHTS-OF-WAY, EASEMENTS AND RESTRICTIVE COVENANTS OF RECORD OR FACT.

NEW LOT 26 DESCRIPTION:

PART OF LOT 19 OF FAIRCLOE BLOCK ADDITION, CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT BOOK 8, PAGE 104, AND PART OF LOT 9 OF FAIRCLOE BLOCK ADDITION OF THE BENTON COUNTY RECORDS, AND BEING MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT THE SW CORNER OF SAID LOT 9; THENCE N02°33'03"E 54.21 FEET; THENCE S87°34'18"E 137.28 FEET TO THE WEST RIGHT-OF-WAY LINE OF SW GLOVER STREET; THENCE ALONG SAID WEST RIGHT-OF-WAY LINE S02°08'53"W 55.56 FEET; THENCE LEAVING SAID WEST RIGHT-OF-WAY LINE N87°00'39"W 137.68 FEET TO THE POINT OF BEGINNING, CONTAINING 7,545.04 SQUARE FEET OR 0.17 ACRES, MORE OR LESS, AND SUBJECT TO ALL RIGHTS-OF-WAY, EASEMENTS AND RESTRICTIVE COVENANTS OF RECORD OR FACT.

CERTIFICATE OF SURVEY ACCURACY:

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

DATE OF EXECUTION _____

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

CERTIFICATE OF AUTHORIZATION
COA CERTIFICATE NUMBER: 3049

0 30 60
SCALE 1" = 30 FEET

LEGEND

- FOUND REBAR
- SET 1/2" REBAR W/CAP, LS 1370
- UTILITY POLE
- Ⓦ WATER METER
- PROPERTY LINE
- RIGHT-OF-WAY LINE
- CENTER LINE
- EASEMENT LINE

CERTIFICATE OF OWNERSHIP AND DEDICATION:

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

DATE OF EXECUTION: _____

PRINT NAME: _____

SIGNATURE: _____

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

_____
NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

CERTIFICATE OF APPROVAL:

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

DATE OF EXECUTION: _____

SIGNED _____
PLANNING COMMISSION CHAIRPERSON

DATE OF EXECUTION: _____

SIGNED _____
MAYOR, CITY OF BENTONVILLE

SIGNED _____
CITY CLERK, CITY OF BENTONVILLE

BENTONVILLE PROJECT #LS20-0065

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

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

SCALE: 1" = 30'	DATE: 9-24-21

LOT SPLIT OF LOTS 9 & 19
FAIRCLOE BLOCK ADDITION
CREATING LOTS 23, 24, 25 & 26

404 & 406 SW GLOVER STREET
BENTONVILLE, BENTON COUNTY, ARKANSAS

JOB #	DRAWN BY:	CHK'D BY:	PAGE
20-194LS	ASD	RJC	1 OF 1

ORDINANCE NO._____

AN ORDINANCE ACCEPTING A LOT SPLIT OF LOTS 23, 24, 25 & 26 OF FAIRCOLE BLOCK ADDITION TO THE CITY OF BENTONVILLE, ARKANSAS (PROJECT NUMBER: LS20-0065).

WHEREAS, pursuant to the provisions of the Land Development Code of the Bentonville Municipal Code, the lot split of Lots 23, 24, 25 & 26 of Faircole Block Addition, Benton County, Arkansas, was submitted to the Bentonville Planning Commission on October 5, 2021; and,

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

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

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

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

Section 1: That the lot split of Lots 23, 24, 25 & 26 of Faircole Block 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

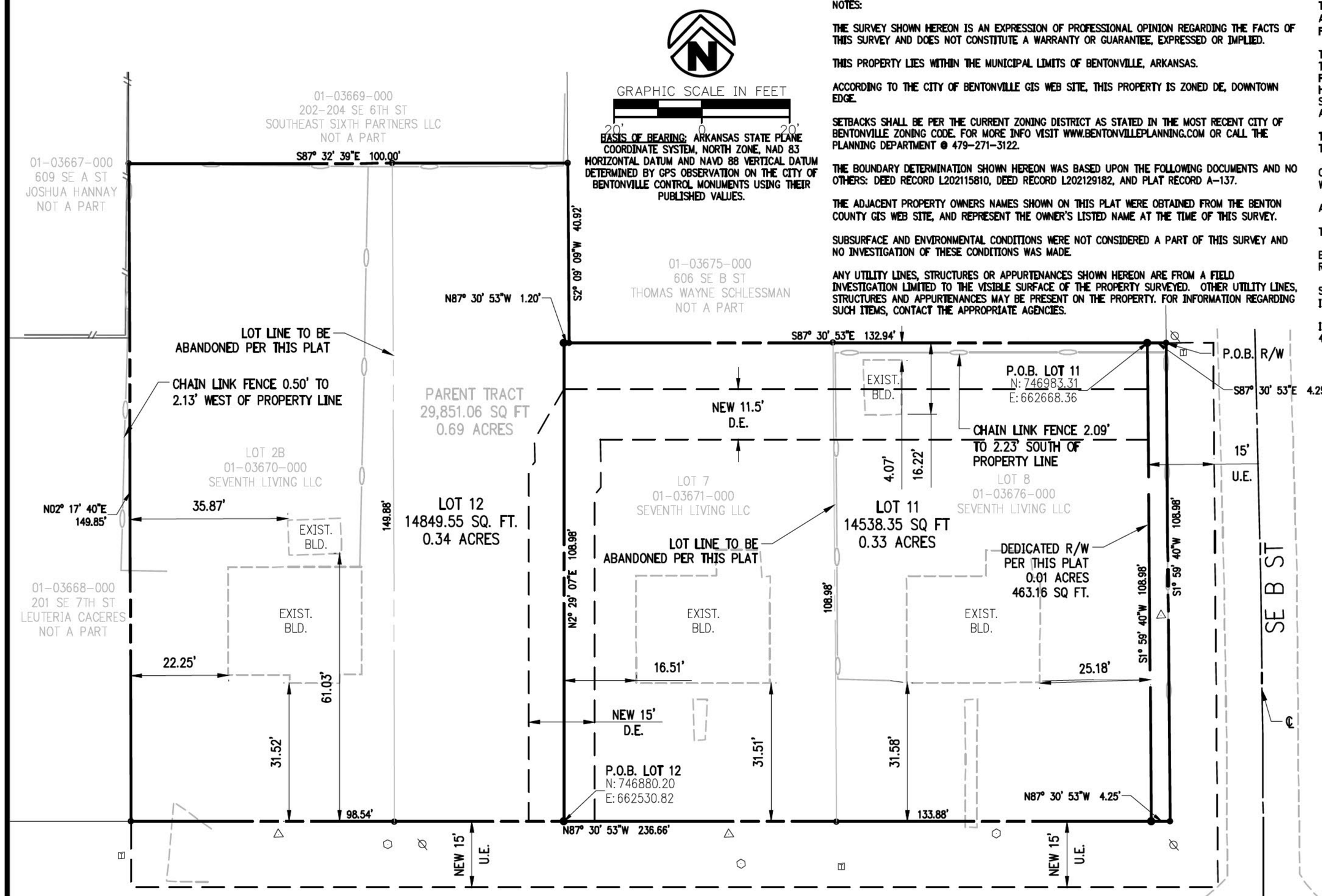
ATTEST:

_____
Kirby Romines, City Clerk



LS21-0043
LOT SPLIT
POLSONS SUBDIVISION
PART OF LOTS 7-8 & 2 CREATING LOTS 11-12

LOT SPLIT OF LOT'S 7, 8 PART OF LOT 2 OF POLSON'S SUBDIVISION, CREATING LOTS 11-12



NOTES:

THE SURVEY SHOWN HEREON IS AN EXPRESSION OF PROFESSIONAL OPINION REGARDING THE FACTS OF THIS SURVEY AND DOES NOT CONSTITUTE A WARRANTY OR GUARANTEE, EXPRESSED OR IMPLIED.

THIS PROPERTY LIES WITHIN THE MUNICIPAL LIMITS OF BENTONVILLE, ARKANSAS.

ACCORDING TO THE CITY OF BENTONVILLE GIS WEB SITE, THIS PROPERTY IS ZONED DE, DOWNTOWN EDGE.

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.

THE BOUNDARY DETERMINATION SHOWN HEREON WAS BASED UPON THE FOLLOWING DOCUMENTS AND NO OTHERS: DEED RECORD L202115810, DEED RECORD L202129182, AND PLAT RECORD A-137.

THE ADJACENT PROPERTY OWNERS NAMES SHOWN ON THIS PLAT WERE OBTAINED FROM THE BENTON COUNTY GIS WEB SITE, AND REPRESENT THE OWNER'S LISTED NAME AT THE TIME OF THIS SURVEY.

SUBSURFACE AND ENVIRONMENTAL CONDITIONS WERE NOT CONSIDERED A PART OF THIS SURVEY AND NO INVESTIGATION OF THESE CONDITIONS WAS MADE.

ANY UTILITY LINES, STRUCTURES OR APPURTENANCES SHOWN HEREON ARE FROM A FIELD INVESTIGATION LIMITED TO THE VISIBLE SURFACE OF THE PROPERTY SURVEYED. OTHER UTILITY LINES, STRUCTURES AND APPURTENANCES MAY BE PRESENT ON THE PROPERTY. FOR INFORMATION REGARDING SUCH ITEMS, CONTACT THE APPROPRIATE AGENCIES.

THIS PROPERTY IS NOT IN FLOOD ZONE "A" OR "AE", AND IS OUTSIDE THE 100-YEAR FLOOD PLAIN AND IS LISTED AS BEING IN ZONE "X" AS SHOWN ON THE NATIONAL FLOOD INSURANCE PROGRAM'S FIRM PANEL NUMBER 05007C0255K, EFFECTIVE DATE JUNE 05, 2012.

THE ABOVE STATEMENT IS FOR INFORMATION ONLY AND THIS SURVEYOR ASSUMES NO LIABILITY FOR THE CORRECTNESS OF THE CITED MAP(S). IN ADDITION, NO INDEPENDENT STUDY OF THE LIKELIHOOD OF FLOODING OF THE SURVEYED PROPERTY HAS BEEN DONE BY THE SURVEYOR AND NO OPINION OF FLOOD HAZARDS IS INCLUDED IN THIS SURVEY. THE FLOOD HAZARD ZONE BOUNDARIES SHOWN HEREON WERE SCALED FROM THE MAPS CITED AND ARE NOT THE RESULT OF INDEPENDENT COMPUTATION OR ANALYSIS.

THERE MAY BE BUILDINGS AND OTHER IMPROVEMENTS ON THE PROPERTY THAT ARE NOT SHOWN ON THIS PLAT.

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 FEET CLEARANCES FROM ALL ELECTRIC LINES.

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

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.

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

IT IS THE RESPONSIBILITY OF THE DEVELOPER TO COORDINATE WITH THE NEW SERVICE COORDINATOR @ 479 271-3139 TO DETERMINE IF EQUIPMENT IS IN CONFLICT

LEGEND

o	FOUND IRON PIN
●	SET IRON PIN
⋈	WATER VALVE
⬡	WATER METER
⊘	SEWER MANHOLE
○	POWER POLE
△	GAS METER
⊞	TELEPHONE PEDESTAL
	PROPERTY LINE
	RIGHT OF WAY LINE
	EASEMENT
	ASPHALT
	CENTERLINE
	CHAIN LINK FENCE

PARENT TRACT
THE WEST 60 FEET OF THE SOUTH 150 FEET OF LOT 2, LOT 7 AND THE EAST 40 FEET OF THE SOUTH 150 FEET OF LOT 2, THE WEST 60 FEET OF THE SOUTH 150 FEET OF LOT 2, AND LOT 8 OF POLSON'S SUBDIVISION, OF OUTLOT 34 TO THE CITY OF BENTONVILLE, AS PER PLAT RECORD A-137 IN THE OFFICE OF THE CIRCUIT CLERK AND EX-OFFICIO RECORDER OF BENTON COUNTY, ARKANSAS , MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 8;
THENCE ALONG THE EAST LINE THEREOF S01°59'40"W 108.98 FEET TO THE SOUTHEAST CORNER OF SAID LOT 8;
THENCE ALONG THE SOUTH LINE OF SAID LOT 2, LOT 7 AND LOT 8 N87°30'53"W 236.66 FEET TO THE SOUTHWEST CORNER OF SAID LOT 2;
THENCE ALONG THE WEST LINE THEREOF N02°17'40"E 149.85 FEET;
THENCE LEAVING SAID WEST LINE S87°32'39"E 100.00 FEET;
THENCE S02°09'09"W 40.92 FEET;
THENCE S87°30'53"E 135.99 FEET TO THE POINT OF BEGINNING, CONTAINING 0.69 ACRES, MORE OR LESS AND SUBJECT TO ANY AND ALL EASEMENTS OF RECORD OR FACT.

R/W DESCRIPTION
PART OF LOT 8 OF POLSON'S SUBDIVISION, OF OUTLOT 34 TO THE CITY OF BENTONVILLE, AS PER PLAT RECORD A-137 IN THE OFFICE OF THE CIRCUIT CLERK AND EX-OFFICIO RECORDER OF BENTON COUNTY, ARKANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 8;
THENCE SOUTH 1°59'40" WEST A DISTANCE OF 108.98 FEET;
THENCE NORTH 87°30'53" WEST A DISTANCE OF 4.25 FEET;
THENCE NORTH 1°59'40" EAST A DISTANCE OF 108.98 FEET
THENCE SOUTH 87°30'53" EAST A DISTANCE OF 4.25 FEET
TO THE POINT OF BEGINNING, CONTAINING 0.01 ACRES, MORE OR LESS AND SUBJECT TO ANY AND ALL EASEMENTS OF RECORD OR FACT.

LOT 11
LOT 7 AND PART OF LOT 8 OF POLSON'S SUBDIVISION, OF OUTLOT 34 TO THE CITY OF BENTONVILLE, AS PER PLAT RECORD A-137 IN THE OFFICE OF THE CIRCUIT CLERK AND EX-OFFICIO RECORDER OF BENTON COUNTY, ARKANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 8;
THENCE NORTH 87°30'53" WEST A DISTANCE OF 4.25 FEET TO THE POINT OF BEGINNING
THENCE SOUTH 1°59'40" WEST A DISTANCE OF 108.98 FEET;
THENCE NORTH 87°30'53" WEST A DISTANCE OF 133.88 FEET;
THENCE NORTH 2°29'07" EAST A DISTANCE OF 108.98 FEET;
THENCE SOUTH 87°30'53" EAST A DISTANCE OF 1.20 FEET;
THENCE SOUTH 87°30'53" EAST A DISTANCE OF 132.94 FEET TO THE POINT OF BEGINNING, CONTAINING 0.33 ACRES, MORE OR LESS AND SUBJECT TO ANY AND ALL EASEMENTS OF RECORD OR FACT.

LOT 12
PART OF LOT 2 OF POLSON'S SUBDIVISION, OF OUTLOT 34 TO THE CITY OF BENTONVILLE, AS PER PLAT RECORD A-137 IN THE OFFICE OF THE CIRCUIT CLERK AND EX-OFFICIO RECORDER OF BENTON COUNTY, ARKANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 11;
THENCE NORTH 87°30'53" WEST A DISTANCE OF 98.54 FEET;
THENCE NORTH 2°17'40" EAST A DISTANCE OF 149.85 FEET;
THENCE SOUTH 87°32'39" EAST A DISTANCE OF 100.00 FEET;
THENCE SOUTH 2°09'09" WEST A DISTANCE OF 40.92 FEET;
THENCE NORTH 87°30'53" WEST A DISTANCE OF 1.20 FEET;
THENCE SOUTH 2°29'07" WEST A DISTANCE OF 108.98 FEET TO THE POINT OF BEGINNING, CONTAINING 0.34 ACRES, MORE OR LESS AND SUBJECT TO ANY AND ALL EASEMENTS OF RECORD OR FACT.

OWNER/DEVELOPER
GATOR DISTRICT LLC
5303 SW LAVENDER ST.
BENTONVILLE, AR 72713

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: _____

BY: _____
GATOR DISTRICT LLC

_____
(PRINT)

STATE OF ARKANSAS)
) SS
COUNTY OF BENTON)
SUBSCRIBED AND SWORN BEFORE ME THIS ____ DAY OF _____ 2021
MY COMMISSION EXPIRES:

NOTARY PUBLIC_____

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 CHAIRPERSON

SIGNED _____
MAYOR CITY OF BENTONVILLE

SIGNED _____
CITY CLERK, CITY OF BENTONVILLE

CERTIFICATE OF SURVEYING ACCURACY

I, KEVIN J. MONTGOMERY, 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: _____

CRAFTON, TULL & ASSOCIATES, INC.
BY KEVIN J. MONTGOMERY (AGENT)

SIGNED: _____
KEVIN J. MONTGOMERY (AGENT)
REGISTERED LAND SURVEYOR
NO. 1460
STATE OF ARKANSAS

REGISTERED STATE OF ARKANSAS NO. 1460 SIGNATURE KEVIN J. MONTGOMERY PROFESSIONAL LAND SURVEYOR

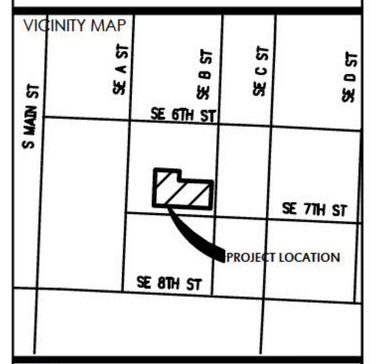
ALL COPIES THAT DO NOT BEAR AN ORIGINAL SEAL AND SIGNATURE MAY HAVE BEEN ALTERED. THE ABOVE DECLARATION SHALL NOT APPLY TO ANY COPY THAT DOES NOT BEAR AN ORIGINAL SEAL AND SIGNATURE.

ATLAS PAGE: 403A

CITY OF BENTONVILLE PROJECT NUMBER: LS21-0043

RECORD INFORMATION

VICINITY MAP



SEAL

BENTONVILLE
ARKANSAS

PREPARED FOR:
GATOR DISTRICT LLC

STATE PLAT CODE:
500-20N-30W-0-31-130-04-1460

DATE: 07/28/2021
PROJECT NO: 211019000
CONTACT: K. MONTGOMERY

901 N. 47th St. Suite 400
Rogers Arkansas 72756
Crafton Tull
architecture | engineering | surveying
479.636.4838 f 479.631 6224 f
www.craftontull.com

CERTIFICATE OF AUTHORIZATION:
CERTIFICATE OF AUTHORIZATION CRAFTON, TULL & ASSOCIATES, INC. No. 109 ARKANSAS ENGINEER

© 2021 Crafton Tull & Associates Inc.

DELTA	DESCRIPTION	DATE

SHEET NO.:
1 OF 1

DRAWING: G:\211019000_7thSTCOWNH\INFRASTRUCTURE\SURVEY\DWG\211019001 LOT COMBO.DWG
LAYOUT: LAYOUT1 LAST SAVED: CU3072 9/17/2021 10:23:02 AM
LAST PLOTTED BY: CHRISTIAN LIMANA 9/17/2021 10:25:18 AM (PLOTTED BY: VALID ON HARD COPY ONLY)

118

ORDINANCE NO._____

AN ORDINANCE ACCEPTING A LOT SPLIT OF LOTS 11 & 12 POLSON'S SUBDIVISION TO THE CITY OF BENTONVILLE, ARKANSAS (PROJECT NUMBER: LS21-0043).

WHEREAS, pursuant to the provisions of the Land Development Code of the Bentonville Municipal Code, the lot split of Lots 11 & 12 Polson's Subdivision, Benton County, Arkansas, was submitted to the Bentonville Planning Commission on October 5, 2021; and,

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

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

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

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

Section 1: That the lot split of Lots 11 & 12 Polson's 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.

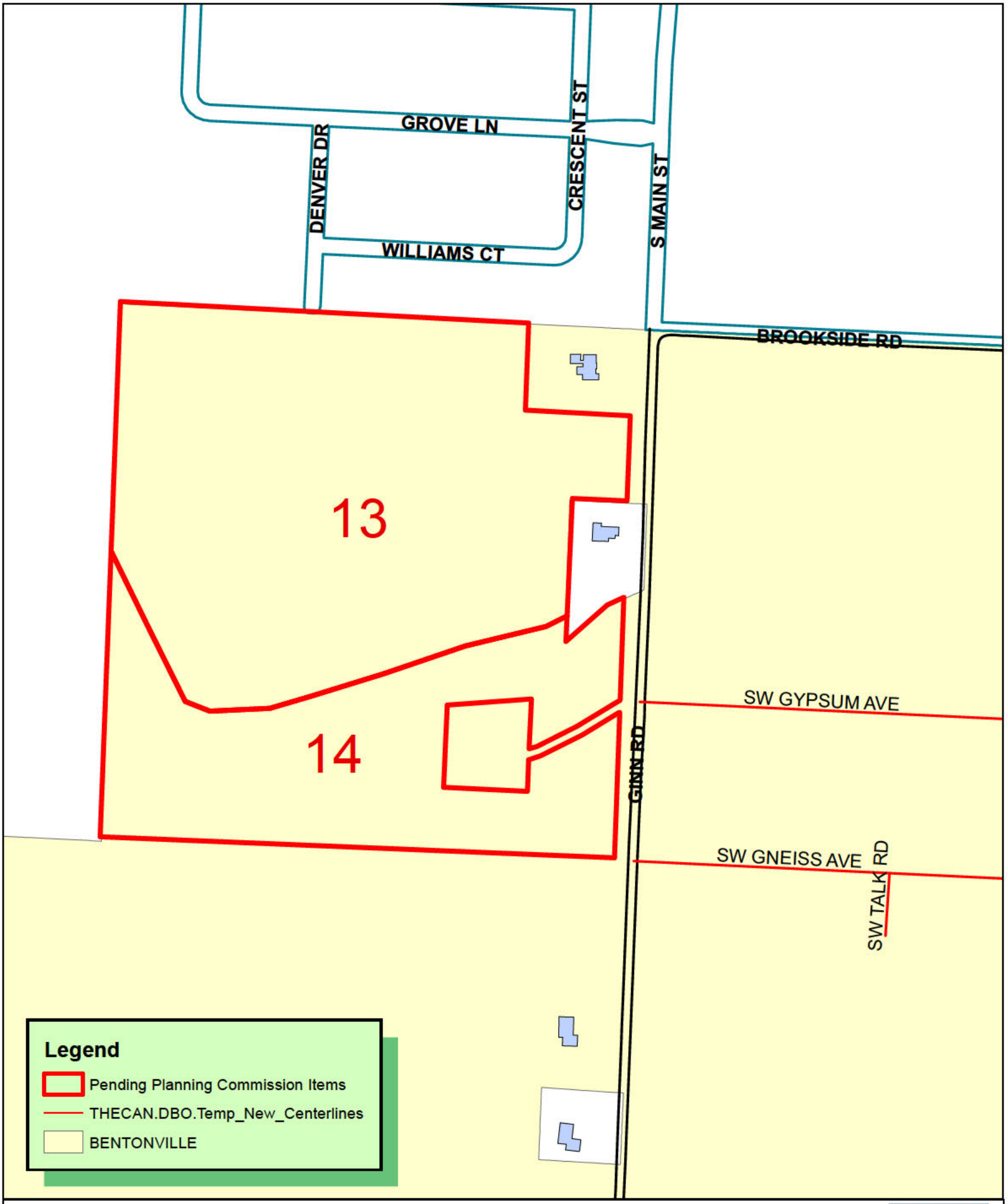
PASSED AND APPROVED this_____ day of _____, 2021.

APPROVED:

_____
Stephanie Orman, Mayor

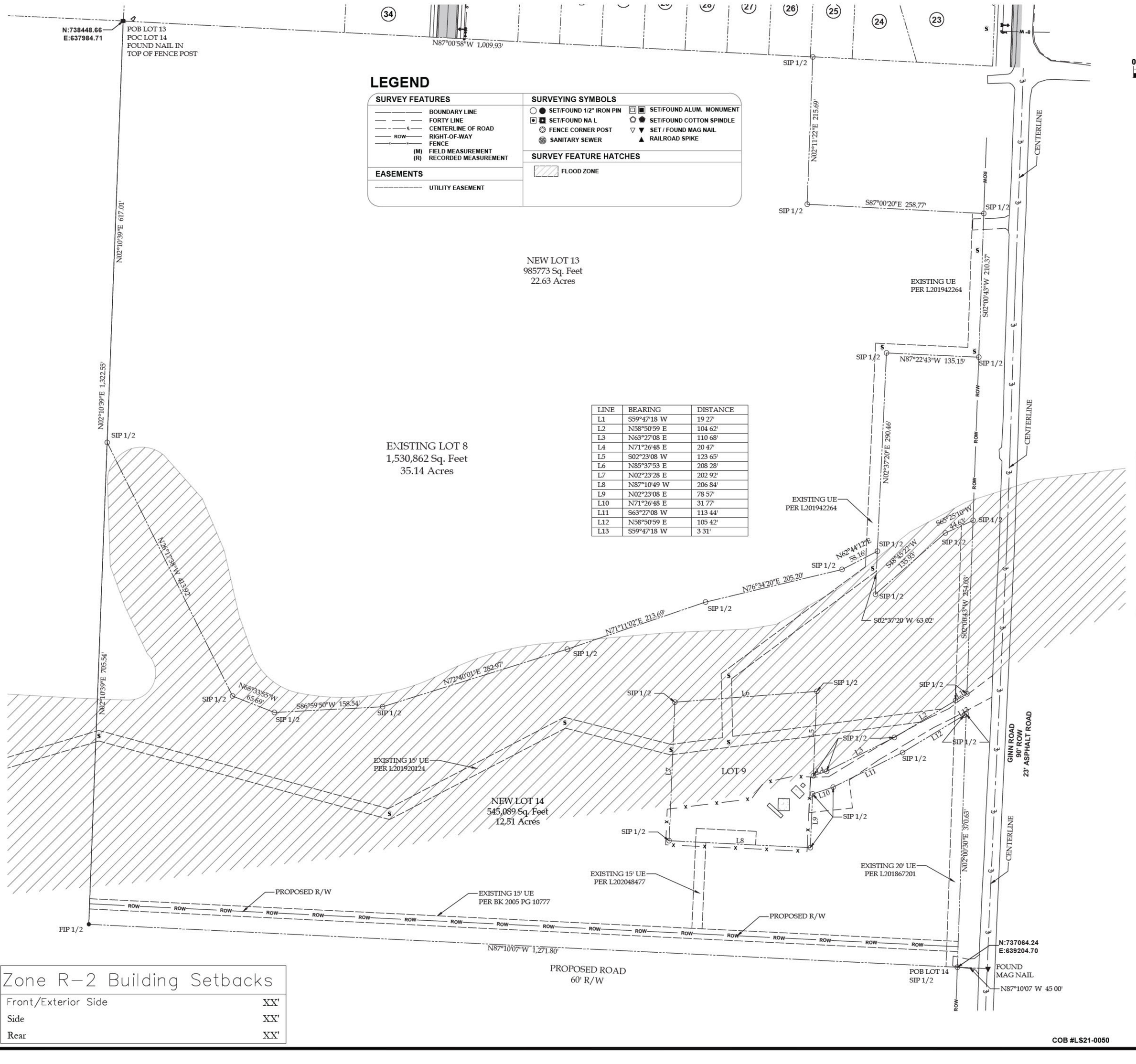
ATTEST:

_____
Kirby Romines, City Clerk



LS21-0050
LOT SPLIT
OSAGE HILLS SUBDIVISION
LOT 8 CREATING LOTS 13-14

c:\cloud rapid\swope engineering dropbox\~swope\20-115 snyder ridge subdivision\external references\20-115su.dwg - Plotted on 9/17/2021 5:58:11 AM @ a scale of 1:1 to dwg to pdf.pc3 by Ethan



LEGEND

SURVEY FEATURES		SURVEYING SYMBOLS	
BOUNDARY LINE		SET/FOUND 1/2" IRON PIN	SET/FOUND ALUM. MONUMENT
FORTY LINE		SET/FOUND NA L	SET/FOUND COTTON SPINDLE
CENTERLINE OF ROAD		FENCE CORNER POST	SET / FOUND MAG NAIL
ROW RIGHT-OF-WAY		SANITARY SEWER	RAILROAD SPIKE
FENCE		**SURVEY FEATURE HATCHES**	
(M) FIELD MEASUREMENT		FLOOD ZONE	
(R) RECORDED MEASUREMENT			
EASEMENTS			
UTILITY EASEMENT			

LINE	BEARING	DISTANCE
L1	S59°47'18 W	19 27'
L2	N58°50'59 E	104 62'
L3	N63°27'08 E	110 68'
L4	N71°26'48 E	20 47'
L5	S02°23'08 W	123 65'
L6	N85°37'53 E	208 28'
L7	N02°23'28 E	202 92'
L8	N87°10'49 W	206 84'
L9	N02°23'08 E	78 57'
L10	N71°26'48 E	31 77'
L11	S63°27'08 W	113 44'
L12	N58°50'59 E	105 42'
L13	S59°47'18 W	3 31'

Zone R-2 Building Setbacks

Front/Exterior Side	XX'
Side	XX'
Rear	XX'

GRAPHIC SCALE

0 100' 200'

1 inch = 100 feet

Recording Block



VICINITY MAP
N.T.S.

BASIS OF BEARING:
ARKANSAS STATE PLANE, COORDINATE SYSTEM, (NAD-83) NORTH ZONE.

LOT SPLIT OF LOT 8 IN OSAGE HILLS SUBDIVISION CREATING LOTS 13 & 14

OSAGE WEST
GINN RD
WM 63 RE 1 LLC
885 3RD AVE STE 2403
NEW YORK, NY 10022-4834

CERTIFICATE OF AUTHORIZATION SWOPE CONSULTING No. 2831 ARKANSAS

LICENSED PROFESSIONAL SURVEYOR STATE OF ARKANSAS No. 1301 SIGNATURE Terry L. Ging

SWOPE ENGINEERING
Civil Engineering and Land Surveying
www.swopeengineering.com
Certificate of Authorization № 2831

DRAWN BY:	EST	JOB NUMBER	20-115
SUBMITTAL DATE:	07/23/2021	SCALE	1" = 100'
DRAWING NAME:	20-115su.dwg		
SHEET NUMBER:	1 OF 1		

COB #LS21-0050

ORDINANCE NO._____

AN ORDINANCE ACCEPTING A LOT SPLIT OF LOTS 13 & 14, OSAGE HILLS SUBDIVISION TO THE CITY OF BENTONVILLE, ARKANSAS (PROJECT NUMBER: LS21-0050).

WHEREAS, pursuant to the provisions of the Land Development Code of the Bentonville Municipal Code, the lot split of Lots 13 & 14, Osage Hills Subdivision**,** Benton County, Arkansas, was submitted to the Bentonville Planning Commission on October 5, 2021; and,

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

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

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

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

Section 1: That the lot split of Lots 13 & 14, Osage Hills 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

PLA21-0033
PROPERTY LINE ADJUSTMENT
W A BURKS ADDITION
LOTS 19-22 BLOCK 6 CREATING LOTS 30-32

THE CITY OF BENTONVILLE

SCALE 1"=30'

30 15 0 30

LEGEND

- S.I.P. SET IRON PIN
- PK FOUND PK NAIL
- S-PK SET PK NAIL
- F.I.P. FOUND IRON PIN
- PROPERTY LINE
- CENTERLINE
- HOUSE TO BE REMOVED
- OLD LOT LINE
- PREVIOUS PROPERTY LINE
- POWER POLE
- SEWER MANHOLE
- WATER METER
- TELEPHONE

CITY REQUIRED NOTES:

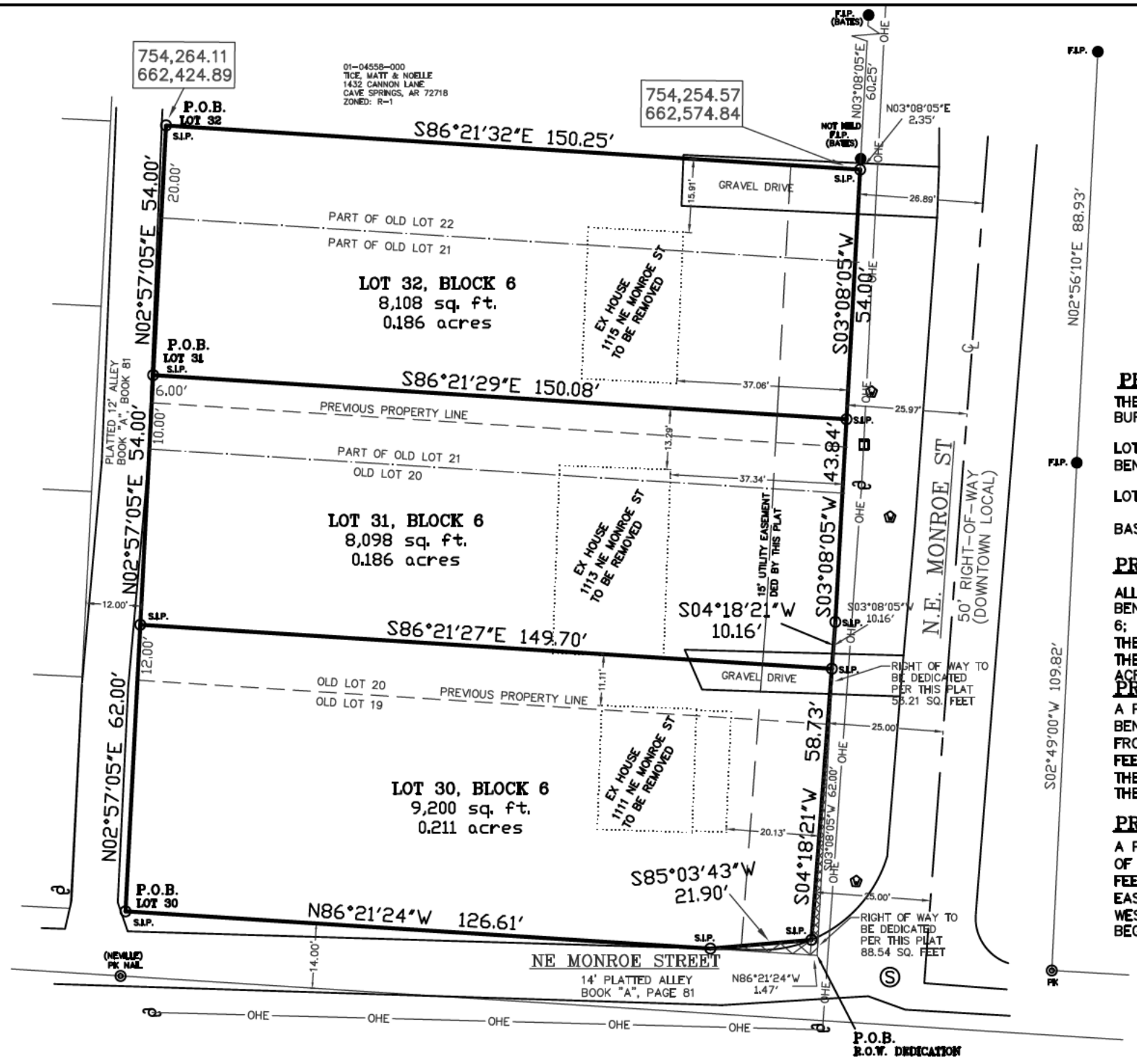
1. SIDEWALKS SHALL BE THE RESPONSIBILITY OF THE BUILDER / OWNER AT THE TIME OF BUILDING PERMIT ISSUANCE.

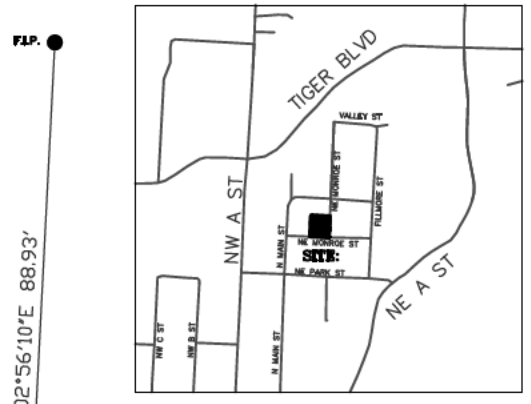
2. OWNER / DEVELOPER SHALL COORDINATE WITH ALL LOCAL UTILITIES TO INSURE THAT EACH LOT HAS WATER, SEWER AND ELECTRIC SERVICE.

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 CONTACT THE CITY OF BENTONVILLE ENGINEERING AND TRANSPORTATION DEPARTMENTS AND NOTIFY SAID DEPARTMENTS ON THE INTENT AND TYPE OF THE WORK THAT WILL TAKE PLACE WITH-IN THE RIGHT-OF-WAY.

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





VIC. MAP

PROPERTY DESCRIPTION (PARENT)

THE NORTH 40 FEET OF LOT 21 AND THE SOUTH 20 FEET OF LOT 22, IN BLOCK 6, IN W.A. BURKS ADDITION TO THE CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS.

LOT 20 AND THE SOUTH 10 FEET OF LOT 21, BLOCK 6, W.A. BURKS ADDITION TO THE CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS, AS SHOWN IN PLAT RECORD "A" AT PAGE 81.

LOT 19, BLOCK 6, W.A. BURKS ADDITION, BENTONVILLE, ARKANSAS

BASIS OF BEARING IS TIED INTO CITY OF BENTONVILLE MONUMENTATION (1 & 56).

PROPERTY DESCRIPTION (LOT 30)

ALL OF LOT 19, AND A PART OF LOT 20, BLOCK 6, W.A. BURKS ADDITION, TO THE CITY OF BENTONVILLE, BENTON COUNTY, BEGINNING AT THE SOUTHWEST CORNER OF THE LOT 19, BLOCK 6; THENCE NORTH 02°57'05" EAST 62.00 FEET; THENCE SOUTH 86°21'27" EAST 149.70 FEET; THENCE SOUTH 04°18'21" WEST 58.73 FEET; THENCE SOUTH 85°03'43" WEST 21.90 FEET; THENCE NORTH 86°21'24" WEST 126.61 FEET TO THE POINT OF BEGINNING, CONTAINING 0.211 ACRES MORE OR LESS.

PROPERTY DESCRIPTION (LOT 31)

A PART OF LOT 20, AND A PART OF LOT 21, BLOCK 6, W.A. BURKS ADDITION, TO THE CITY OF BENTONVILLE, BENTON COUNTY, BEGINNING AT A POINT, NORTH 02°57'05" EAST 16.00 FEET FROM THE SOUTHWEST CORNER OF LOT 21, BLOCK 6; THENCE SOUTH 86°21'29" EAST 150.08 FEET; THENCE SOUTH 03°08'05" WEST 43.84 FEET; THENCE SOUTH 04°18'21" WEST 10.16 FEET; THENCE NORTH 86°21'27" WEST 149.70 FEET; THENCE NORTH 02°57'05" EAST 54.00 FEET TO THE POINT OF BEGINNING, CONTAINING 0.186 ACRES MORE OR LESS.

PROPERTY DESCRIPTION (LOT 32)

A PART OF LOT 21, AND A PART OF LOT 22, BLOCK 6, W.A. BURKS ADDITION, TO THE CITY OF BENTONVILLE, BENTON COUNTY, BEGINNING AT A POINT, NORTH 02°57'05" EAST 20.00 FEET FROM THE SOUTHWEST CORNER OF OLD LOT 22, BLOCK 6; THENCE SOUTH 86°21'32" EAST 150.25 FEET; THENCE SOUTH 03°08'05" WEST 54.00 FEET; THENCE NORTH 86°21'29" WEST 150.08 FEET; THENCE NORTH 02°57'05" EAST 54.00 FEET TO THE POINT OF BEGINNING, CONTAINING 0.186 ACRES MORE OR LESS.

RIGHT-OF-WAY DEDICATION

A PART OF LOTS 19 AND 20, BLOCK 6, W.A. BURKS ADDITION, TO THE CITY OF BENTONVILLE, BENTON COUNTY, BEGINNING AT THE SOUTH EAST CORNER OF LOT 19, BLOCK 6; THENCE NORTH 86°21'24" WEST 1.47 FEET; THENCE NORTH 04°18'21" EAST 72.16 FEET; THENCE SOUTH 03°08'05" WEST 72.16 FEET TO THE POINT OF BEGINNING, CONTAINING 53.21 SQUARE FEET.

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

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: _____

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

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

CERTIFICATE OF APPROVAL

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

DATE OF EXECUTION: _____

SIGNED: _____
MAYOR

_____
CITY CLERK

_____
PLANNING COMMISSION CHAIRMAN

SURVEYOR NOTES:

1. PARENT DEEDS FILED IN DEED RECORD 2015-54672 & L2020-00997 & 2001-154535

2. PROPERTIES ARE COUNTY TAX PARCEL #01-04555-000 & 01-04556-000 & 01-04557-000

3. THE CURRENT ZONING AT TIME OF SUBMITTAL FOR THE PROPERTY IS 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. ALL EASEMENTS AVAILABLE TO THE SURVEYOR ARE SHOWN, TO FIND ANY/ALL EASEMENTS OF RECORD A TITLE SEARCH IS REQUIRED.

PROP. LINE ADJUSTMENT OF LOT 19-21 & PART OF LOT 22, BLOCK 6, W A BURK'S ADDITION, CREATING LOTS 30-32, BLOCK 6 BENTONVILLE, ARKANSAS

OWNER CONTACT INFO:
THOMAS & JUDITH TERRELL
PO BOX 390
BENTONVILLE, ARKANSAS 72712

REVISIONS		
No.:	BY:	DATE:
#1	C.O.B.	9/20/21

273-7989 OR 366-7989
DAVID B. PLATZ
LAND SURVEYOR
P.O. BOX 223
BENTONVILLE, AR 72712

DRAWN BY: DP/ZS	DATE: 8/28/21
CHECKED BY:	JOB No.: 2021431
SCALE: 1"=30'	SHEET: 1

ATLAS PAGE 361

BENTONVILLE PROJECT #: PLA21-0033

ORDINANCE NO. _____

AN ORDINANCE ACCEPTING A PROPERTY LINE ADJUSTMENT OF LOTS 30, 31 & 32, BLOCK 6, W.A. BURK'S ADDITION TO THE CITY OF BENTONVILLE, ARKANSAS (PROJECT NUMBER: PLA21-0033).

WHEREAS, pursuant to the provisions of the Land Development Code of the Bentonville Municipal Code, the property line adjustment of Lots 30, 31 & 32, Block 6, W.A. Burk's Addition of the City of Bentonville, Benton County, Arkansas was submitted to the Bentonville Planning Commission on October 5, 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 30, 31 & 32, Block 6, W.A. Burk's Additionto 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.

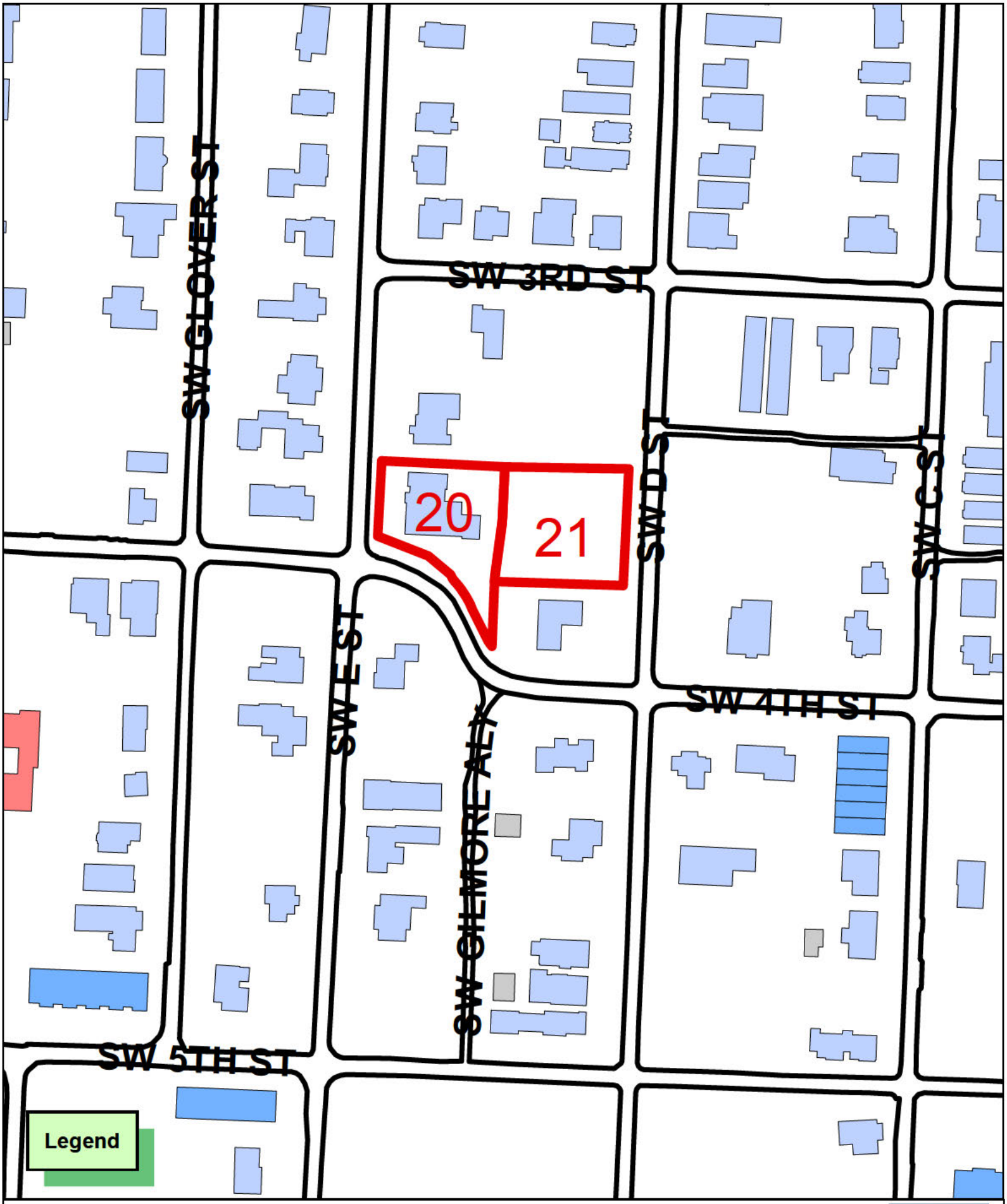
APPROVED:

_____

ATTEST: **Stephanie Orman, Mayor**

_____

Kirby Romines, City Clerk



N
W E
S

1 inch = 150 feet

PLA21-0034
PROPERTY LINE ADJUSTMENT
LOT 13 & 15 BLOCK 5 CREATING LOTS 20-21

THE CITY OF BENTONVILLE

SCALE 1"=40'

40 20 0 40

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.

CITY REQUIRED NOTES:

4. BEFORE ANY WORK IN THE RIGHT-OF-WAY COMMENCES, CONTRACTOR AND OR OWNER IS TO CONTACT THE CITY OF BENTONVILLE ENGINEERING AND TRANSPORTATION DEPARTMENTS AND NOTIFY SAID DEPARTMENTS ON THE INTENT AND TYPE OF THE WORK THAT WILL TAKE PLACE WITH-IN THE RIGHT-OF-WAY.

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

6. THE PORTION OF 408 N.W. C. STREET HOME IS UNDER CONSTRUCTION AND DOES NOT SHOW UP ON THE AERIAL IMAGERY AS OF THE DATE OF THIS PLAT.

SURVEYOR NOTES:

1. PARENT DEEDS FILED IN DEED RECORD L2020 AT PAGE 05316 & BOOK 2015 AT PAGE 74215.

2. PROPERTIES ARE COUNTY TAX PARCEL #01-01771-000 & 01-01772-000.

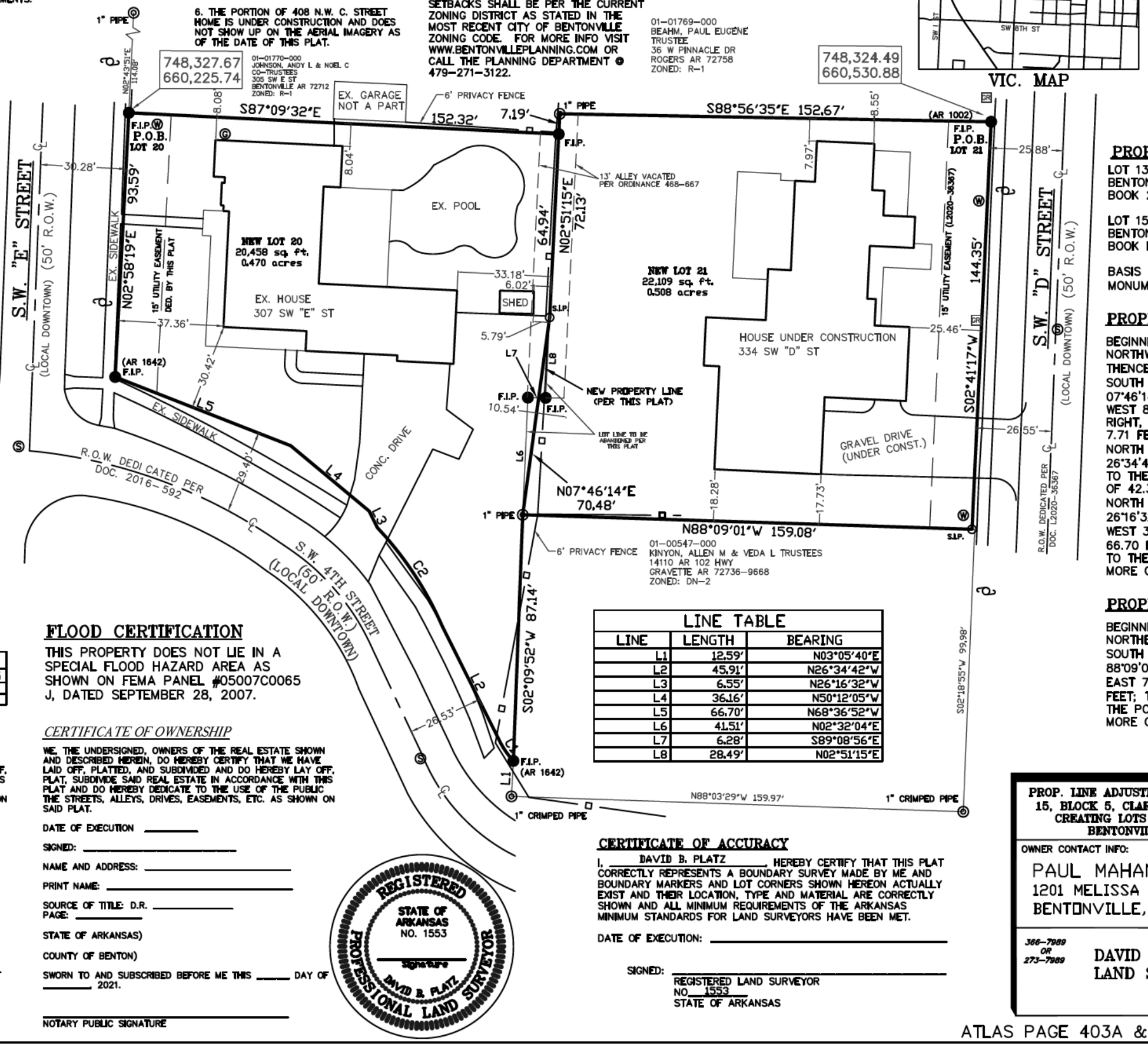
3. THE CURRENT ZONING FOR THE PROPERTY IS RESIDENTIAL (R-1). SETBACKS SHALL BE PER THE CURRENT ZONING DISTRICT AS STATED IN THE MOST RECENT CITY OF BENTONVILLE ZONING CODE. FOR MORE INFO VISIT WWW.BENTONVILLEPLANNING.COM OR CALL THE PLANNING DEPARTMENT @ 479-271-3122.

SURVEYOR NOTES:

4. ALL EASEMENTS AVAILABLE TO THE SURVEYOR ARE SHOWN. TO FIND ANY/ALL EASEMENTS OF RECORD A TITLE SEARCH IS REQUIRED.



VIC. MAP



LEGEND

- S.I.P. SET IRON PIN
- PIPE FOUND PIPE
- F.I.P. FOUND IRON PIN
- PROPERTY LINE
- CENTERLINE
- FENCE
- UTILITY EASEMENT
- POWER POLE
- SEWER MANHOLE
- GAS METER
- WATER METER
- CABLE
- GAS RISER

CURVE TABLE				
CURVE	LENGTH	RADIUS	CHORD	CHORD BEARING
C1	7.71'	28.50'	7.69'	N35°39'02"W
C2	42.34'	120.41'	42.12'	N33°17'46"W

LINE TABLE		
LINE	LENGTH	BEARING
L1	12.59'	N03°05'40"E
L2	45.91'	N26°34'42"W
L3	6.55'	N26°16'32"W
L4	36.16'	N50°12'05"W
L5	66.70'	N68°36'52"W
L6	41.51'	N02°32'04"E
L7	6.28'	S89°08'56"E
L8	28.49'	N02°51'15"E

PROPERTY DESCRIPTION (PARENT)

LOT 13, BLOCK 5 OF CLARKS SECOND ADDITION, BENTONVILLE, BENTON COUNTY, ARKANSAS, AS SHOWN IN BOOK 2016, PAGE 592

LOT 15, BLOCK 5 OF CLARKS SECOND ADDITION, BENTONVILLE, BENTON COUNTY, ARKANSAS AS SHOWN IN BOOK L2020, PAGE 36367.

BASIS OF BEARING IS TIED INTO CITY OF BENTONVILLE MONUMENTATION (1 & 56).

PROPERTY DESCRIPTION (LOT 20)

BEGINNING AT AN EXISTING FOUND IRON PIN ON THE NORTHWEST CORNER OF SAID LOT 20, BLOCK 5, THENCE SOUTH 87°09'32" EAST 152.32 FEET; THENCE SOUTH 02°51'15" WEST 64.94 FEET; THENCE SOUTH 07°46'14" WEST 70.48 FEET; THENCE SOUTH 02°09'52" WEST 87.14 FEET; THENCE ALONG A CURVE TO THE RIGHT, A RADIUS OF 28.50 FEET, WITH A LENGTH OF 7.71 FEET, WITH A CHORD BEARING AND DISTANCE, NORTH 35°39'02" WEST 7.69 FEET; THENCE NORTH 26°34'42" WEST 45.91 FEET; THENCE ALONG A CURVE TO THE LEFT WITH A RADIUS OF 120.41 FEET, LENGTH OF 42.34 FEET, WITH A CHORD BEARING AND DISTANCE, NORTH 33°17'46" WEST 42.12 FEET; THENCE NORTH 26°16'32" WEST 6.55 FEET; THENCE NORTH 50°12'05" WEST 36.16 FEET; THENCE NORTH 68°36'25" WEST 66.70 FEET; THENCE NORTH 02°58'19" EAST 93.59 FEET TO THE POINT OF BEGINNING, CONTAINING 0.470 ACRES MORE OR LESS.

PROPERTY DESCRIPTION (LOT 21)

BEGINNING AT AN EXISTING FOUND IRON PIN ON THE NORTHEAST CORNER OF SAID LOT 21, BLOCK 5, THENCE SOUTH 02°41'17" WEST 144.35 FEET; THENCE NORTH 88°09'01" WEST 159.08 FEET; THENCE NORTH 07°46'14" EAST 70.48 FEET; THENCE NORTH 02°51'15" EAST 72.13 FEET; THENCE SOUTH 88°56'35" EAST 152.67 FEET TO THE POINT OF BEGINNING, CONTAINING 0.508 ACRES MORE OR LESS.

CERTIFICATE OF APPROVAL

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

DATE OF EXECUTION: _____

SIGNED: _____

MAYOR

_____

CITY CLERK

_____

PLANNING COMMISSION CHAIRMAN

FLOOD CERTIFICATION

THIS PROPERTY DOES NOT LIE IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FEMA PANEL #05007C0065 J, DATED SEPTEMBER 28, 2007.

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: _____

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 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: _____

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

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

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

PROP. LINE ADJUSTMENT OF LOT 13 & LOT 15, BLOCK 5, CLARK'S SECOND ADDITION, CREATING LOTS 20 & 21, BLOCK 5 BENTONVILLE, ARKANSAS

REVISIONS		
No.:	BY:	DATE:
#1	COB	9/20/21

OWNER CONTACT INFO:
PAUL MAHAN
1201 MELISSA DR
BENTONVILLE, ARKANSAS 72712

366-7989
OR
273-7989

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

DRAWN BY: DP/ZS	DATE: 8/28/21
CHECKED BY:	JOB No.: 2021430
SCALE: 1"=40'	SHEET: 1

ATLAS PAGE 403A & 403B BENTONVILLE PROJECT #: PLA21-0034

ORDINANCE NO. _____

AN ORDINANCE ACCEPTING A PROPERTY LINE ADJUSTMENT OF LOTS 20 & 21, BLOCK 5 CLARK'S SECOND ADDITION TO THE CITY OF BENTONVILLE, ARKANSAS (PROJECT NUMBER: PLA21-0034).

WHEREAS, pursuant to the provisions of the Land Development Code of the Bentonville Municipal Code, the property line adjustment of Lots 20 & 21, Block 5 Clark's Second Addition of the City of Bentonville, Benton County, Arkansas was submitted to the Bentonville Planning Commission on October 5, 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 20 & 21, Block 5 Clark's Second Additionto 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



FP21-0005
FINAL PLAT
AURORA SUBDIVISION PHASE 2

Final Plat of Aurora Subdivision, Phase 2

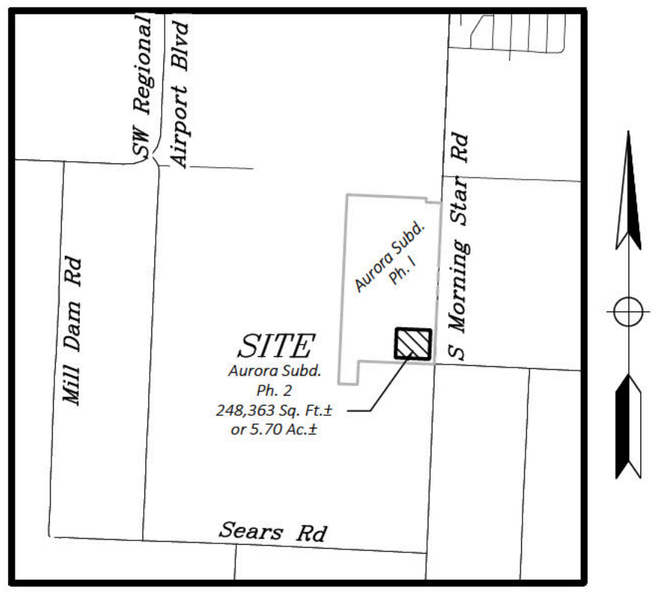
being a Replat of Lot 228, Aurora Sudivision, Phase I

Bentonville, Benton County, Arkansas

REVISION		
NO.	DESCRIPTION	DATE
1	City Comments	09/10/2021

NOTES:

1. *Every document of record reviewed and considered as a part of this survey is noted hereon. Only the documents noted hereon were supplied to the surveyor.*
2. *This plat represents a Final Plat of Aurora Subdivision, Phase I as recorded in Record Plat in the public records of Benton County, Arkansas.*
3. *The contractor must determine that proposed structures are clear of all boundary lines, easements, and meet building setback requirements before construction begins.*
4. *Basis of Bearings: NAD83, State Plane Coordinate System, AR North Zone based on GPS observations using OPUS.*
5. *This survey is valid only if the drawing includes the seal and signature of the surveyor.*
6. *This survey meets current "Arkansas Standards of Practice for Property Boundary Surveys and Plats."*
7. *This survey is based on a 50 Year Search, Invoice #17-34618-007 supplied by Elite Title Company, and dated July 18, 2017,*
8. *No attempt was made to show zone building setback lines graphically on the survey. The assignment, vacation, or orientation of setbacks that impact the usage rights of the property are determined by the local governing jurisdictional agency. Setback dimensions will be based on the orientation of the building(s) to be constructed as approved.*
9. *By scaled map location and graphical plotting only. This property is located in Zone "X" which are areas determined to be outside the 0.2% annual chance floodplain determined by the National Flood Insurance Program, Flood Insurance Rate Map for Benton County, Arkansas.*
   Map Number: 05007C0245K
   Map Revised: June 5, 2012
10. *Subsurface and environmental conditions were not examined nor considered a part of this survey.*
11. *Underground utilities were located by visible above ground markings as marked by utility locators and shown hereon as located by CEI Engineering Associates, Inc. survey field crews. All utility locations shown hereon are approximate. All utilities may not have been marked/located by the appropriate locators. No excavation has taken place as of this date to determine the exact location of existing underground utilities shown on this survey.*
12. *Arkansas State Law. The Underground Facilities Damage Act, requires two working days advance notification through the Arkansas One-Call System Center before excavating using mechanized equipment or explosives (except in the case of an emergency). The One-Call System Telephone Number is 1-800-482-8998. The contractor is advised that there is a severe penalty for not making this call. Not all utility companies are members of the Arkansas One-Call Systems. Therefore the contractor is advised to contact all non-members as well as the One-Call System.*
13. *Current zoning PRD (Planned Residential Development District) was approved by City Council on 2-13-18.*
14. *At the time of survey there was no evidence of wetland areas delineated by "Wetlands Mapping Services" published by U.S. Fish and Wildlife Service, Division of Habitat and Resource Conservation.*
15. *Surveyor is not aware of a septic system being used on the subdivision.*
16. *Owners/Developers shall coordinate with local utilities to insure that each lot has water, sewer and electric service*
17. *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.*
18. *Sidewalks shall be the responsibility of the builder/owner at time of building permit issuance.*
19. *There may not be fences or any other structures built in any drainage easements.*
20. *Lot 29, including all landscape areas, private drives, and private streets is common area to be used for access, recreation, and private utilities, serving all lots within the subdivision.*



Vicinity Map

Not to Scale

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

SURVEY DESCRIPTION:

Lot 228 of Aurora Subdivision to the City of Bentonville as recorded in Document No. L202165615, of the public records of Benton County, Arkansas and being described more particularly by metes and bounds as follows:

BEGINNING at a found 5/8" rebar with cap stamped LS 1666 at the Northeast corner of said Lot 228 on the west right-of-way line of S. Morningstar Rd.

THENCE with said west right-of-way line, South 02°21'11" West, 446.99 feet to a found 5/8" rebar with cap stamped with LS 1666;

THENCE along a curve to the right, with a length of 20.43 feet, having a radius of 13.00 feet, through a central angle of 90°03'04", and having a chord with bears South 47°22'43" West, 18.39 feet to a found 5/8" rebar with cap stamped LS 1666 on the north right-of-way line of SW Scoggins Rd. per Doc. #L202165615;

THENCE with said north right-of-way line, North 87°35'45" West, 527.19 feet to a found 5/8" rebar with cap stamped LS 1666 at the Southwest corner of said Lot 228;

THENCE with the common line of said Lot 228 and Lot 227 of said Doc. No. L202165615, North 02°24'15" East, 460.00 feet to a found 5/8" rebar with cap stamped LS 1666;

THENCE continuing with said common line, South 87°35'45" East, 539.79 feet to the POINT OF BEGINNING and containing 248,363 square feet or 5.70 acres, more or less.

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 : _____
Signature

Signed : _____
Print Name

Source of Title: *Deed Bk. L201944883*

City of Bentonville
3200 SW Municipal Drive
Bentonville, AR 72712
Street Dept.: Tony Davis
(479) 271-3130
Water Dept.: Beau Thompson
(479) 271-3140
Electric Dept.: Charlie Barnes
(479) 271-2159
City Engineer: Dan Weese
(479) 271-5993
Stormwater: Janet Paith
(479) 271-5002

City of Bentonville
305 SW A Street
Bentonville, AR
Planning Dept.: Ellen Norvell
(479) 271-3122
Building & Fire Safety: Jake Feemster
(479) 271-3108

Fire Dept. (City of Bentonville):
Brent Boydston, Fire Chief
800 SW A Street
Bentonville, AR 72712
(479) 271-5927

City of Bentonville
1901 NE A Street
Bentonville, AR
Wastewater Dept.: Nancy Busen
(479) 271-3160

Black Hills Energy:
Josh Knight
1301 Federal Way
PO Box 2129, Lowell, AR 72745
(479) 333-7005
Joshua.knight@blackhillscorp.com

AT&T:
Brent Baldwin,
1133 East Harold St.
Fayetteville, AR 72703
Office: (479) 571-6609
Cell: (479) 200-9022

Cox Communications:
Kip Smith
4901 S. 48th Street
Springdale, AR 72762
(479) 717-3796
kip.smith@cox.com

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

CERTIFICATE OF AUTHORIZATION
CEI Engineering Associates, Inc. No. 118
ARKANSAS ENGINEER

Certificate of Surveying Accuracy:

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

Date of Execution: _____

_____
Registered Land Surveyor
State of Arkansas
Registration No. 1666

Zone Setback Table						
Zone	Garage	Front	Interior Side	Exterior Side	Rear	Lot #
Zone 2	0'	0'	0' & 10'	20'	0'	1 - 29

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

Parking and Off-Street Loading:

Parking and off-street loading. All uses established with a PRD shall comply with the off-street parking and loading requirements as established Art. 501 Off-street Parking and Loading of the Zoning Code and the following additional requirements.

a. *Two (2) off-street parking spaces must be provided of each residential unit, such as a driveway, carport, garage, etc.*
b. *Guest parking spaces may be uncovered and shall be so located as to be accessible to visitors and guests.*
c. *The required parking spaces, garages, or carports, or any portions thereof, may be grouped when it is determined by the planning commission that such grouping and the locations thereon with be accessible and useful in connection with the proposed dwelling unit in the development.*

Owners/Developer:

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

Sheet Index

Sheet 1	***Cover / Notes / Signatures***
Sheet 2	***Final Plat, Phase 2***
Sheet 3	***Curve Tables / Legend / Overall Detail***

City of Bentonville Project # FP21-0005

ATLAS PAGE: 565

State Survey Code: 500-19N-31W-0-23-420-04-1666

CIVIL ENGINEERING ▪ LANDSCAPE ARCHITECTURE ▪ LAND SURVEYING ▪ PLANNING

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

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CEI Solutions for Land and Life

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

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

Final Plat of Aurora Subdivision, Phase 2
being a Replat of Lot 228, Aurora Sudivision, Phase I
Bentonville, Benton County, Arkansas

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

PROFESSIONAL OF RECORD	JKB
DESIGNER	TLP
FIELD WORK	JF
CEI PROJECT NUMBER	30234
DATE	9/17/2021
REVISION	REV-1

Cover Sheet
SHEET TITLE

SHEET NUMBER
1 OF 3

DRAWING LOCATION - S:\30000\30234\DRAWINGS\SURVEY\30234 FINAL PLAT - PH. II_WORKING\30234FP-PH 2.DWG -- SAVED BY - TPRIVETT

Aurora Subdivision, Phase I
Per Doc. # L202165615

SW AWAKENING AVE.
(PRIVATE RD)

SW HARMONY WAY
(PRIVATE RD.)

S. MORNINGSTAR RD.
(90' R/W - ARTERIAL RD)

SW SCOGGINS RD.
(52' R/W per Doc. # L202165615 - Local Rd)

P.O.B.
5/8" REBAR
LS1666
N:726561.62'
E:649321.14'

5/8" REBAR LS1666
N:726124.67'
E:648762.53'

SE Corner
SE1/4, NW1/4
T-19-N, R-31-W
CPF

Convergence -1°18'43"
Combined Scale Factor: 0.9999605503
At a Found Railroad Spike at the
SW corner of the SE1/4 of the NW1/4
of Section 23, T-19-N, R-31-W

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

SCALE IN FEET 0 40' 60' 80'

Lot	Address	Area	Ac.
LOT 1	6711	4,121 Sq. Ft.±	0.09 Ac.±
LOT 2	6713	4,123 Sq. Ft.±	0.09 Ac.±
LOT 3	6801	4,123 Sq. Ft.±	0.09 Ac.±
LOT 4	6803	4,123 Sq. Ft.±	0.09 Ac.±
LOT 5	6805	4,123 Sq. Ft.±	0.09 Ac.±
LOT 6	6807	4,123 Sq. Ft.±	0.09 Ac.±
LOT 7	6809	4,123 Sq. Ft.±	0.09 Ac.±
LOT 8	6811	4,242 Sq. Ft.±	0.10 Ac.±
LOT 9	3508	4,250 Sq. Ft.±	0.10 Ac.±
LOT 10	3400	4,250 Sq. Ft.±	0.10 Ac.±
LOT 11	3402	4,286 Sq. Ft.±	0.10 Ac.±
LOT 12	3404	4,080 Sq. Ft.±	0.09 Ac.±
LOT 13	3406	4,080 Sq. Ft.±	0.09 Ac.±
LOT 14	3500	4,080 Sq. Ft.±	0.09 Ac.±
LOT 15	3502	4,080 Sq. Ft.±	0.09 Ac.±
LOT 16	3504	4,080 Sq. Ft.±	0.09 Ac.±
LOT 17	3506	4,287 Sq. Ft.±	0.10 Ac.±
LOT 18	3507	4,140 Sq. Ft.±	0.10 Ac.±
LOT 19	3505	4,080 Sq. Ft.±	0.09 Ac.±
LOT 20	3503	4,080 Sq. Ft.±	0.09 Ac.±
LOT 21	3501	4,080 Sq. Ft.±	0.09 Ac.±
LOT 22	3409	4,080 Sq. Ft.±	0.09 Ac.±
LOT 23	3407	4,080 Sq. Ft.±	0.09 Ac.±
LOT 24	3405	4,140 Sq. Ft.±	0.10 Ac.±
LOT 25	3403	4,250 Sq. Ft.±	0.10 Ac.±
LOT 26	3401	4,248 Sq. Ft.±	0.10 Ac.±
LOT 27	3511	4,248 Sq. Ft.±	0.10 Ac.±
LOT 28	3509	4,250 Sq. Ft.±	0.10 Ac.±
LOT 29		132,117 Sq. Ft.±	3.03 Ac.±

LOT 29 — FFE=1244.0' — Common Area

Parcel #01-08215-355
Aurora Development Company, LLC
Inst. No. L201944883
Zone: PRD

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

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

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

Common Area
Pond / Drainage Easement
Per Doc. # L202165615

20' Drainage Esmt
Per Doc. # L202165615

20' Utility Esmt
Per Doc. # L202165615

Utility Esmt
Per Doc. # L201921392

Sidewalks to be Constructed by Developer

AURORA SUBD. PH.I LOT 228 Per Doc.# L202165615

100-Year WSE=1234.25'

Note:
Lot 29, including all landscape areas, private drives, and private streets is common area to be used for access, recreation, and private utilities, serving all lots within the subdivision.

LEGEND
- Boundary Line
- Lot/Deed Line
- Adjoining Boundary Line
- Easement Line
- Centerline
- Section Line
- Proposed Boundary Corner to be set with 5/8" Rebar w/Cap #1666
- Found Rebar (As Noted)
- Found Cotton Picker Spindle
- Found Railroad Spike
- XXXX Lot Addresses

City of Bentonville Project # FP21-0005

ATLAS PAGE: 565

State Survey Code: 500-19N-31W-0-23-420-04-1666

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

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

REVISION

NO.	DESCRIPTION	DATE
1	City Comments	09/10/2021

CERTIFICATE OF AUTHORIZATION
CEI Engineering Associates, Inc. No. 118
ARKANSAS ENGINEER

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

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

CEI Solutions for Land and Life

Final Plat of Aurora Subdivision, Phase 2

being a Replat of Lot 228, Aurora Sudivision, Phase I
Bentonville, Benton County, Arkansas

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

PROFESSIONAL OF RECORD	JKB
DESIGNER	TLP
FIELD WORK	JF
CEI PROJECT NUMBER	30234
DATE	9/17/2021
REVISION	REV-1

Final Plat, Phase 2
SHEET TITLE

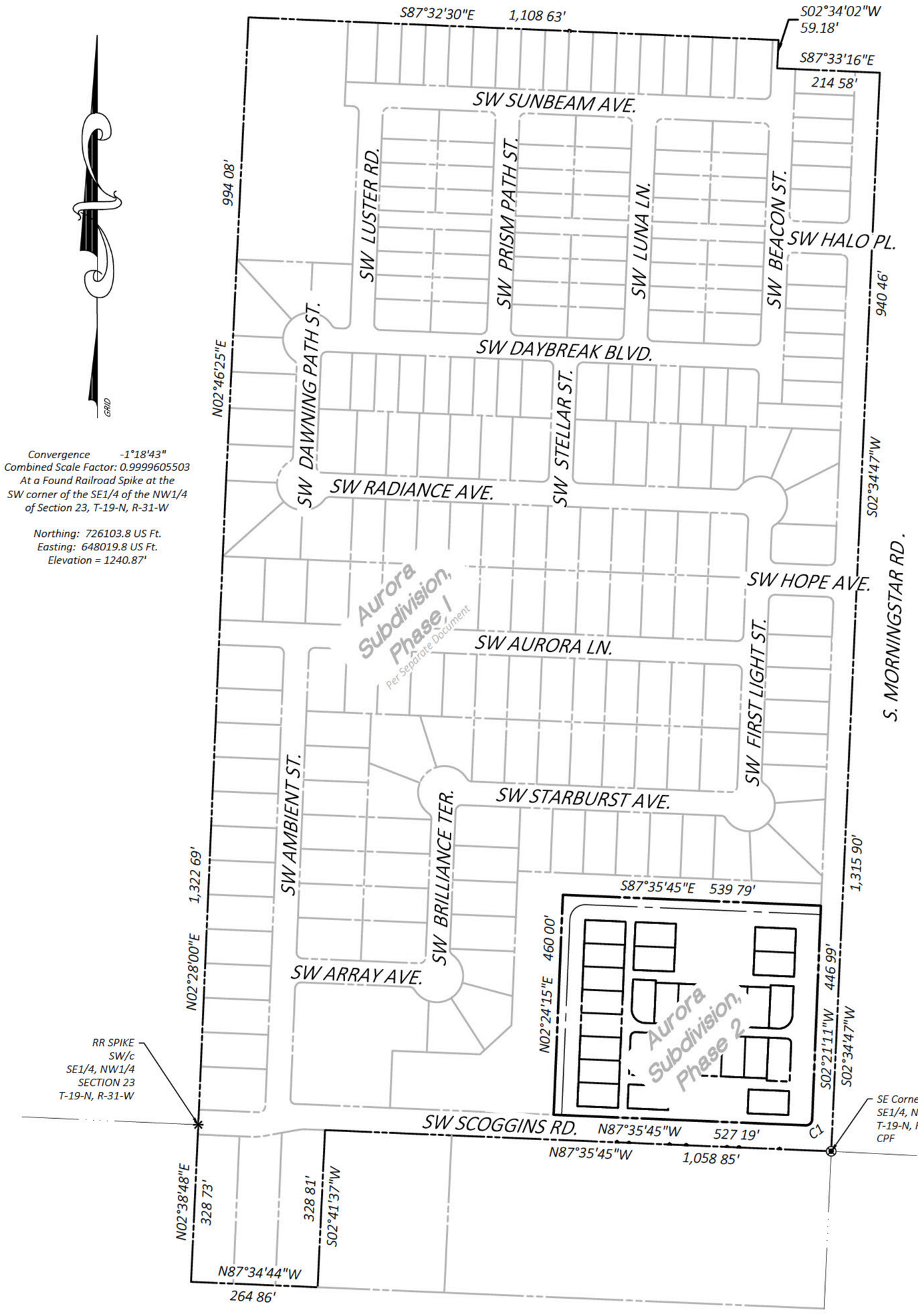
SHEET NUMBER
2 OF 3

DRAWING LOCATION - S:\30000\30234\DRAWINGS\SURVEY\30234 FINAL PLAT - PH. II_WORKING\30234FP-PH 2.DWG -- SAVED BY - TPRIVETT

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Convergence -1°18'43"
Combined Scale Factor: 0.9999605503
At a Found Railroad Spike at the
SW corner of the SE1/4 of the NW1/4
of Section 23, T-19-N, R-31-W

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



Overall Detail
Scale: 1" = 200'

LEGEND

- Boundary Line
- Lot/Deed Line
- Adjoining Boundary Line
- Easement Line
- Centerline
- Section Line
- Proposed Boundary Corner to be set with 5/8" Rebar w/Cap #1666
- Found Rebar (As Noted)
- Found Cotton Picker Spindle
- Found Railroad Spike
- XXXX Lot Addresses
- Existing 20' Drainage Easement per Record Plat
- Existing 20' Utility Easement per Record Plat Unless otherwise dimensioned
- Existing Common Area / Pond / Drainage Easement per Record Plat
- Existing Utility Easement per Doc. No. L201921392

REVISION

NO.	DESCRIPTION	DATE
1	City Comments	09/10/2021

Property Curve Table

Curve #	Radius	Length	Delta	Chord Bearing	Chord Distance
C1	13.00'	20.43'	90°03'04"	S47°22'43"W	18.39'
C2	20.00'	6.09'	17°27'27"	S6°19'29"E	6.07'
C3	20.00'	6.09'	17°27'27"	S11°07'58"W	6.07'
C4	28.00'	43.98'	90°00'00"	S42°35'45"E	39.60'
C5	10.00'	15.71'	89°59'44"	N47°24'23"E	14.14'
C6	9.98'	15.70'	90°07'47"	N42°39'39"W	14.13'
C7	28.00'	43.98'	90°00'00"	N47°24'15"E	39.60'
C8	20.00'	6.09'	17°27'27"	S6°19'29"E	6.07'

Centerline Curve Table

Curve #	Radius	Length	Delta	Chord Bearing	Chord Distance
CL9	32.00'	50.27'	90°00'00"	S47°24'15"W'	45.25'

CERTIFICATE OF AUTHORIZATION
CEI Engineering Associates, Inc. No. 118
ARKANSAS ENGINEER

Note:
Lot 29, including all landscape areas, private drives, and private streets is common area to be used for access, recreation, and private utilities, serving all lots within the subdivision.

City of Bentonville Project # FP21-0005

ATLAS PAGE: 565

State Survey Code: 500-19N-31W-0-23-420-04-1666

CEI Solutions for Land and Life

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

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

Final Plat of Aurora Subdivision, Phase 2

being a Replat of Lot 228, Aurora Sudivision, Phase I
Bentonville, Benton County, Arkansas

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

PROFESSIONAL OF RECORD	JKB
DESIGNER	TLP
FIELD WORK	JF
CEI PROJECT NUMBER	30234
DATE	9/17/2021
REVISION	REV-1

Description, Curve Table & Legend
SHEET TITLE

SHEET NUMBER
3 OF 3

© 2021 CEI ENGINEERING ASSOCIATES, INC.

DRAWING LOCATION - S:\30000\30234\DRAWINGS SURVEY\30234 FINAL PLAT - PH. II_WORKING\30234FP-PH 2.DWG -- SAVED BY - TPRIVETT

ORDINANCE NO._____

AN ORDINANCE ACCEPTING A FINAL PLAT OF AURORA SUBDIVISION PHASE II TO THE CITY OF BENTONVILLE, ARKANSAS (PROJECT NUMBER: FP21-0005).

WHEREAS, pursuant to the provisions of the Land Development Code of the Bentonville Municipal Code, the final plat of Aurora Subdivision Phase II**,** to the City of Bentonville, Benton County, Arkansas, was submitted to the Bentonville Planning Commission on October 5, 2021; and,

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

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

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

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

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

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

PASSED AND APPROVED this_____ day of _____, 2021.

APPROVED:

_____

Stephanie Orman, Mayor

ATTEST:

_____

Kirby Romines, City Clerk

Amendments to Tree & Landscape Advisory Committee

PC Date: 10/5/2021
Reviewer: Shelli Kerr, AICP, Comprehensive Planning Mngr

Type	Amendment
Code Impacted	Subdivision Code
Section(s)	Sec. 1300.04 Establishment of a Tree and Landscape Advisory Committee

History

The Tree and Landscape Advisory Committee was establish in 1998 with Ordinance No. 98-90. Membership was to include five people, two professionally trained in a related field. The membership was adjusted from 5 to 6 in 2020 with Ord. No. 2020-156.

Issues

We recently advertised and conducted interviews for the additional position added in 2020. In doing so, we referenced the adopting ordinance and the bylaws to determine membership and terms and found several items that should be updated.

1. **Increase membership from 6 to 7.**
   - Committee voting works better with an odd number.
   - More members provides more volunteers for tree giveaways.
   - As we expand efforts for tree preservation and education, we need more members to be available to work on these components.

2. **Clarify that there are no term limits.**
   - The current regulations do not identify how many terms a member can serve.
   - Staff suggests to clearly state that there are no term limits, but that the member must request in writing to be considered for reappointment.

3. **Remove from Duties:** ***Pursue the establishment of a comprehensive Bentonville Street Tree Plan.***
   - The Street Tree Master Plan was adopted in 2012 but has since been eliminated.

4. **Add to Duties:** ***Organize and manage Tree Giveaways.***
   - Members are currently asked to volunteer for these and staff is coordinating as part of the Tree & Landscape Advisory Committee responsibilities.

5. **Identify which departments provide staff support.**
   - The Planning Department provides support to the committee, including agenda prep, minutes prep, coordinating tree giveaways and landscape awards. The Parks Department is advising on horticultural and landscaping issues and participating in the tree giveaways.

6. Adjust current terms so all terms run with the calendar year.

- This adjustment streamlines the process of advertising, accepting applications, and making appointments. Advertising would begin in October, interview in November, and appointments made at the first meeting in December.
- It also ensures that no more than three positions expire in one year, in accordance with Sec. 1300.04(b).

Position	Member	Term No.	Term Begins	Term Expires	Proposed Expiration	Change
1	Jessie Wagner	1	08/12/2020	8/12/2023	12/31/2023	+4 months
2	Gulizar Baggson	1	08/12/2020	8/12/2023	12/31/2023	+4 months
3	David Short	2	05/23/2020	5/23/2022	12/31/2022	-5 months
4	Nathan Lembke	2	07/25/2020	7/25/2023	12/31/2023	+5 months
5	Ralph Weber	2	01/01/2019	12/31/2021	12/31/2021	No change
6	Vacant	n/a	01/01/2022	n/a	12/31/2024	New 3 yr term
7	Vacant	n/a	01/01/2022	n/a	12/31/2024	New 3 yr term

ORDINANCE NO. _____

AN ORDINANCE AMENDING BENTONVILLE MUNICIPAL CODE APPENDIX B LAND DEVELOPMENT CODE, SEC 1300.04 ESTABLISHMENT OF A TREE AND LANDSCAPE ADVISORY COMMITTEE.

WHEREAS, the Tree and Landscape Advisory Committee was established in 1998 with Ord. No. 98-90, amended in 2020 with Ord. No. 2020-156; and

WHEREAS, additional amendments are needed to clarify term limits and membership.

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

Section 1. That Bentonville Municipal Code, *Appendix B Land Development Code* should be and the same is hereby amended with the following *Attachment A: Tree and Landscape Advisory Committee Amendments*, an electronic copy and paper copy of which is on file with the City Clerk, is hereby referred to, adopted and made a part hereof as though it were copied herein fully.

Section 2. For compliance with *Sec. 1300.04 (b) Terms* that requires terms of office be alternated so that a maximum of three appointments expire in one year, the position and terms are amended as follows:

Position	Term Expires	Position	Term Expires
1	12/31/2023	5	12/31/2021
2	12/31/2023	6	12/31/2024
3	12/31/2022	7	12/31/2024
4	12/31/2023		

Section 3.That this ordinance shall be in full force and effect 30 days from the date of its passage and approval.

PASSED and APPROVED this _____ day of _____, 2021.

APPROVED:

_____
Mayor Stephanie Orman

ATTEST:

_____
City Clerk

Attachment A

Tree and Landscape Advisory Committee Amendment

Sec 1300.04 Establishment Of A Tree And Landscape Advisory Committee

(a) *Membership*.

(1) There shall be created a committee to be known and designated as the "Tree and Landscape Advisory Committee", composed of citizens of the City of Bentonville.

(2) The Tree and Landscape Advisory Committee shall consist of ~~Six~~ Seven(~~6~~7) ~~of said~~ members ~~shall be~~ appointed by the Mayor and approved by City Council. The ~~appointees~~members shall consist of at least~~:~~ three (3) persons professionally trained in fields such as forestry, botany, horticulture, and/or landscape architecture; ~~and three (3) persons who are residents of the City of Bentonville~~.

(3) The Mayor shall appoint a City Council member as a non-voting ex-officio member.

(4) All appointed members shall serve without pay.

(b) *Terms*.

(1) The ~~five (5)~~ seven (7) ~~appointees~~ members shall serve a term of three (3) years, with terms of office to be alternated so that a maximum of three appointments expire in one year.

(2) Said members shall serve until their successors are duly appointed and approved by City Council.

(3) Vacancies shall be filled for the unexpired term in the same manner as original appointments are made.

(4) There are no term limits. However, members must request in writing to be considered for reappointment.

(c) *Jurisdiction and powers*.

(1) *Creation*. The Tree and Landscape Advisory Committee shall be created upon the adoption of this ordinance.

(2) *Officers*. The Committee shall elect from its membership, a chairperson, who shall serve a one-year term and shall be eligible for re-election to a subsequent term or terms. Additional officers may be elected and subcommittees established at the discretion of the Committee.

(3) *Rules*. The Committee shall adopt and amend rules to govern the conduct of its business, consistent with the provisions of the Arkansas Freedom of Information Act, Arkansas Code Ann. § 25-19-101.

(4) *Meetings*. The Committee shall hold regular meetings and may call special meetings if necessary to carry out its duties.

(d) *Duties*. The Tree and Landscape Advisory Committee, with the assistance of the Community Development Director, shall:

(1) Advise and consult the Community Development Director on issues pertaining to the Tree Preservation Ordinance and its enforcement.

(2) Organize and administer an ongoing program of public education designed to increase public awareness of trees, their needs and proper care.

(3) Assist in the dissemination of news and information regarding the protection, maintenance, removal, and planting of trees in the City of Bentonville.

(4) Monitor the needs of the City of Bentonville with regard to its tree planting and preservation program.

(5) ~~Pursue the establishment of a comprehensive Bentonville Street Tree Plan~~. Organize and manage Tree Giveaways.

(e) *Staff Support. The Planning Department and Parks and Recreation department shall serve as support to the Tree and Landscape Advisory Committee.*

Agenda Item Form

Date of City Council Meeting	**10/12/2021**
Department	**Planning**
Submitted by	**Shelli Kerr**
Phone	**(479)271-6822**

Item Type: (*Check Applicable Item Type)*

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

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

Reappointment of Ralph Weber to Position 5 on the Tree and Landscape Advisory Committee. Mr. Weber has been an active member of the committee for six years and his knowledge and experience have been a valuable asset. This will be Mr. Weber's third three-year term that begins January 1, 2022 and will expire on December 31, 2024. The Tree and Landscape Advisory Committee does not have term limits.

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 Members and City Clerk
From: Stephanie Orman, Mayor
CC date: October 12, 2021
RE: Re-appointment of Ralph Weber to the Tree and Landscape Advisory Committee

I recommend Ralph Weber for re-appointment to Position 5 on the Tree and Landscape Advisory Committee.

This will be Mr. Weber's third three-year term that begins January 1, 2022 and will expire on December 31, 2024. The Tree and Landscape Advisory Committee does not have term limits.

SO

Stephanie Orman

From:	Ralph Weber
To:	Shelli Kerr
Subject:	Re: Tree and Landscape membership
Date:	Wednesday, August 25, 2021 1:55:23 PM
Attachments:	image008.png image009.png

Hi Shelli.

If you'll have me, I'll serve another term. Thanks.

Ralph

On Wednesday, August 25, 2021, 01:49:34 PM CDT, Shelli Kerr <skerr@bentonvillear.com> wrote:

Hi Ralph,

We are working on preparing for upcoming expiration of terms and new appointments on the Tree and Landscape Advisory Committee. I show that your position expires at the end of this year (12/31/2021). Are you interested in serving another term? If so, we can request your reappointment.

Thanks,

Shelli

Shelli Kerr, AICP | Comprehensive Planning Manager | Neighborhoods Team

City of Bentonville, Arkansas

315 SW A Street, Bentonville, AR 72712 | 479.271.6822

Agenda Item Form

Date of City Council Meeting	**10/12/2021**
Department	**Planning**
Submitted by	**Shelli Kerr**
Phone	**(479)271-6822**

Item Type: (*Check Applicable Item Type)*

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

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

Appointment of Mark Bray to fill the vacant Position 6 on the Tree and Landscape Advisory Committee. Mr. Bray has a master's degree in horticulture and was a county extension agent for Benton County for seven years. This will be Mr. Bray's first three-year term that begins January 1, 2022 and will expire on December 31, 2024.

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 Members and City Clerk
From:	Stephanie Orman, Mayor
CC date:	October 12, 2021
RE:	**Appointment of Mark Bray to the Tree and Landscape Advisory Committee**

I recommend appointment of Mark Bray to fill the vacant Position 6 on the Tree and Landscape Advisory Committee.

This will be Mr. Bray's first three-year term that begins January 1, 2022 and will expire on December 31, 2024.

Stephanie Orman

Boards and Commissions Application Form

Applicant Information	
First Name	Mark
Last Name	Bray
Address	[redacted]
City	Bentonville
State	Arkansas
Zip Code	72712
Home / Cell Phone	[redacted]
Email Address	mark@airshipcoffee.com
Length of Bentonville Residency	15 years
Employer	Self
Occupation	coffee roasting, retail and distribution
Business Phone	479-387-1584

(Section Break)

References
Please provide 2 references

Name	Patti Irwin
Email Address	[redacted]
Address	NA
City	Fayetteville
State	AR
Zip Code	72701
Phone Number	[redacted]

Name	Chris Sooter
Email Address	[redacted]
Address	NA
City	Bentonville
State	AR
Zip Code	72712
Phone Number	[redacted]
Fax Number	*Field not completed.*

(Section Break)

Board Selection and Qualifications

Select all commissions and boards for which you would like to be considered:	Tree & Landscape Advisory Committee
1. What are your qualifications for serving on this commission or board, including education and subject matter expertise?	Masters degree in Horticulture, University of Arkansas 7 years as a County Extension Agent in Benton County, AR 2 years service on Parks Conservancy Board 5 years service on Peel Compton Foundation Board
2. Why would you like to be considered for appointment to this commission or board?	Trees are an important part of maintaining a sustainable community.
3. What do you hope to be able to contribute?	Expertise, knowledge, network.

(Section Break)

Qualifications for Serving

Please read the Qualifications for Serving provided below. These are the general qualifications to serve on any board or commission of the City of Bentonville.

I have read the above qualifications to serve on a city commission or board.	Yes

(Section Break)

Restrictions on Appointees

Please read the Restrictions on Appointees provided below. Then type in your name and date to confirm that you are aware of and, if appointed, agree to the following rules.

Agreement to Abide by Restrictions on Appointees	Mark Bray
Date	8/5/2021

Agenda Item Form

Date of City Council Meeting	**10/12/2021**
Department	**Planning**
Submitted by	**Shelli Kerr**
Phone	**(479)271-6822**

Item Type: (*Check Applicable Item Type)*

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

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

Appointment of Stephen Gilbert to fill the newly created Position 7 on the Tree and Landscape Advisory Committee. Mr. Gilbert has a bachelor's degree in landscape architecture and grew up on a Georgia-Pacific forestry compound. This will be Mr. Gilbert's first three-year term that begins January 1, 2022 and will expire on December 31, 2024.

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 Members and City Clerk
From: Stephanie Orman, Mayor
CC date: October 12, 2021
RE: Appointment of Stephen Gilbert to the Tree and Landscape Advisory Committee

I recommend Stephen Gilbert for appointment to fill the newly created Position 7 on the Tree and Landscape Advisory Committee.

This will be Mr. Gilbert's first three-year term that begins January 1, 2022 and will expire on December 31, 2024.

Stephanie Orman

Boards and Commissions Application Form

Applicant Information	
First Name	Stephen
Last Name	Gilbert
Address	[redacted]
City	Bentonville
State	AR
Zip Code	72713
Home / Cell Phone	[redacted]
Email Address	[redacted]
Length of Bentonville Residency	1.5 years
Employer	Baldwin & Shell Construction Company
Occupation	Project Executive/Business Strategy and Development
Business Phone	479-225-5115

(Section Break)

References
Please provide 2 references

Name	Troy Musson
Email Address	[redacted]
Address	[redacted]
City	Springdale
State	AR
Zip Code	72762
Phone Number	[redacted]

Name	Kerry Harper
Email Address	[redacted]
Address	2710 Rife Medical
City	Rogers
State	AR
Zip Code	72758
Phone Number	[redacted]
Fax Number	*Field not completed.*

(Section Break)

Board Selection and Qualifications

Select all commissions and boards for which you would like to be considered:	Tree & Landscape Advisory Committee
1. What are your qualifications for serving on this commission or board, including education and subject matter expertise?	In Depth knowledge of best practices and Arkansas Native species, large scale planning, community master planning, park design and programming, and irrigation. Bachelor's in Landscape Architecture from University of Arkansas--Still design landscapes and pools for my business, Green Republic Design Group Member of ASLA, American Society of Landscape Architects Grew up on a Georgia-Pacific Forestry compound--Father was a forester for 35 years Previously worked as Facilities Manager for Walmart Home Office Corporate HQ for Exterior Maintenance--Landscape, parking lots, roofs, and stormwater. Previously worked for Liquid Assets Custom Pools and Landscape Austin, Texas Previously worked for Howell & Vancuren, Inc. Landscape Architects in Tulsa, OK Previously Regional Manager of Construction for Arkansas-Mercy Health Currently Project PM/Executive and Business Development Leader for Baldwin & Shell.

2. Why would you like to be considered for appointment to this commission or board?	To help my community stay beautiful and continue to use best practices in a pragmatic fashion that benefits our citizens and businesses.
3. What do you hope to be able to contribute?	Experience in design, budgeting, installation and maintenance of landscapes. Experience in keeping a balance between goals and costs.

(Section Break)

Qualifications for Serving

Please read the Qualifications for Serving provided below. These are the general qualifications to serve on any board or commission of the City of Bentonville.

I have read the above qualifications to serve on a city commission or board.	Yes

(Section Break)

Restrictions on Appointees

Please read the Restrictions on Appointees provided below. Then type in your name and date to confirm that you are aware of and, if appointed, agree to the following rules.

Agreement to Abide by Restrictions on Appointees	Stephen Gilbert
Date	7/15/2021

Agenda Item Form

Date of City Council Meeting	**10/12/2021**
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):*

Ordinance repealing Ordinance No. 2015-122 as amended, fixing rates for electricity to be furnished by the electric system of the City of Bentonville; pertaining to the other matters relating thereto; and declaring an emergency. Approved by the Utility Board 4-0.

Estimated Cost	
Is this Item Budgeted?	☐ Yes ☐ No

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

M E M O R A N D U M

DATE: October 12, 2021

TO: **City Council, Mayor Orman**

FROM: Travis Matlock, Electric Utility Director

RE: **Electric Rate Ordinance**

BEUD recommends amending the electric rate ordinance as recommended by UFS, Inc.

UFS has analyzed the current Bentonville Electric Rate Ordinance and has recommended some minor changes that have a very minor effect on the residents and businesses within the City of Bentonville. The biggest change is an increase to the "facilities charge" and a change over the next couple of years to remove the "block" style of rates and only have a different summer and winter rate. These changes affect all the current rate classes. These changes take place over the next three years.

Changes are due to go into effect beginning January 1, 2022.

They changes are shown in the attached Ordinance.

Approved by the Utility Board 4-0.

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ELECTRIC RATE SCHEDULE

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

Section 1: That the following electric rate schedules be adopted and the rate schedules contained in Ordinance [2000-20, 2000-160, 2005-183, 2008-38, 2008-88, 2009-73, and 2015-122] be amended accordingly:

Schedule R-2022 – Residential Service

Applicable to residential customers for all domestic users.

	2022	2023	2024
Facilities Charge	$13.70/month	$14.70/month	$15.70/month
Winter Block 1 (0- 800 kWh)	$0.10285	$0.0971	$0.09135
Winter Block 2 (excess)	$0.08538	$0.08837	$0.09135
Summer Block 1 (0-800 kWh)	$0.10865	$0.10870	$0.10875
Summer Block 2 (excess)	$0.10278	$0.10627	$0.10875
Minimum Bill	$13.70/month	$14.70/month	$15.70/month

Schedule SC-2022 – Small Commercial Service

Available to commercial customers and multiple-family dwelling for all general purposes when the demand is **less than 50 kW**.

	2022	2023	2024
Facilities Charge	$16.80/month	$19.80/month	$22.80/month
Winter Block 1 (0-2,000 kWh)	$0.10997	$0.10294	$0.09591
Winter Block 2 (excess)	$0.0901	$0.09301	$0.09591
Summer Block 1 (0-2,000 kWh)	$0.1170	$0.1170	$0.1170
Summer Block 2 (excess)	$0.1170	$0.1170	$0.1170
Minimum Bill	$16.80/month	$19.80/month	$22.80/month

Schedule SC – 2022 – Medium Commercial Service

Available to commercial customers and multiple-family dwelling for all general purposes when the demand is **more than 50 kW but less than 200 kW**.

	2022	2023	2024
Facilities Charge	$20.00/month	$30.00/month	$40.00/month
Demand Charge per month (All kW)	$8.35	$9.35	$10.35
Energy Charge (Winter: Nov. - April)	$0.06545	$0.06238	$0.0593
Energy Charge (Summer: May - Oct.)	$0.06915	$0.06608	$0.063
Minimum Bill (25 kW)	$228.75/month	$263.75/month	$298.75/month

Schedule SC – 2022 – Large Commercial Power Service

Available to commercial customers and multiple-family dwelling for all general purposes when the demand is **more than 200 kW**.

	2022	2023	2024
Demand Charge (All kW)	$7.75	$8.25	$8.75
Consumption Charge (Demand (kW) x 200)	$0.0665	$0.06488	$0.06327
Consumption Charge (all excess use)	$0.0665	$0.06488	$0.06327
Minimum Bill (100 kW)	$775.00/month	$825.00/month	$875.00/month

Schedule PA-2022 – Power Cost Adjustment Rider

The revised monthly "base cost" for purposes of the PCA will be the total demand, energy and transmission cost contained on Exhibit 12A and 12 B – Development of Purchased Power Expense. A copy of this exhibit is a part of the Technical Appendix found in the Comprehensive Electric Rate Study prepared by HDR and dated October 2015.

The total purchased power expense from Exhibit 12A will be divided by the total kWh's to produce a ¢/kWh value (PCA calculation shown in Exhibit 12B). The ¢/kWh value is the "base cost" for the PCA adjustment and shall be set at $0.00210.

Schedule NM -2022 – Net Metering

Available to customers who meet the Net Metering requirements in Ordinance 2015-122.

	2022	2023	2024
Residential			
Energy Charge (Winter: Nov - April)	($0.05715)	($0.05715)	($0.05715)
Energy Charge (Summer: May - Oct.)	($0.05715)	($0.05715)	($0.05715)
Small Commercial (< 50kW)			
Energy Charge (Winter: Nov - April)	($0.05715)	($0.05715)	($0.05715)
Energy Charge (Summer: May - Oct.)	($0.05715)	($0.05715)	($0.05715)
Medium Commercial (> 50kW; < 200kW)			
Energy Charge (Winter: Nov. - April)	($0.05715)	($0.05715)	($0.05715)
Energy Charge (Summer: May - Oct.)	($0.05715)	($0.05715)	($0.05715)
Large Commercial (> 200kW)			
Energy Charge (Winter: Nov. - April)	($0.05715)	($0.05715)	($0.05715)
Energy Charge (Summer: May - Oct.)	($0.05715)	($0.05715)	($0.05715)

a) Net metering service charge is paid in addition to the standard rate facilities charge
b) Net metering credit is multiplied by the energy generated by the customer up to a maximum of the customer's total usage in the billing period. No credit is provided for demand usage or demand charges.

Section 2: Schedules shall be in effect for all bills due on or after **January 1, 2022**. 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.

APPROVED:

_____
MAYOR

ATTEST:

_____
CITY CLERK

Agenda Item Form

Date of City Council Meeting	**10/12/2021**
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 enter into an agreement with Osmose, Inc. to perform a joint use audit on the Bentonville Electric Utility Dept. system for $57,121.46. This firm was selected following the City's standard RFQ solicitation process for procurement of professional services in accordance with state law. Approved by the Utility Board 4-0.

Estimated Cost	**$57,121.46**
Is this Item Budgeted?	☑ Yes ☑ No

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

Expenses will be split between COB, Cox, and ATT.

M E M O R A N D U M

DATE: October 12, 2021

TO: **City Council, Mayor Orman**

FROM: Travis Matlock, Electric Utility Director

RE: **Osmose Agreement – Joint Use Audit**

BEUD recommends entering into a contract with Osmose, Inc. to conduct a joint use audit on the BEUD system for $57,121.46.

A joint use audit is a count of all the attachers on BEUD poles, and any shared poles (ATT owned, BEUD facilities). BEUD conducted an audit in 2013 (first one) to establish the attacher counts on BEUD poles. With the two attacher agreements (Cox, ATT), an audit is to occur every 5-ish years and with the growth Bentonville has experienced in the last 8 years, it is time to update the counts.

Per the attacher agreements, the cost of the audit is to be split between the different businesses (COB, Cox, ATT). BEUD proposed using the 2013 pole count (7,274) and attacher counts as a way to split the costs that was agreed to with the attachers. The breakdown is shown below:

- COB – 14% - $7,997.01
- Cox – 70% - $39,985.02
- ATT – 16% - $9,139.43

The $8k for the COB is budgeted, but the overall $57,121.46 is not budgeted. There will be a budget adjustment to recognize the payment for services from the attachers.

Osmose was selected through the City of Bentonville RFQ process.

Approved by the Utility Board 4-0.

Professional Services Agreement

This PROFESSIONAL SERVICES AGREEMENT (the "Agreement"), dated as of July 19, 2021 (the "Effective Date"), is entered into by and between OSMOSE UTILITIES SERVICES, INC., a Delaware corporation with a place of business at 635 Highway 74 South, Peachtree City, Georgia 30269 ("Contractor"), and CITY OF BENTONVILLE, a company with a place of business at 3200 Municipal Drive, Bentonville, Arkansas 72712 ("Owner"), jointly referred toas the "Parties", and individually a "Party".

In consideration of the mutual promises and conditions contained in this Agreement, the Parties mutually agree as follows:

1.0 Contract Documents: The term "Contract Documents" shall mean this Agreement, Contractor's proposal, any associated amendments, any Statement of Work defined in writing by the Parties, and any other separate document mutually agreed to and executed by the Parties that are now or hereafter agreed to and signed by the Parties and that may contain,without limitation, a specific description of the scope of the project, pricing assumptions, Source Materials (as defined below), and/or the Data Deliverables (as defined below). The Parties agree that the Contract Documents shall be incorporated as part of this Agreement. Furthermore, in the event that a Statement of Work is developed and executed between theParties, the Statement of Work shall supersede and replace all *prior* correspondence including, but not limited to, Contractor's proposal and any associated amendments. In the event of inconsistent or contradictory provisions among any of the Contract Documents, inclusive of Owner's purchase order, the provisions of this Agreement shall take precedence.

2.0 Supplemental Terms and Conditions: In the event that Owner desires services from Contractor that fall outside the scope of this Agreement, Contractor will submit supplementalterms and conditions for such services. The terms and conditions of this Agreement shall beoverridden by any supplemental terms and conditions that are submitted by Contractor andapproved in writing by both Parties.

3.0 Work: Contractor shall furnish all supervision, labor, tools, equipment, and materials necessary or required to perform the work on Owner's infrastructure including, but not limited to, wood poles, steel or metal poles, steel towers, and/or underground/surface mounted electrical equipment (collectively the "Structures" and/or individually referenced byspecific structure type as applicable) as described in Contractor's price schedule and in accordance with the specifications set forth in the Contract Documents (collectively the "Work").

4.0 Source Materials: For the purposes of this Agreement, "Source Materials" shall mean the data which Owner may have available including locations of the Work sites and other data pertinent to the Work. Whenever applicable and requested, Owner, without charge, shall

furnish or make available for examination or use by Contractor any Source Materials which Contractor may need during its performance of the Work. Specific Source Materials needed by Contractor will be further defined in the Contract Documents.

5.0 Contractor Fees: Owner agrees to pay Contractor, and Contractor agrees to accept as full compensation for the Work performed and materials used, the fees set forth in or otherwise calculated in accordance with the rates set forth in Contractor's price schedule which are incorporated into the Contract Documents. Notwithstanding the foregoing, if during the termof this Agreement, unforeseen economic conditions (including but not limited to, fuel and raw material price increases, energy, government or regulatory charges, etc.) change Contractor's cost of providing products and/or services to Owner, Contractor may increase its rates and charges or impose applicable surcharges to cover such increased costs.Furthermore, Owner shall be responsible for all applicable sales taxes, unless it provides to Contractor a valid exemption certificate or other documentation satisfactory to Contractor reflecting a sales tax exemption. If the Work is subject to a gross receipts or other similar tax,said amount shall be added to the pricing.

6.0 Contractor's Invoicing and Payment Terms:

6.1 Invoicing: The invoicing and payment terms shall be those set forth in the Contract Documents. In the event said terms are not set forth in the Contract Documents the below terms shall apply. Contractor shall prepare and furnish Owner with a detailed invoice of the number of billable items (as defined in the Contract Documents) for the covered period and the amount due.

6.2 Payment Terms: Owner shall pay Contractor the amount due upon receipt of the invoice. A service charge of the lesser of one and one-half percent (1½%) per month or the highest amount legally permitted will be added to all accounts balances not paid within thirty (30) days. Notwithstanding any language to the contrary, this service charge shall be governed by the laws of the State of Georgia.

7.0 Commencement of Work and Project Schedule:

7.1 Commencement of Work: Contractor shall not commence the Work until it has received written notice from Owner to proceed.

7.2 Project Schedule: Contractor shall perform the Work in accordance with the Contract Documents, specifying the dates and time periods by which specified portions of the Work shall be completed, which shall either be as previously agreed and included in the Contract Documents, or as mutually agreed prior to commencement of the Work. Should either Party reasonably desire changes to the Contract Documents at any time due to a *Force Majeure*, as defined in Section 21.0, the Parties shall promptly discuss such changes and use their best efforts to prepare modified Contract Documents mutually acceptable to them. The current applicable Contract Documents as approved by Contractor and Owner shall be signed and dated by authorized

representatives of each Party and shall constitute the Contract Documents for purposes of this Agreement.

Except as may be required pursuant to Section 22.0, no change to the Contract Documents shall be effective unless mutually agreed to by the Parties and set forth in a written agreement signed by both of them.

8.0 Project Scope and/or Schedule Changes: Any project scope and/or schedule change must be mutually agreed to by both Owner and Contractor. Procedures for establishing a changeto either the project scope or schedule or both will be accomplished in accordance with the Contract Documents and must be agreed to, in writing, by both Parties. Based on the change(s) made to the Contract Documents, prices may be subject to change.

9.0 Deliverables and Owner's Acceptance of Data:

9.1 Data Deliverables: For the purposes of this Agreement, "Data Deliverables" shall be defined as all Structure data, studies, reports, sketches, drawings, and other required documentation collected, prepared, and/or created during Contractor's performance of the Work as required and defined in the Contract Documents. All Data Deliverables shall conform to the specifications and acceptance criteria set forth in the Contract Documents at the time of delivery. In particular, data to be delivered by Contractor as part of the Data Deliverables described in the Contract Documents shall be delivered to Owner in accordance with delivery frequencies outlined in the Contract Documents. Contractor's Data Deliverables will be further specified and defined in the Contract Documents.

9.2 Owner's Acceptance of Data: Unless otherwise specified in the Contract Documents, Owner shall have ten (10) business days following receipt of each Data Deliverable to accept or reject such Data Deliverable based on the specifications and acceptance criteria set forth in the Contract Documents. Owner shall give Contractor written notice of rejection of any Data Deliverable specifying the reasons the acceptance criteria have not been satisfied. Any Data Deliverable not rejected by Owner in writing within ten (10) business days from delivery will be deemed accepted.

10.0 Project Pricing Assumptions: Assumptions used in developing the project scope and associated pricing may be set forth in the Contract Documents. The pricing set forth in the Contract Documents is firm unless otherwise specified within the Contract Documents.

11.0 Additional Owner Obligations: Owner shall: (i) be responsible for supplying all Source Materials required for the completion of the Work in a timely and continuous fashion so as to permit Contractor to perform the work in accordance with the Contract Documents; (ii) examine all Contract Documents, Data Deliverables, and other documents pertinent to the Work which are presented to Owner by Contractor and render in any necessary decisions in writing within a reasonable time so as not to delay Contractor's performance of the Work; (iii) designate a Project Manager to act as its representative with respect to this Agreement who shall be given complete authority to transmit instructions, receive information, execute change orders and/or supplemental agreements, and interpret and define Owner specifications with respect to the Work (Owner shall give Contractor written notification of any change in the designation of the Project Manager); and (iv) assist Contractor in obtaining approval of necessary permits from all governmental authorities or agencies having jurisdiction over the type of Work to be performed by Contractor; provided however, Contractor shall be primarily responsible for obtaining such approval and permits.

Should Owner fail to comply with any of the undertakings contained in the foregoing paragraph, Contractor will be entitled to an extension of time of completion for a period equal to the delay, if any, caused by the failure of Owner to comply with such undertakings, provided Contractor shall have notified Owner in writing of its desire to extend the time of completion in accordance with the foregoing; should such delay cause an increase in costs to Contractor, Contractor shall be reimbursed by Owner for such costs.

12.0 Termination: Either Party may terminate this Agreement upon thirty (30) days written notice served upon the other Party by registered mail. Upon expiration of such thirty (30) day period, all Work under this Agreement shall cease. Upon termination, Contractor shall issue a final invoice and Owner shall pay Contractor for all Work performed through the end of the thirty (30) day notice period.

13.0 Independent Contractor: Contractor shall at all times be an independent contractor for all purposes under this Agreement, including without limitation in connection with the performance of labor and services under this Agreement.

14.0 Compliance with Laws: Contractor shall promptly pay all wages due to its employees, shall obtain all licenses and permits required by law and shall otherwise comply with all ordinances, laws, orders, rules, directives and regulations made by any governmental authority or regulatory body pertaining to the Work.

15.0 Contractor's Insurance: Throughout the term of this Agreement, Contractor shall maintain infull force and effect, in amounts reasonably satisfactory to Owner and otherwise in compliance with applicable law, the following insurance coverages: workers' compensation, commercial general liability (including public liability, personal injury, property damage and contractual liability) and automobile liability.

Prior to the commencement of the Work, Contractor shall furnish Owner with a certificate evidencing said coverages. Notwithstanding any language to the contrary, any insurance coverage provided by Contractor shall not cover Owner for any negligent acts or omissions of Owner, its employees or agents.

16.0 Indemnification:

16.1 Contractor Indemnification: Contractor shall indemnify, defend and hold harmless Owner, its officers, employees, representatives and agents, from and against all liability, loss, damage or expense resulting from any claim, suit or action for personal injury (including death) or damage to property caused by or arising out of any negligent act or negligent failure to act by Contractor, its employees, or agents, in connection with the performance of the Work. In the event of the joint and concurrent negligence of Contractor and Owner, each Party shall be responsible for the percentage of negligence attributed to it by agreement between the parties or in a court of competent jurisdiction. Notwithstanding any other language to the contrary, in no event shall Contractor be responsible for or be required to defend, indemnify or hold harmless Owner from and against any claim for personal injury (including death) or damage to property or loss of use thereof which occurs more than one (1) year after completion of the Work. Owner agrees to give Contractor written notice of any claims received within ten (10) days after Owner first discovers or receives notice of a claim. If Owner fails to provide such notice, Contractor shall not be required to defend, indemnify, or hold harmless Owner.

16.2 Owner Indemnification: Owner shall indemnify, defend, and hold harmless Contractor from and against any and all claims, actions, judgments, settlements, losses, damages, costs and expenses, including reasonable attorneys' fees, arising from or related to any allegation that (i) any of Owner's documents, information, data, or instructions to use systems or methodologies furnished, delivered or made available to Contractor in connection with the performance of the Work contain any material errors, omissions or inaccuracies that are unknown to Contractor and/or (ii) is in violation of, or contributes to the violation of, any patent, copyright, trade secret or other proprietary right of a third party. Contractor agrees to give Owner prompt written notice of any claims received. Indemnification does not constitute a waiver of Owner's statutory immunity.

17.0 Warranty:

17.1 Contractor's Warranty: Contractor warrants to Owner that (i) all Work provided under this Agreement shall be performed in a skillful and workmanlike manner and (ii) all Data Deliverables, at the time they are delivered to Owner, shall comply with all specifications and acceptance criteria set forth in the Contract Documents.

Contractor further represents and warrants to Owner, for a period of six (6) months following Owner's acceptance of the each Data Deliverable, that the Data Deliverable(s) will conform to the specifications set forth in the Contract Documents and shall be free of material errors and omissions, provided that neither Owner nor any other party has materially altered any such Data Deliverable in any way and no such Data Deliverable has been altered or affected in any way by being loaded onto or maintained on Owner's computer system. If any Data Deliverable is found not to conform to the specifications, Contractor shall correct such error or omission without cost to Owner.

17.2 Warranty Disclaimer; Limitation of Liability: EXCEPT AS EXPRESSLY PROVIDED IN SUBSECTION 17.1, CONTRACTOR MAKES NO WARRANTIES WHATSOEVER WITH REGARD TO THE WORK OR DATA DELIVERABLES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY AND ALL WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. IN NO EVENT SHALL CONTRACTOR, ITS AFFILIATES, OR ANY SUBCONTRACTOR OR SUPPLIER OF CONTRACTOR, BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR ANY DAMAGE WHATSOEVER RESULTING OR ARISING FROM THE LOSS OF USE, DATA, PROPERTY, EQUIPMENT, GOOD WILL OR PROFITS, INCREASED COSTS OR CLAIMS OF CUSTOMERS OF OWNER. FURTHERMORE, THE TOTAL CUMULATIVE LIABILITY OF CONTRACTOR AND ITS SUBCONTRACTORS AND SUPPLIERS ARISING FROM THE PERFORMANCE OR A FAILURE TO PERFORM WORK PURSUANT TO THIS AGREEMENT, WHETHER IN TORT, CONTRACT, STRICT LIABILITY, OR OTHERWISE, INCLUDING ALL EXPENSES INCURRED OR PAYABLE BY CONTRACTOR IN SATISFACTION OF ITS INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, SHALL NOT EXCEED THE TOTAL FEES PAID TO CONTRACTOR PURSUANT TO THIS AGREEMENT.

18.0 Confidentiality: The terms of this Agreement shall remain confidential and shall not be disclosed by either Party to any person without the consent of the other Party or as may be required by law or order of a court of competent jurisdiction. The Parties acknowledge that,in the course of this Agreement, they may have access to and/or be in possession of Confidential Information of the other Party. "Confidential Information" shall mean information regarded by that Party as confidential, including without limitation information relating to its past, present or future research, development, sales and marketing, financial or business affairs and any proprietary products, materials or methodologies. Each Party shall hold in strict confidence, in the same manner as it holds its own Confidential Information oflike kind, all Confidential Information of the other Party which may be disclosed to it or to which it may have access. Access to Confidential Information shall be restricted to those of each Party's personnel who have a need to know such information and its use shall be limited to the performance of this Agreement. Owner is subject to legal FOI request.

The foregoing shall not prohibit or limit either Party's use of information of the other Party (including without limitation ideas, concepts, know-how, techniques and methodologies) which: (i) was previously known to it; (ii) was or is independently developed by it; (iii) was or is acquired by it from a third party having no obligation of confidentiality regarding the information; or (iv) is, or becomes, publicly available through no breach by it of this Agreement, or (v) is disclosed pursuant to law or the order, requirement or request of a court or government authority. This Section 18.0 shall survive termination of this Agreement for any reason.

19.0 Ownership: The Parties agree and acknowledge that Contractor may use proprietary materials of Contractor or third Parties in the preparation of the Work ("Proprietary Items") and that Owner shall not obtain any ownership rights in the Proprietary Items. All Work conceived or developed by Contractor in connection with Contractor's provision of servicesunder this Agreement shall belong to the Contractor. Owner shall execute all documents thatmay be reasonably requested by Contractor in order to vest in Contractor all right, title and interest in the Work. Notwithstanding the foregoing, any Confidential Information of Ownerthat is used by Contractor in connection with the Work shall remain Confidential Informationof the Owner. Subject to the terms of this Agreement, Contractor shall grant Owner a perpetual, royalty free license to use the Work provided that Owner agrees to treat all such materials as Confidential Information in the same manner that Owner treats its own confidential material, but in no event less than a reasonable degree of care. This Section 19.0shall survive the termination of this Agreement for any reason.

20.0 Notices: All notices and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given: (i) when delivered by hand or confirmed facsimile transmission; (ii) one day after delivery by receipted overnight delivery; or (iii) four days after being mailed by certified or registered mail, return receipt requested, with postage prepaid to the appropriate address set forth in this Agreement or to such other person or address as either Party shall furnish to the other Party in writing in accordance with this Section 20.0.

21.0 *Force Majeure*: Except as specifically provided in this Agreement, neither Party shall be liable for any delays or other nonperformance resulting from circumstances or causes beyond its reasonable control and anticipation, including fire or other casualty, act of God, strike or labor dispute, war or other violence, acts of third Parties not within such Party's reasonable control and anticipation, or any law, order or requirement of any governmental agency or authority (collectively "Force Majeure"); provided however, that the Party whose nonperformance is excused under this Section 21.0 shall take commercially reasonable steps to circumvent such events of Force Majeure and shall resume performance immediately upon the cessation of the condition of Force Majeure which prevented such performance. In the event of a Force Majeure, Contractor's price schedule shall be automatically modified to adjust for any delays occasioned by the Force Majeure.

22.0 Severability: If any term or provision of this Agreement is held illegal or unenforceable by acourt of competent jurisdiction, all other terms of this Agreement shall remain in full force and effect, and the illegal or unenforceable provision shall be deemed struck. In the event that the stricken provision materially affects the rights, obligations or duties of either Party, Owner and Contractor shall substitute a provision by mutual agreement that preserves the original intent of the Parties as closely as possible under applicable law.

23.0 Jurisdiction/Choice of law: The Parties hereby irrevocably submits to the jurisdiction of the United States District Court for the Western District of Arkansas in any action or proceeding arising out of or relating to this Agreement. This provision shall survive the termination of this Agreement for any reason. TheParties further agree that this Agreement and all matters arising out of, directly or indirectly,or related to this Agreement will be governed by and interpreted in accordance with the lawsof the State of Arkansas.

24.0 Miscellaneous: This Agreement constitutes the entire agreement between the Parties relativeto the subject matter contained in this Agreement. None of the terms of this Agreement shallbe changed, waived, superseded or supplemented, except in a written document signed by the Parties hereto. Each Party acknowledges that it has participated in the negotiation and preparation of this Agreement and has had the opportunity to have its counsel review this Agreement. Therefore, neither Party shall be deemed to have drafted this Agreement and the customary rule of construction resolving ambiguities in the language against the drafting Party shall not apply.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date set forth at the beginning of this Agreement.

OSMOSE UTILITIES SERVICES, INC.	CITY OF BENTONVILLE
(Contractor)	(Owner)
[redacted]	
	Signature
Jose Villalba	
Print Name	Print Name
Vice President-Contracts	
Title	Title

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CLERK TO ENTER INTO AN AGREEMENT WITH OSMOSE INC. TO PERFORM A JOINT USE AUDIT ON BENTONVILLE ELECTRIC UTILITY DEPARTMENT SYSTEMS.

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 Osmose to provide a joint use audit on Bentonville Electric Utility Department Systems, as per the proposal attached hereto as Exhibit "A".

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

PASSED and APPROVED this _____ day of _____, 2021.

APPROVED:

_____
MAYOR

ATTEST:

_____
CITY CLERK

Agenda Item Form

Date of City Council Meeting	**10/12/2021**
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 recognizing payment for services for a joint use audit in the amount of $49,124.45. Approved by the Utility Board 4-0.

Estimated Cost	**$49,124.45**
Is this Item Budgeted?	☐ Yes ☑ No

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

Expenses will be reimbursed for services rendered.

Budget Adjustment Request

Date of City Council Meeting	**10/12/2021**
Department	**Electric**
Submitted by	**Travis Matlock, PE**
Phone	**479-271-5941**

Purpose of Budget Adjustment ***(Enter purpose in space below):***

Recognizing payment for services rendered.

General Ledger Account Information*				
Org (Department)	**Object**	**Account Description**	**Revenue + (-)**	**Expense + (-)**
503010	34410	Billed Services	$ 49,124.45	
503010	43210	Professional Services		$ 49,124.45
		Totals	$ 49,124.45	$ 49,124.45
		Net Impact on Fund Balance	$	-

***Final Account Number will be determined by Accounting Department after approval and purchase**

Agenda Item Form

Date of City Council Meeting	**10/12/2021**
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):*

Presentation of the Agreed Upon Procedures between SWEPCO and the City of Bentonville by BKD, Inc. concerning the February 2021 SWEPCO invoice which was affected by the 2021 winter storm. Presented to the Utility Board on 9/28/21.

Estimated Cost	
Is this Item Budgeted?	☐ Yes ☐ No

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

M E M O R A N D U M

DATE: October 12, 2021

TO: **City Council, Mayor Orman**

FROM: Travis Matlock, Electric Utility Director

RE: **Agreed Upon Procedures (AUP) between SWEPCO and the City of Bentonville**

After receiving Bentonville's February 2021 invoice from SWEPCO (with the effects of the 2021 Winter Storm), it was determined that before payment of the "excess" $16,347,720.71 is made, Bentonville should perform all due diligence to ensure the charges are appropriate and were allocated correctly. In March of 2021, Bentonville retained BKD to establish an Agreed Upon Procedures (AUP) to review all the any and all information relating to the invoice.

Over the next 6 months, Bentonville, BKD, and SWEPCO met multiple times, BKD requested information (multiple times), performed reviews, spoke with SWEPCO personnel, and finalized the AUP.

The result of the AUP confirms that the charges are valid and have been allocated to Bentonville correctly. The plan to pay the $16M (and change) is to split the costs between Electric Department reserves ($8M) and obtain a utility bond for the remaining ($8M). The 2022 Electric COS Study takes this cost into account.

Agenda Item Form

Date of City Council Meeting	**10/12/2021**
Department	**Water Utilities**
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):*

Ordinance recommended by Staff for City Council approval waiving the requirement of competitive bidding and award contract to Utility Services Co. Inc. in an amount not to exceed $694,480.00 including contingencies for all material and labor to provide full repairs of the 3MG and 6MG water tanks at SW I Street damaged during the winter storm in February. The $25,000.00 deductible will be funded by Water Utilities Reserves. FM Global Insurance has approved coverage of $588,549.00 for identified repairs and will address additional costs presented as contingencies ($105,931.00) as the need arises. Under this agreement, the City's responsibility is $25,000.00. If that needs to increase, it will be brought back to City Council. Utility Board approved this item 4-0 on September 28, 2021.

Estimated Cost	**$694,480.00**
Is this Item Budgeted?	☐ Yes ☑ No

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

The $25,000.00 deductible will be funded by Water Utility Reserves and $669,480.00 will be provided by FM Global Insurance Claim.

Waiver of Bid Request

Date of City Council Meeting	**10/12/2021**
Department	**Water Utilities**
Submitted by	**Mike Bender**
Phone	**(479) 271-6873**

Vendor	**Utility Services Company Incorporated Dba: Suez**
Total Cost	**$694,480.00**

Description of Purchase ***(This should include a detailed description of the type of material, equipment or service that is being requested including make, model, year & options if applicable. Enter details in space below):***

Staff recommends a waiver of bid to allow Utility Services Co. Inc., to continue to be the sole provider of all maintenance and repair work associated with the City of Bentonville's five major water tanks. Following the February 2021 winter storm, damage was discovered to the structures of the 3 million gallon and 6 million gallon water tanks. Subsequently and as part of the yearly contract with Suez, an immediate evaluation of the tanks was conducted by Suez which determined the tanks may remain operable at a reduced capacity. Information was gathered at that time to produce a full Condition Assessment Report outlining the processes, materials and repairs needed to regain full use of the tanks and restore the structural integrity. The waiver of Bid request will be for the material and repairs outlined within the assessment and agreement.

Justification ***(Enter justification in space below):***

Utility Service Co. Inc.'s (Suez) has a current and long-standing yearly maintenance contract with the City of Bentonville and performed the immediate evaluation of the tanks and subsequent 'Condition Assessment Report'. Due to Suez having created the repair plan, their familiarity with the tanks and damage, the time sensitive nature of the repairs to bring the tanks to full operating capacity, and since Suez will be responsible for maintaining the tanks after repair it is impractical to solicit competitive bids.

Memo

To: Bentonville City Council

From: Mike Bender

CC: Mayor Orman

Date: October 12, 2021

Re: Utility Service Co. Inc. agreement for repairs to the 3MG and 6MG water tanks

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Staff is recommending the Mayor and City Clerk to enter into an agreement with Utility Services Co. Inc. in an amount of $694,480.00 for material and labor to provide all repairs to the 3MG and 6MG I Street Water Tanks.

On February 18, 2021 damage was reported on both tanks due to snow and ice accumulation on the exterior of the tank along with ice buildup on the interior. As a result of routine mixing practices and rotation within the tank, structural damage occurred when the ice contacted the supports within the tank.

Insurance claim 511460 was filed with Affiliated FM Insurance Company Policy No. 1B151 and the valuation of damages in the amount of $588,549.00 was approved. Contingencies have also been placed in the agreement to cover an additional cost of $105,931.00. The loss will be subject to a $25,000 deductible. Affiliated FM is aware of the contingencies and prepared to cover additional expenses as needed. However, the amount of the contingency can not be approved until such repairs are confirmed as needed. The deductible will be paid from Water Utilities Reserves. We have asked that the agreement cover the full anticipated cost including contingencies. In the event the city must pay more than the $25,000 deductible or the total exceeds $694.480.00 staff will bring the item back to council.

Upon receipt of a signed agreement, Affiliated FM Insurance will issue payment to the City of Bentonville for one half of the projected total cost less the

deductible. Once the project is complete, the remaining half of the payment will be issued.

Utility Services Co. Inc.; (dba; Suez) has a current and long standing yearly maintenance contract with the City of Bentonville. Suez is familiar with all city storage facilities in relation to structural and sheeting material make ups. They are experienced in similar repairs and new tank construction.

Bentonville Water Utilities does not anticipate any interruptions in service while the work is completed. Temporary aesthetic alterations may exist due to the timing of both repairs.

Thank you for your consideration of this request.

CONSTRUCTION SERVICES AGREEMENT
CITY OF BENTONVILLE, ARKANSAS
REPAIR OF ICE DAMAGE – 3MG TANK
REPAIR OF ICE DAMAGE – I ST 6MG TANK

This CONSTRUCTION SERVICES AGREEMENT FOR REPAIR OF ICE DAMAGE – 3MG TANK AND REPAIR OF ICE DAMAGE I ST 6MG TANK ("Agreement") is entered into by and between **CITY OF BENTONVILLE, ARKANSAS** with a principal business address of 1000 SW 14th Street, Bentonville, AR 72712 ("Owner"), and **UTILITY SERVICE CO., INC.**, a Georgia corporation with a principal business address of 535 General Courtney Hodges Boulevard, P O Box 1350, Perry, GA 31069 ("Company").

WHEREAS, the Owner and Company (collectively, "the Parties") desire for Company to provide services to Owner under the terms set forth herein;

NOW THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Term. The effective date of this Agreement shall be October , 2021, ("Effective Date"). The term of this Agreement shall commence on the Effective Date and shall continue in full force and effect for one year. ("Term").

2. Scope of Work and Company's Obligations. The Company shall supply all material, equipment, and personnel necessary to perform the services as outlined in Exhibit A. (Collectively, "Services".)

3. Owner's Obligations. The Owner shall, at no cost to the Company, perform or provide: (1) the Company with ingress, egress, and all reasonably necessary access to the real property which the Company needs to access to perform the Services, including an access point; and (2) permits and fees necessary to perform the Services, if any. The previous list is not intended to be exhaustive. If any additional support of the Owner is reasonably necessary to perform the Services, the Owner shall provide such needed support or services in good faith so that the Company can perform the Services.

4. Cost and Payment Terms. The Owner agrees to pay the total amount of $694,480.00 to the Company for the performance of the Services ("Contract Price".) The Contract Price is broken down by tank as follows:

3MG Tank:	$229,677.00
I St. 6MG Tank:	$464,803.00

Payment by tank shall be due upon completion of the services as defined in Exhibit A. All applicable taxes are the responsibility of the Owner, if any, and are in addition to the Contract Price.

5. Independent Contractor. Company is, and shall at all times remain, an independent contractor. Company and each of Company's employees and principals shall not be deemed for any purpose to be Owner's employees, and they shall not be entitled to any claims, rights, benefits and privileges to which an employee of Owner or any if its respective affiliates may be entitled under any retirement, pension, insurance, medical or other plans which may now be in effect or which may hereafter be adopted. Owner is not responsible to any governing body or to Company for paying or withholding payroll taxes and other employee expenses related to

payments made to Company. Notwithstanding anything to the contrary, this Agreement does not, and shall not be deemed to, constitute a partnership or joint venture between the Parties and neither Party nor any of their respective directors, officers, officials, or employees shall, by virtue of the performance of their obligations under this Agreement, be deemed to be an agent or employee of the other. No Party has the authority to bind another Party except to the extent approved in writing by the Party to be bound.

6. Insurance. Company shall maintain statutory minimum Worker's Compensation as required by the laws of any jurisdiction in which Services are performed, and commercial general liability insurance covering Company's liabilities hereunder and for injury to persons or damage to property with limits of not less than $2,000,000 per occurrence. Upon Owner's request, Company shall furnish Owner with a certificate of insurance evidencing this coverage.

7. Representations. Company represents and warrants that Company has the full power and authority to enter into and perform this Agreement; that the execution, delivery and performance of this Agreement has been duly authorized and constitutes a valid and binding agreement of Company; and that the execution, delivery and performance of this Agreement will not result in the breach of, or constitute a default under, or violate any provision of, any agreement or other instrument to which Company is a party.

8. Indemnification. Company shall indemnify Owner and its officers and officials from and against any claims, actions, and suits arising from and to the extent of the Company's negligence while performing the Services hereunder. Company's indemnification obligations hereunder shall be subject to Owner's prompt notification to Company with respect to the pertinent third-party claim(s).

9. Warranty. Company warrants to Owner ("Warranty") for a period of one (1) year ("Warranty Period") from completion of the Services that the Services are free from defects in workmanship and material under normal and proper use within the Warranty Period ("Covered Defect"). Covered Defects do not include defects caused by fire, war, earthquake, or other earth movement, acts of God, negligence, abuse, alteration, aggressive environmental conditions or from the failure to properly inspect, service, or maintain the asset. If a defect in workmanship or material is identified by Owner during the Warranty Period, then Owner shall promptly notify the Company of the nature of the defect in writing. Following the receipt of such notice, the Company shall inspect the work product produced by the Services to determine if a Covered Defect exists to the reasonable satisfaction of the Company. The Company's inspection shall be performed on a date that is mutually agreeable to the Owner and the Company, and the Owner agrees to provide an access point and satisfy any other reasonable requests of the Company so that it can carry out its inspection. If a Covered Defect exists, the Company's sole liability shall be discharged by the Company providing the labor and material to repair any part or parts of the work product produced by the Services which prove to be defective. COMPANY MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES AND ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR PARTICULAR OR SPECIAL PURPOSES.

10. Exclusions. This Agreement does NOT include the cost for and/or liability on the part of the Company for: (1) discovery, identification, and/or removal of any hazardous waste or materials; (2) discharge piping; (3) electrical equipment; and (4) other conditions which are beyond the Owner's and Company's control, including, but not limited to: acts of God and acts of terrorism.

11. Assignment of Receivables. The Company reserves the right to assign any

outstanding receivables from this Contract to its financial institutions as collateral for any loans or lines of credit.

12. Termination. This Agreement may be terminated by Owner by giving the non-terminating Party ninety (90) days' prior written notice of termination. In the event of termination by Owner, Owner shall pay Company the proportionate amount of the Contract Price that remains unpaid for Services performed and completed prior to the date of termination of this Agreement.

13. Intellectual Property. The Owner acknowledges that all intellectual property rights in the Services, their method of delivery, and all related know-how are owned by the Company or its licensors. The Owner hereby agrees and acknowledges that this Agreement shall not be construed as a license for the Owner to use, deliver, or exploit the intellectual property used by the Company in delivering the Services. To the extent that any new intellectual property or know-how is developed as a result of carrying out the Services, the new intellectual property rights will all be owned by the Company or its licensors, and the Owner agrees that it will not make a claim to any such new intellectual property rights.

14. Limitation of Liability. IN NO EVENT SHALL EITHER PARTY OR ITS RESPECTIVE DIRECTORS, OFFICERS, OFFICIALS, AND EMPLOYEES BE LIABLE FOR ANY LOSS OF PROFITS OR REVENUES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, HOWSOEVER CAUSED OR ARISING UNDER THIS AGREEMENT. The foregoing provision limiting the liability of the Parties' directors, officers, officials, and employees shall be deemed to be trust provisions for the benefit of such directors, officers, officials, and employees and shall be enforceable by such persons as trust beneficiaries. Such provisions shall not be construed as imposing any liability on such directors, officers, officials, and employees where it does not otherwise exist in law.

15. Miscellaneous.

a. Notices. All notices hereunder shall be in writing and shall be sent by certified mail, return receipt requested, or by overnight courier service, to the address set forth below each Party's signature, or to such other addresses as may be stipulated in writing by the Parties pursuant hereto. Unless otherwise provided, notice shall be effective on the date it is officially recorded as delivered by return receipt or equivalent.

b. Entire Agreement; Amendment. This Agreement supersedes all prior agreements, arrangements, and undertakings between the Parties and constitutes the entire agreement between the Parties relating to the subject matter thereof. This Agreement may not be amended except by written instrument executed by both Parties.

c. Assignment. Neither Party may assign this Agreement without the prior written consent of the other Party; such consent will not be unreasonably withheld. Any attempt to assign this Agreement without the prior written consent of the other Party shall be null and void. A change in control of a Party shall not be deemed an assignment of this Agreement.

d. Force Majeure. If either party is prevented from performing any of its duties or obligations hereunder (other than duties or obligations with respect to payment) in a timely manner by reason or act of God or force majeure such as fire; war; earthquake; strike; lock-out; labor dispute; flood; public disaster; pandemic or epidemic event (to include but not limited to COVID-19); interruptions or delays in reasonably available means of transportation; acts of any government or its agencies or officers, or any order, regulation, or ruling thereof; equipment or

technical malfunctions or failures; power failures or interruptions; or any other reason beyond its reasonable control, such condition shall be deemed to be a valid excuse for delay of performance or for nonperformance of any such duty or obligation for the period during which such conditions exist.

e. **Survival of Certain Provisions.** Notwithstanding the termination or expiration of this Agreement, the provisions of Sections 11 and 12 shall survive the termination or expiration and bind the parties and their legal representatives, successors and permitted assigns.

f. **No Waiver.** The waiver of any breach or failure of a term or condition of this Agreement by any party shall not be construed as a waiver of any subsequent breach or failure of the same term or condition, or a waiver of any other breach or failure of a term or condition of this Agreement.

g. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same Agreement. The Parties may utilize electronic means (including facsimile and e-mail) to execute and transmit the Agreement and all such electronically executed and/or transmitted copies of the Agreement shall be deemed as valid as originals.

WHEREFORE, for the purpose of being bound, the Parties execute this Agreement by their duly authorized representatives as of the date(s) set forth below.

OWNER

City of Bentonville, Arkansas

By:_____

Name:_____

Title:_____

Date:_____

COMPANY

Utility Service Co., Inc.

By: _____

Name: _____

Title: _____

Date: _____

Notice Address for Each Party:

City of Bentonville, Arkansas

Attn: Camille Thompson

1000 SW 14th Street

Bentonville, AR 72712

Utility Service Co., Inc.

Attn: Customer Service Department

535 General Courtney Hodges Blvd

P O Box 1350

Perry, Georgia 31069

Exhibit A

3MG Tank - $229,677.00

Repair Interior and Exterior – $193,661.00

Repairs Exterior

1. Remove two (2) damaged sections of roof knuckle.
2. Install by welding two (2) radius rolled fabricated knuckle plates matching dimension, shape, and thickness of existing knuckle plates.
3. All unprimed areas shall be tool cleaned per SSPC-SP#2, #3 cleaning methods.
4. All areas tool cleaned shall be spot primed with a compatible primer.
5. One (1) full intermediate coat of a compatible coating shall be applied to repaired areas of exterior surfaces.
6. One (1) full finish coat of a compatible coating shall be applied to repaired areas of exterior surfaces.

Repairs Interior

1. Install Temporary Door Sheet to Provide for access to Tank Interior. Replace door sheet upon completion of repairs.
2. Remove and replace in-kind thirteen (13) damaged or deformed roof rafters.
7. All damaged coating on tank floor resulting from repair work to be tool cleaned per SSPC-SP#2, #3 cleaning methods.
8. All areas tool cleaned shall be spot primed with a compatible primer.
9. One (1) finish coat of a compatible coating shall be applied to all areas of floor affected by repairs.
10. Abrasive blast coated areas of interior tank roof previously damaged or disturbed by repair work in accordance with SSPC-SP #10 "Near White" finish.
11. Apply one (1) intermediate coat of Epoxy at a DFT of 4 to 6 mils to all prepared areas.
12. Apply one (1) finish coat of Epoxy at a DFT of 4 to 6 mils to all prepared areas.

Contingency Work for 3MG Tank – Budgeted at $36,016.00

Contingency Line Items:

Company is estimating the need to perform 250 sq ft ($36,016) of roof steel replacement. Roof steel replacement will be performed as needed at a cost of $144.064/sq ft. with determination of replacement based on inspection and need.

1. Remove existing roof plate steel utilizing all applicable and approved standards and methods.
2. Install new roof plate steel of like dimensions utilizing all applicable and approved standards and methods.

In consideration of project timelines and weather, there is a potential need for additional heating resources during coating repairs taking place in wet section of the water storage tank.

1. Heating resources are to be provided at a unit cost of $16,949/week.

I St. 6MG Tank - $464,803.00

Repair Interior and Exterior – $394,888.00

Repairs Exterior

1. Remove eight (8) damaged sections of roof knuckle.
2. Install by welding eight (8) radius rolled fabricated knuckle plates matching dimension, shape, and thickness of existing knuckle plates.
3. Complete exterior shall be fully pressure washed.
4. All unprimed areas shall be tool cleaned per SSPC-SP#2, #3 cleaning methods.
5. All areas tool cleaned shall be spot primed with a compatible primer.
6. One (1) full finish coat of a compatible coating shall be applied to 100% of exterior surfaces.

Repairs Interior

1. Install Temporary Door Sheet to Provide for access to Tank Interior. Replace door sheet upon completion of repairs.
2. Alleviate stresses on super structure with temporary support of roof.
3. Level existing columns and rafters in series.
4. Upon completion of levelling of existing columns, remove existing and install new column base angle restraints.
7. All damaged coating on tank floor resulting from repair work to be tool cleaned per SSPC-SP#2, #3 cleaning methods.
8. All areas tool cleaned shall be spot primed with a compatible primer.
9. One (1) finish coat of a compatible coating shall be applied to all areas of floor affected by repairs.
10. Abrasive blast coated areas of interior tank roof previously damaged or disturbed by repair work in accordance with SSPC-SP #10 "Near White" finish.
11. Apply one (1) intermediate coat of Epoxy at a DFT of 4 to 6 mils to all prepared areas.
12. Apply one (1) finish coat of Epoxy at a DFT of 4 to 6 mils to all prepared areas.

Contingency Work for I St. 6MG Tank – Budgeted at $69,915.00

Contingency Line Items:

Company is estimating the need to perform 250 sq ft ($36,016)of roof steel replacement. Roof steel replacement will be performed as needed at a cost of $144.064/sq ft. with determination of replacement based on inspection and need.

2. Remove existing roof plate steel utilizing all applicable and approved standards and methods.
3. Install new roof plate steel of like dimensions utilizing all applicable and approved standards and methods.

In consideration of project timelines and weather, Company is forecasting the need for additional heating resources during coating repairs taking place in wet section of the water storage tank.

1. Heating resources are estimated to be needed for a two week time period at a cost of $33,898.
2. Heating resources are to be provided at a unit cost of $16,949/week.

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE MAYOR AND THE CITY CLERK TO ENTER INTO AGREEMENTS WITH UTILITY SERVICES GROUP FOR THE REPAIR OF CERTAIN CITY OF BENTONVILLE WATER STORAGE TANKS AND WAIVING THE REQUIREMENT OF COMPETITIVE BIDDING.

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

Section 1: That the Mayor and City Clerk be and are hereby authorized to enter into agreements with Utility Services Group for the repair of two (2) water storage tanks in the City of Bentonville, as attached hereto as Exhibit "A".

Section 2: Because Utility Services Group is the sole qualified service provider that meets the City's requirements for inspection and maintenance of City tanks, it would be neither practical nor feasible to advertise for competitive bidding, and that requirement is herein waived.

PASSED and APPROVED this _____ day of _____, 2021.

APPROVED:

_____
MAYOR

ATTEST:

_____
CITY CLERK

Agenda Item Form

Date of City Council Meeting	**10/12/2021**
Department	**Water Utilities**
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):*

Budget Adjustment recommended by Staff for City Council approval to cover insurance deductible in the amount of $25,000.00 and recognize revenues from FM Global Insurance claim up to $669,480.00 to cover costs associated with Utility Service Co., Inc.'s agreement for material and labor to provide full repairs of the 3MG and 6MG water tanks. Funding the deductible will be from the Water Utility reserves. Utility Board approved 9/28/2021 by a vote of 4-0.

Estimated Cost	**$694,480.00**
Is this Item Budgeted?	☐ Yes ☑ No

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

The $25,000.00 deductible will be funded by Water Utility Reserves and remainder will be provided by FM Global Insurance Claim 511460.

Budget Adjustment Request

Date of City Council Meeting	**10/12/2021**
Department	**Bentonville Water Utilities**
Submitted by	**Mike Bender**
Phone	**(479) 271-6873**

Purpose of Budget Adjustment ***(Enter purpose in space below):***

Budget Adjustment - Staff is requesting approval of a budget adjustment in the amount of $694,480.00 to cover full cost of repairs consistent with Utility Services Co., Incorporated's agreement for material and labor to provide repairs of the 3MG and 6MG water tanks. This Budget Adjustment will recognize revenues from FM Global associated with insurance claim 511460 in an amount up to $669,480.00. A balance of $25,000 for the deductible will be funded from the Water Utility reserves. Utility Board approved 9-28-2021 by a vote of 4-0.

General Ledger Account Information*

Org (Department)	Object	Account Description	Revenue + (-)	Expense + (-)
503020	47210	Plants and Building		$ 694,480.00
503020	37520	Miscellaneous Income	$ 669,480.00	
		Totals	$ 669,480.00	$ 694,480.00
		Net Impact on Fund Balance	$	(25,000.00)

***Final Account Number will be determined by Accounting Department after approval and purchase**

Agenda Item Form

Date of City Council Meeting	**10/12/2021**
Department	**Water Utilities**
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. 2 and Final Reconciliation of the Nomad Creek Sewer Interceptor project with Brothers Construction recognizing a decrease of $80,527.02 reducing the contract total from $1,680,267.50 to $1,599,740.48. Utility Board approved this item 4-0.

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: October 1, 2021

Re: Change Order No. 2 and Final Reconciliation – Brother's Construction for services associated with Nomad Creek Interceptor

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Staff recommends City Council approval of Change Order No. 2 and Final Reconciliation of the Guaranteed Maximum Price Contract with Brothers Construction for construction services associated with the Nomad Creek Sewer Interceptor recognizing a decrease of $80,527.02 reducing the contract total from $1,680,267.50 to $1,599,740.48. Change order #1 (CC approved 2-9-21) was an increase for the Rock Contingency of $113,495.00. The $80,527.02 in savings came from $77,392.00 in the lack of rock excavation and $3,135.00 in straw waddle reductions.

Nomad Creek Sewer Interceptor is currently in use serving multiple subdivisions and the Nomad Road lift station has been taken off line.

The Utility Board approved this item 4-0.

Thank you for your consideration of this request.

CEI Engineering Associates, Inc.
P.O. Box 1408
Bentonville, AR 72712
Phone: (479) 273-9472
Nate Bachelor

3-Aug-21
CEI Project No: 30677.0

Pay Application #8
Nomad Creek Interceptor (PIIP18-013)
COB Solicitation #IFB-20-03
Bentonville, AR

Brothers Construction

	Item	Quantity	Unit	Cost	Total	Pay App 1	Pay App 2	Pay App 3	Pay App 4	Pay App 5	Pay App 6	Pay App 7	Pay App 8	Pay App 9	% Complete	Earned to Date	Balance remaining after CO#1
1	Mobilization	1	LS	$40,000.00	$40,000.00	$ 40,000.00	$ -	$ -	$ -	$ -	$ -	$ -	$ -		100.0%	$ 40,000.00	
2	Tree removal area	6.75	AC	$5,500.00	$37,125.00	$ 2,750.00	$ 5,500.00	$ 5,500.00	$ -	$ 23,375.00	$ -	$ -	$ -		100.0%	$ 37,125.00	
3	Remove and Replace barbed wire fence	880	LF	$8.00	$7,040.00	$ -	$ -	$ -	$ -	$ -	$ -	$ 3,520.00	$ -	$ 3,520.00	100.0%	$ 7,040.00	
4	Nomad road cut & repair (conc & asphalt)	815	SF	$7.00	$5,705.00	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 5,705.00	100.0%	$ 5,705.00	
5	Morning Star road cut & repair (conc & asphalt)	0	SF	$7.00	$0.00	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -			$ -	updated per CO 1
6	traffic control for road cuts	3	EA	$5,000.00	$15,000.00	$ -	$ 10,000.00	$ -	$ -	$ -	$ 5,000.00	$ -	$ -		100.0%	$ 15,000.00	updated per CO 1
7	Temporary livestock fence	2570	LF	$6.00	$15,420.00	$ 12,000.00	$ 3,420.00	$ -	$ -	$ -	$ -	$ -	$ -		100.0%	$ 15,420.00	
8	Temporary construction entrance	6	EA	$2,000.00	$12,000.00	$ 2,000.00	$ 4,000.00	$ 4,000.00	$ -	$ -	$ -	$ -	$ -	$ 2,000.00	100.0%	$ 12,000.00	
9	Concrete washout	6	EA	$300.00	$1,800.00	$ 300.00	$ 300.00	$ -	$ -	$ 600.00	$ -	$ 600.00	$ -		100.0%	$ 1,800.00	
10	Straw wattle	12104	LF	$3.00	$36,312.00	$ -	$ 18,810.00	$ -	$ -	$ 5,997.00	$ 3,360.00	$ 1,845.00	$ 3,165.00			$ 33,177.00	$3,135.00
11	Silt fence	1181	LF	$4.00	$4,724.00	$ 720.00	$ -	$ 4,160.00	$ -	$ (156.00)	$ -	$ -	$ -		100.0%	$ 4,724.00	updated per CO 1
12	Rock check dam	10	EA	$250.00	$2,500.00	$ 500.00	$ -	$ -	$ -	$ 1,500.00	$ 250.00	$ 250.00	$ -		100.0%	$ 2,500.00	updated per CO 1
13	Flexamat	9889	SF	$6.50	$64,278.50	$ -	$ -	$ -	$ -	$ -	$ -	$ 28,600.00	$ 35,679.00		100.0%	$ 64,279.00	
14	Staging area	2	EA	$1,000.00	$2,000.00	$ 1,000.00	$ -	$ -	$ -	$ 1,000.00	$ -	$ -	$ -		100.0%	$ 2,000.00	
15	SWPPP reporting & maintenance	9.5	MO	$500.00	$4,750.00	$ 500.00	$ 500.00	$ 500.00	$ -	$ 1,000.00	$ 500.00	$ 750.00	$ 500.00	$ 500.00	100.0%	$ 4,750.00	
16	Final stabilization	15.5	AC	$1,500.00	$23,250.00	$ -	$ -	$ -	$ -	$ -	$ -	$ 4,500.00	$ 4,500.00	$ 14,250.00	100.0%	$ 23,250.00	
17	Class 7 backfill under road cuts	365	CY	$100.00	$36,500.00	$ -	$ 4,300.00	$ 2,370.00	$ -	$ 13,930.00	$ 15,900.00	$ -	$ -		100.0%	$ 36,500.00	updated per CO 1
18	72" Cast in place Manhole (10' standard depth)	20	EA	$3,500.00	$70,000.00	$ 10,500.00	$ 14,000.00	$ 3,500.00	$ 17,500.00	$ 14,000.00	$ 10,500.00	$ -	$ -		100.0%	$ 70,000.00	
19	72" CIP Manhole Additional depth	22	LF	$400.00	$8,800.00	$ 1,200.00	$ -	$ 800.00	$ 4,896.00	$ -	$ 924.00	$ 980.00	$ -		100.0%	$ 8,800.00	
20	48" Cast in place Manhole (10' standard depth)	12	EA	$2,700.00	$32,400.00	$ -	$ -	$ -	$ -	$ 8,100.00	$ 2,700.00	$ -	$ 21,600.00		100.0%	$ 32,400.00	
21	48" CIP Manhole Additional depth	44	LF	$200.00	$8,800.00	$ -	$ -	$ -	$ -	$ 1,000.00	$ 200.00	$ -	$ 7,600.00		100.0%	$ 8,800.00	
22	8" sanitary pipe stub out (X3)	25	LF	$40.00	$1,000.00	$ -	$ 400.00	$ -	$ -	$ -	$ -	$ -	$ 600.00		100.0%	$ 1,000.00	
23	12" sanitary pipe stub out (X1)	5	LF	$100.00	$500.00	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 500.00		100.0%	$ 500.00	
24	18" sanitary pipe stub out (X1)	5	LF	$150.00	$750.00	$ -	$ -	$ -	$ -	$ 750.00	$ -	$ -	$ -		100.0%	$ 750.00	
25	4' Guard post	15	EA	$500.00	$7,500.00	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 3,750.00	$ 3,750.00	100.0%	$ 7,500.00	
26	24"PS115 PVC Pipe	5708	LF	$98.00	$559,384.00	$ 121,226.00	$ 186,004.00	$ 53,312.00	$ 162,288.00	$ 36,554.00	$ -	$ -	$ -		100.0%	$ 559,384.00	
27	20" steel encasement pipe	50	LF	$105.00	$5,250.00	$ -	$ -	$ -	$ -	$ -	$ 5,250.00	$ -	$ -		100.0%	$ 5,250.00	updated per CO 1
28	36" steel encasement pipe	363	LF	$300.00	$108,900.00	$ -	$ 55,200.00	$ 11,400.00	$ -	$ 42,300.00	$ -	$ -	$ -		100.0%	$ 108,900.00	
29	12" SDR-26 PVC pipe	3439	LF	$61.00	$209,779.00	$ -	$ -	$ -	$ -	$ 115,290.00	$ 37,942.00	$ 56,547.00	$ -		100.0%	$ 209,779.00	updated per CO 1
30	Trench & Excavation Safety Systems	1	LS	$48,000.00	$48,000.00	$ 4,800.00	$ 9,600.00	$ 4,800.00	$ -	$ 9,600.00	$ -	$ 19,200.00	$ -		100.0%	$ 48,000.00	
31	Rock Excavation	428	CY	$350.00	$149,800.00	$ -	$ -	$ -	$ 72,408.00	$ -	$ -	$ -	$ -			$ 72,408.00	$77,392.00
32	Filter Fabric	22000	SF	$0.50	$11,000.00	$ 9,350.00	$ 1,650.00	$ -	$ -	$ -	$ -	$ -	$ -		100.0%	$ 11,000.00	
33	Contingency Allowance*	1	LS	$150,000.00	$150,000.00	$ 33,951.00	$ 16,500.00	$ 99,549.00	$ -	$ -	$ -	$ -	$ -		100.0%	$ 150,000.00	
																$ -	
					$1,690,267.50	$240,797.00	$330,184.00	$189,691.00	$257,092.00	$274,840.00	$82,626.00	$115,792.00	$77,884.00	$28,725.00	95.2%	$ 1,599,741.00	Total $80,527.02
					Stored Materials	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -		$ -	
					5% Retainage	$ 12,039.85	$ 16,509.20	$ 9,494.55	$ 12,854.60	$ 13,742.00	$ 4,126.30	$ 5,839.60	$ 3,894.70	$ -		$ 78,500.78	
					Recommended Pay Amount	$ 228,757.15	$ 313,674.80	$ 180,396.45	$ 244,237.40	$ 261,098.00	$ 78,399.70	$ 110,952.37	$ 73,998.83	$108,225.78		$ 1,599,740.48	

NOTES FOR TRACKING PURPOSES

*	Rock Excavation 97 CY (pay app 1)	97	CY	$ 350.00	$33,951.00
*	Rock Excavation 47 CY (pay app 2)	47	CY	$ 350.00	$16,450.00
*	Rock Excavation 284.4 CY (pay app 3)	284	CY	$ 350.00	$99,549.00

Agenda Item Form

Date of City Council Meeting	**9/28/2021**
Department	**Engineering**
Submitted by	**Tracy Billings**
Phone	**(479) 696-0229**

Item Type: (*Check Applicable Item Type)*

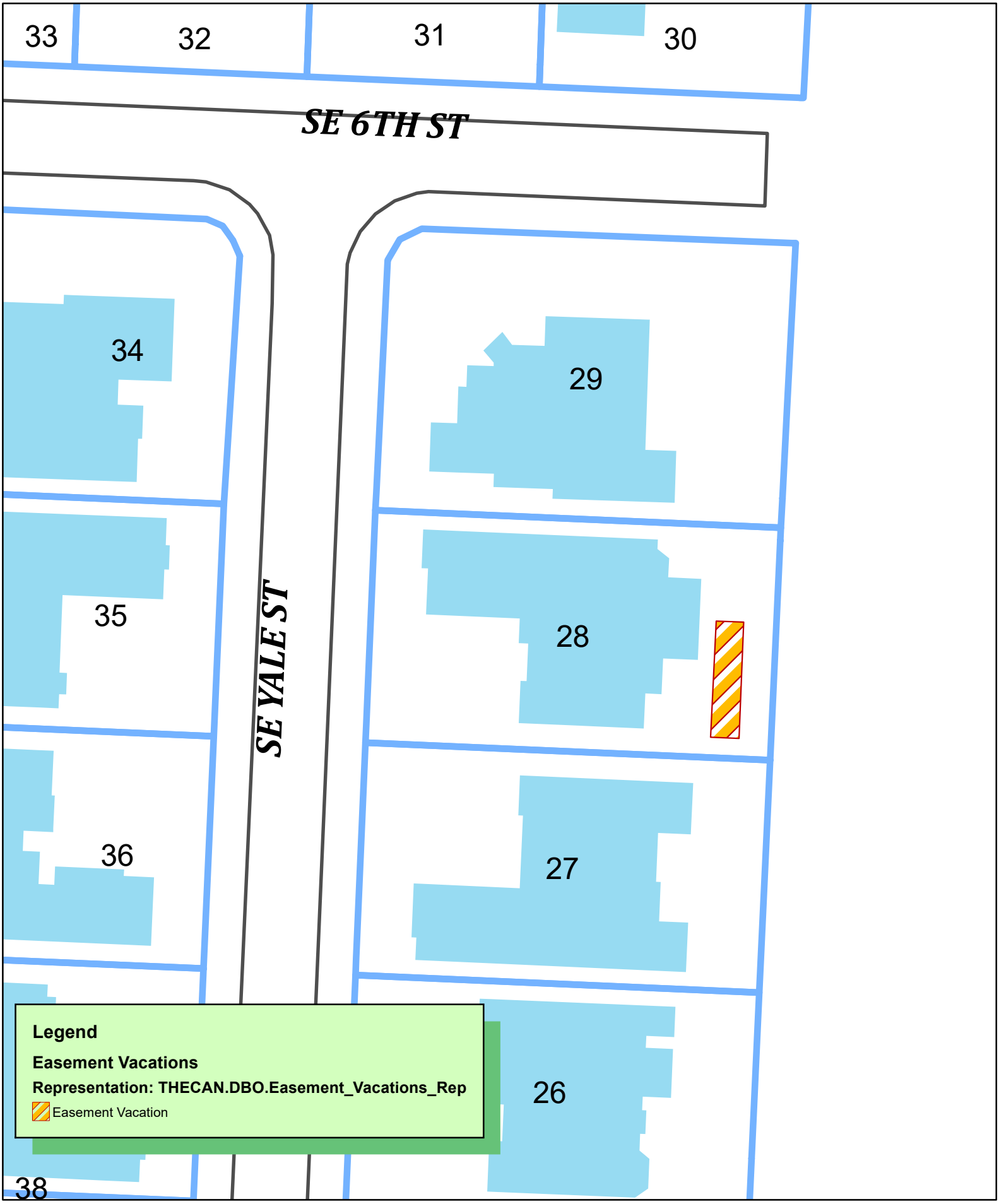
☐ Budget Adjustment	☐ Change Order	☐ Informational	☑ Ordinance	☐ Resolution	☐ Bid Award

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

Public hearing and ordinance vacating a Utility Easement requested for 603 SE Yale Street of College Place Phase 8 (VAC21-0024).

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 = 42 feet

VAC21-0024
Proposed Easement Vacation
603 SE Yale St

ORDINANCE NO_____

AN ORDINANCE VACATING A UTILITY EASEMENT LOCATED AT 603 SE YALE STREET OF COLLEGE PLACE SUBDIVISION PHASE 8 TO THE CITY OF BENTONVILLE, ARKANSAS, BENTON COUNTY ARKANSAS (VAC21-0024).

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

PART LOT 28, COLLEGE PLACE SUBDIVISION, PHASE 8, TO THE CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS, AS SHOWN IN PLAT BOOK 2007 AT PAGES 82 AND 83.

COMMENCING AT THE SOUTHEAST (SE) CORNER OF SAID LOT 28; THENCE NORTH 87032’13" WEST A DISTANCE OF 20.00 FEET; THENCE NORTH 02048’14" EAST A DISTANCE OF 7.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 02048’14" EAST A DISTANCE OF 40.00 FEET; THENCE SOUTH 87032’13" EAST A DISTANCE OF 9.49 FEET; THENCE SOUTH 020 191 18" WEST A DISTANCE OF 40.00 FEET; THENCE NORTH 8703213" WEST A DISTANCE OF 9.82 FEET TO HE POINT OF BEGINNING CONTAINING 0.01 ACRES OR 386 SQUARE FEET MORE OR LESS

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

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

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

PART LOT 28, COLLEGE PLACE SUBDIVISION, PHASE 8, TO THE CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS, AS SHOWN IN PLAT BOOK 2007 AT PAGES 82 AND 83.

COMMENCING AT THE SOUTHEAST (SE) CORNER OF SAID LOT 28; THENCE NORTH 87032’13" WEST A

DISTANCE OF 20.00 FEET; THENCE NORTH 02048’14"
EAST A DISTANCE OF 7.00 FEET TO THE POINT OF
BEGINNING; THENCE NORTH 02048’14" EAST A
DISTANCE OF 40.00 FEET; THENCE SOUTH 87032’13"
EAST A DISTANCE OF 9.49 FEET; THENCE SOUTH
020 191 18" WEST A DISTANCE OF 40.00 FEET; THENCE
NORTH 8703213" WEST A DISTANCE OF 9.82 FEET TO HE POINT OF BEGINNING
CONTAINING 0.01 ACRES OR 386 SQUARE FEET MORE OR LESS

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

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

_____
Kirby Romines, City Clerk
Bentonville, Arkansas

_____
Stephanie Orman, Mayor
City of Bentonville, Arkansas

Agenda Item Form

Date of City Council Meeting	**9/28/2021**
Department	**Engineering**
Submitted by	**Tracy Billings**
Phone	**(479) 696-0229**

Item Type: (*Check Applicable Item Type)*

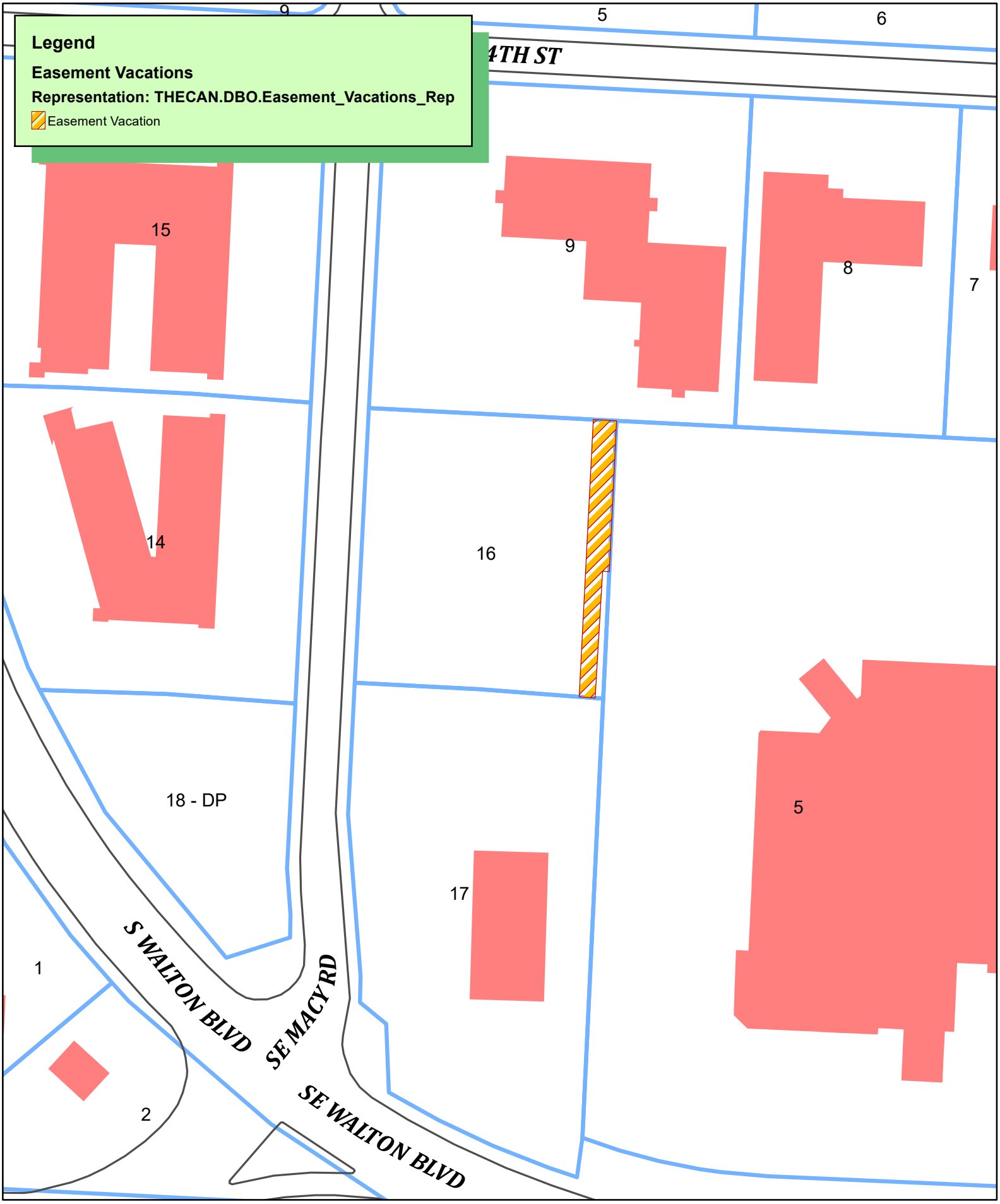
☐ Budget Adjustment	☐ Change Order	☐ Informational	☑ Ordinance	☐ Resolution	☐ Bid Award

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

Resolution setting a public hearing for October 26, 2021 for a Utility Easement Vacation requested for 3405 SE Macy Road of 71 Business Center (VAC21-0027).

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
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1 inch = 104 feet

VAC21-0027
Proposed Easement Vacation

THE CITY OF BENTONVILLE

RESOLUTION NO._____

IN THE CITY COUNCIL FOR THE CITY OF BENTONVILLE, ARKANSAS:

WHEREAS, a petition was duly filed with the City Council of Bentonville, Arkansas by Sand Creek requesting a utility easement vacation (VAC21-0027) within the City of Bentonville, Arkansas be vacated, which said utility easement is described as follows:

PART OF LOT 16 OF A PROPERTY LINE ADJUSTMENT OF LOTS 10,11 AND 12 OF 71 BUSINESS CENTER SUBDIVISION, BENTONVILLE, BENTON COUNTY ARKANSAS AS SHOWN AND DESCRIBED IN PLAT RECORD 2005 - 196 FILED IN THE CIRCUIT CLERKS OFFICE OF BENTON COUNTY.

EASEMENT RELEASE MORE PARTICULARLY DESCRIBED AS THE EAST 20 FEET OF SAID LOT 16 LESS AND EXCEPT THE SOUTH 109.21' OF THE EAST 7.0' THEREOF WHICH PORTION IS TO REMAIN IN PLACE AND ACTIVE AS A UTILITY EASEMENT.

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 October 26, 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	**10/12/2021**
Department	**Administration**
Submitted by	**Debbie Griffin**
Phone	**(479) 254-2028**

Item Type: (*Check Applicable Item Type)*

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

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

Resolution for City Council approval authorizing the Mayor and City Clerk to enter into a professional services contract with Garver, LLC to perform services for the Municipal Airport. This is a master agreement for airport consulting services. Individual tasks/projects will be handled with separate work orders. Contract term is 3 years eligible for two 1-year extensions. This firm was selected in accordance with Arkansas State Law and FAA AC5100-14E for the selection of professional services for airport projects.

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

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

MASTER AGREEMENT FOR PROFESSIONAL SERVICES
City of Bentonville
Bentonville, Arkansas

THIS MASTER AGREEMENT FOR PROFESSIONAL SERVICES ("**Agreement**") is made as of the Effective Date by and between the **City of Bentonville** (hereinafter referred to as "**Owner**"), and **Garver, LLC** (hereinafter referred to as "**Garver**" or "**Engineer**"). Owner and Garver may individually be referred to herein after as a "Party" and/or "Parties" respectively.

RECITALS

WHEREAS, Owner is in need of certain professional Services as further set forth in the applicable Work Order.

WHEREAS, Garver will provide professional Services as further described herein.

NOW THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS GARVER

In addition to other defined terms used throughout this Agreement, when used herein, the following capitalized terms have the meaning specified in this Section

"Effective Date" means the date last set forth in the signature lines below.

"Damages" means any and all damages, liabilities, or costs (including reasonable attorneys' fees recoverable under applicable law).

"Hazardous Materials" means any substance that, under applicable law, is considered to be hazardous or toxic or is or may be required to be remediated, including: (i) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, (ii) any chemicals, materials or substances which are now or hereafter become defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," or any words of similar import pursuant to applicable law; or (iii) any other chemical, material, substance or waste, exposure to which is now or hereafter prohibited, limited or regulated by any governmental instrumentality, or which may be the subject of liability for damages, costs or remediation.

"Personnel" means affiliates, directors, officers, partners, members, employees, and agents.

"Work Order" means a document executed by both Parties reflecting Owner's request for professional Services in the form of Exhibit A.

2. SCOPE OF SERVICES

2.1. Services. Owner hereby engages Garver to perform the scope of service requested by Owner under a Work Order(s) (the "**Services**"). Execution of the applicable Work Order by Owner constitutes Owner's written authorization to proceed with the Services set forth in such Work

Order. In consideration for such Services, Owner agrees to pay Garver in accordance with Section 3 below.

3. PAYMENT

3.1. Fee. For the Services described under Section 2.1, Owner will pay Garver in accordance with this Section 3 and the applicable Work Order. Owner represents that funding sources necessary to pay Garver in accordance with the terms of this Agreement will be in place prior to execution of the applicable Work Order.

3.2. Invoicing Statements. Garver shall invoice Owner on a monthly basis. Such invoice shall include supporting documentation reasonably necessary for Owner to know with reasonable certainty the proportion of Services accomplished.

3.3. Payment.

3.3.1. Due Date. Owner shall pay Garver all undisputed amounts thirty (30) days after receipt of an invoice. Owner shall provide notice in writing of any portion of an invoice that is disputed in good faith within fifteen (15) days of receipt of an invoice. Garver shall promptly work to resolve any and all items identified by Owner relating to the disputed invoice. All disputed portions shall be paid promptly upon resolution of the underlying dispute.

3.3.2. If any undisputed payment due Garver under this Agreement is not received within forty-five (45) days from the date of an invoice, Garver may elect to suspend Services under this Agreement without penalty.

3.3.3. Payments due and owing that are not received within thirty (30) days of an invoice date will be subject to interest at the lesser of a one percent (1%) monthly interest charge (compounded) or the highest interest rate permitted by applicable law.

4. AMENDMENTS

4.1. Amendments. Garver shall be entitled to an equitable adjustment in the cost and/or schedule for circumstances outside the reasonable control of Garver, including modifications in the scope of Services, applicable law, codes, or standards after the Effective Date ("Amendment"). As soon as reasonably possible, Garver shall forward a formal Amendment to Owner with backup supporting the Amendment. All Amendments should include, to the extent known and available under the circumstances, documentation sufficient to enable Owner to determine: (i) the factors necessitating the possibility of a change; (ii) the impact which the change is likely to have on the cost to perform the Services; and (iii) the impact which the change is likely to have on the schedule. All Amendments shall be effective only after being signed by the designated representatives of both Parties. Garver shall have no obligation to perform any additional work created by such Amendment until a mutually agreeable Amendment is executed by both Parties.

5. OWNER'S RESPONSIBILITIES

5.1. Owner's responsibilities shall include the following:

5.1.1. Those responsibilities set forth in the applicable Work Order.

5.1.2. Pay Garver in accordance with Section 3 and the applicable Work Order.

5.1.3. Owner shall be responsible for all requirements and instructions that it furnishes to Garver pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Garver pursuant to this Agreement. Garver may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items as further set forth in the applicable Work Order.

5.1.4. Owner shall give prompt written notice to Garver whenever Owner observes or otherwise becomes aware of the presence at the project site of any Hazardous Materials or any relevant, material defect, or nonconformance in: (i) the Services; (ii) the performance by any contractor providing or otherwise performing construction services related to the Work Order; or (iii) Owner's performance of its responsibilities under this Agreement.

5.1.5. Owner shall include "Garver, LLC" as an indemnified party under the contractor's indemnity obligations included in the construction contract documents, if any.

5.1.6. Owner will not directly or indirectly solicit any of Garver's Personnel during performance of this Agreement and for a period of one (1) year beyond completion of this Agreement.

6. GENERAL

6.1. Standards of Performance.

6.1.1. Industry Practice. Garver shall perform any and all Services required herein in accordance with generally accepted practices and standards employed by the applicable United States professional services industries as of the Effective Date practicing under similar conditions and locale. Such generally accepted practices and standards are not intended to be limited to the optimum practices, methods, techniques, or standards to the exclusion of all others, but rather to a spectrum of reasonable and prudent practices employed by the United States professional services industry.

6.1.2. Owner shall not be responsible for discovering deficiencies in the technical accuracy of Garver's services. Garver shall promptly correct deficiencies in technical accuracy without the need for an Amendment unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

6.1.3. On-site Services. Garver and its representatives shall comply with Owner's and its separate contractor's project specific safety programs, which have been provided to Garver in writing in advance of any site visits.

6.1.4. Relied Upon Information: Garver may use or rely upon design elements and information ordinarily or customarily furnished by others including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

6.1.5. Aside from Garver's direct subconsultants, Garver shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Garver have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any such contractor, or the safety precautions and programs incident thereto, for security or safety at the project site, nor for any failure of a

contractor to comply with laws and regulations applicable to that contractor's services. Garver shall not be responsible for the acts or omissions of any contractor for whom it does not have a direct contract. Garver neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the construction contract documents applicable to the contractor's work, even when Garver is performing construction phase services.

6.1.6. Garver is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, research, or enforcement of construction insurance or surety bonding requirements. Garver's Services expressly do not include providing advice pertaining to insurance, legal, finance, surety-bonding, or similar services. In no event is Garver acting as a "municipal advisor" as set forth in the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission.

6.2. Instruments of Service.

6.2.1. Deliverables. All reports, specifications, record drawings, models, data, and all other information provided by Garver or its subconsultants, which is required to be delivered to Owner under the applicable Work Order (the "**Deliverables**"), shall become the property of Owner subject to the terms and conditions stated herein.

6.2.2. Electronic Media. Owner hereby agrees that all electronic media, including CADD files ("**Electronic Media**"), are tools used solely for the preparation of the Deliverables. Upon Owner's written request, Garver will furnish to Owner copies of Electronic Media to the extent included as part of the Services. In the event of an inconsistency or conflict in the content between the Deliverables and the Electronic Media, however, the Deliverables shall take precedence in all respects. Electronic Media is furnished without guarantee of compatibility with the Owner's software or hardware. Because Electronic Media can be altered, either intentionally or unintentionally, by transcription, machine error, environmental factors, or by operators, it is agreed that, to the extent permitted by applicable law, Owner shall indemnify and hold Garver, Garver's subconsultants, and their Personnel harmless from and against any and all claims, liabilities, damages, losses, and costs, including, but not limited to, costs of defense arising out of changes or modifications to the Electronic Media form in Owner's possession or released to others by Owner. Garver's sole responsibility and liability for Electronic Media is to furnish a replacement for any non-functioning Electronic Media for reasons solely attributable to Garver within thirty (30) days after delivery to Owner.

6.2.3. Property Rights. All property rights of a Party, including copyright, patent, and reuse ("**Intellectual Property**"), shall remain the Intellectual Property of that Party. Garver shall obtain all necessary Intellectual Property from any necessary third parties in order to execute the Services. Any Intellectual Property of Garver or any third party embedded in the Deliverables shall remain so embedded and may not be separated therefrom.

6.2.4. License. Upon Owner fulfilling its payment obligations under this Agreement, Garver hereby grants Owner a license to use the Intellectual Property, but only in the operation and maintenance of the project for which it was provided. Use of such Intellectual Property for modification, extension, or expansion of the project or on any other project, unless under the direction of Garver, shall be without liability to Garver and Garver's subconsultants. To the extent permitted by applicable law, Owner shall indemnify and hold Garver, Garver's subconsultants, and their Personnel harmless from and against

any and all claims, liabilities, damages, losses, and costs, including but not limited to costs of defense arising out of Owner's use of the Intellectual Property contrary to the rights permitted herein.

6.3. Opinions of Cost.

6.3.1. Since Garver has no control over: (i) the cost of labor, materials, equipment, or services furnished by others; (ii) the contractor or its subcontractor(s)' methods of determining prices; (iii) competitive bidding; (iv) market conditions; or (v) similar material factors, Garver's opinions of project costs or construction costs provided pursuant to the applicable Work Order, if any, are to be made on the basis of Garver's experience and qualifications and represent Garver's reasonable judgment as an experienced and qualified professional engineering firm, familiar with the construction industry. Garver cannot and does not guarantee that proposals, bids, or actual project or construction costs will not vary from estimates prepared by Garver.

6.3.2. Owner understands that the construction cost estimates developed by Garver do not establish a limit for the construction contract amount. If the actual amount of the low construction bid or resulting construction contract exceeds the construction budget established by Owner, Garver will not be required to re-design the Services without additional compensation. In the event Owner requires greater assurances as to probable construction cost, then Owner agrees to obtain an independent cost estimate.

6.4. Underground Utilities. Except to the extent expressly included as part of the Services, Garver will not provide research regarding utilities or survey utilities located and marked by their owners. Furthermore, since many utility companies typically will not locate and mark their underground facilities prior to notice of excavation, Garver is not responsible for knowing whether underground utilities are present or knowing the exact location of such utilities for design and cost estimating purposes. In no event is Garver responsible for damage to underground utilities, unmarked or improperly marked, caused by geotechnical conditions, potholing, construction, or other contractors or subcontractors working under a subcontract to this Agreement.

6.5. Design without Construction Phase Services.

6.5.1. Garver shall be responsible only for those construction phase Services expressly set forth in a Work Order, if any. With the exception of such expressly required Services, Garver shall have no responsibility or liability for any additional construction phase services, including review and approval of payment applications, design, shop drawing review, or other obligations during construction. Owner assumes all responsibility for interpretation of the construction contract documents and for construction observation and supervision and waives any claims against Garver that may be in any way connected thereto.

6.5.2. Owner agrees, to the fullest extent permitted by law, to indemnify and hold Garver, Garver's subconsultants, and their Personnel harmless from any loss, claim, or cost, including reasonable attorneys' fees and costs of defense, arising or resulting from the performance of such construction phase services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments, or changes made to the construction contract documents to reflect changed field or other conditions, except to the extent such claims arise from the negligence of Garver in performance of the Services.

6.5.3. If the Owner requests in writing that Garver provide any specific construction phase services or assistance with resolving disputes or other subcontractor related issues, and if Garver agrees to provide such services, then Garver shall be compensated for the work as an Amendment in accordance with Sections 4 and 10.2.

6.6. Hazardous Materials. Nothing in this Agreement shall be construed or interpreted as requiring Garver to assume any role in the identification, evaluation, treatment, storage, disposal, or transportation of any Hazardous Materials. Notwithstanding any other provision to the contrary in this Agreement and to the fullest extent permitted by law, Owner shall indemnify and hold Garver and Garver's subconsultants, and their Personnel harmless from and against any and all losses which arise out of the performance of the Services and relating to the regulation and/or protection of the environment including without limitation, losses incurred in connection with characterization, handling, transportation, storage, removal, remediation, disturbance, or disposal of Hazardous Material, whether above or below ground.

6.7. Confidentiality. Owner and Garver shall consider: (i) all information provided by the other Party that is marked as "Confidential Information" or "Proprietary Information" or identified as confidential pursuant to this Section 6.7 in writing promptly after being disclosed verbally; and (ii) all documents resulting from Garver's performance of Services to be Confidential Information. Except as legally required, Confidential Information shall not be discussed with or transmitted to any third parties, except on a "need to know basis" with equal or greater confidentiality protection or written consent of the disclosing Party. Confidential Information shall not include and nothing herein shall limit either Party's right to disclose any information provided hereunder which: (i) was or becomes generally available to the public, other than as a result of a disclosure by the receiving Party or its Personnel; (ii) was or becomes available to the receiving Party or its representatives on a non-confidential basis, provided that the source of the information is not bound by a confidentiality agreement or otherwise prohibited from transmitting such information by a contractual, legal, or fiduciary duty; (iii) was independently developed by the receiving Party without the use of any Confidential Information of the disclosing Party; or (iv) is required to be disclosed by applicable law or a court order. All confidentiality obligations hereunder shall expire three (3) years after completion of the Services.

7. INSURANCE

7.1. Insurance.

7.1.1. Garver shall procure and maintain insurance as set forth in Exhibit B until completion of the Service.

7.1.2. Garver shall name Owner as an additional insured on Garver's General Liability policy to the extent of Garver's indemnity obligations provided in Section 9 of this Agreement.

7.1.3. Upon request, Garver shall furnish Owner a certificate of insurance evidencing the insurance coverages required in Exhibit B.

8. DOCUMENTS

8.1. Audit. Garver shall maintain all required records for the later of three (3) years after completion of the Services or Owner makes final payment and all other pending matters are closed. FAA, Owner, Comptroller General of the United States or any of their duly authorized

representatives shall have access to any books, documents, papers and records of Garver which are directly pertinent to a specific grant program for the purpose of audit, examination, excerpts, and transcription. In no event shall Owner be entitled to audit the makeup of lump sum or other fixed prices (e.g., agreed upon unit or hour rates).

8.2. Delivery. After completion of the Services, and prior to final payment, Garver shall deliver to the Owner all original documentation prepared under this Agreement, and one (1) set of the record drawing construction plans updated to reflect changes. One (1) set of the record drawing construction plans will also be delivered to the FAA airport region office. In the event the Owner does not have proper storage facilities for the protection of the original drawings, the Owner may request Garver to retain the drawings with the provision that they will be made available upon written request.

9. INDEMNIFICATION / WAIVERS

9.1. Indemnification.

9.1.1. Garver Indemnity. Subject to the limitations of liability set forth in Section 9.2, Garver agrees to indemnify and hold Owner, and Owner's Personnel harmless from Damages due to bodily injury (including death) or third-party tangible property damage to the extent such Damages are caused by the negligent acts, errors, or omissions of Garver or any other party for whom Garver is legally liable, in the performance of the Services under this Agreement.

9.1.2. Owner Indemnity. Subject to the limitations of liability set forth in Section 9.2, Owner agrees to indemnify and hold Garver and Garver's subconsultants and their Personnel harmless from Damages due to bodily injury (including death) or third-party tangible property damage to the extent caused by the negligent acts, errors, or omissions of Owner or any other party for whom Owner is legally liable, in the performance of Owner's obligations under this Agreement.

9.1.3. In the event claims or Damages are found to be caused by the joint or concurrent negligence of Garver and the Owner, they shall be borne by each Party in proportion to its own negligence.

9.2. Waivers. Notwithstanding any other provision to the contrary, the Parties agree as follows:

9.2.1. The Parties agree that any claim or suit for Damages made or filed against the other Party will be made or filed solely against Garver or Owner respectively, or their successors or assigns, and that no Personnel shall be personally liable for Damages under any circumstances.

9.2.2. Mutual Waiver. To the fullest extent permitted by law, neither Owner, Garver, nor their respective Personnel shall be liable for any consequential, special, incidental, indirect, punitive, or exemplary damages, or damages arising from or in connection with loss of use, loss of revenue or profit (actual or anticipated), loss by reason of shutdown or non-operation, increased cost of construction, cost of capital, cost of replacement power or customer claims, and Owner hereby releases Garver, and Garver releases Owner, from any such liability.

9.2.3. Limitation. In recognition of the relative risks and benefits of the Work Order to both the Owner and Garver, Owner hereby agrees that Garver's and its Personnel's total liability

under the Agreement shall be limited to one hundred percent (100%) of Garver's fee set forth in the applicable Work Order giving rise to the liability.

9.2.4. No Other Warranties. No other warranties or causes of action of any kind, whether statutory, express or implied (including all warranties of merchantability and fitness for a particular purpose and all warranties arising from course of dealing or usage of trade) shall apply. Owner's exclusive remedies and Garver's only obligations arising out of or in connection with defective Services (patent, latent or otherwise), whether based in contract, in tort (including negligence and strict liability), or otherwise, shall be those stated in the Agreement.

9.2.5. The limitations set forth in Section 9.2 apply regardless of whether the claim is based in contract, tort, or negligence including gross negligence, strict liability, warranty, indemnity, error and omission, or any other cause whatsoever.

9.2.6. Nothing in this agreement should be construed as a waiver of immunity pursuant to Arkansas law.

10. DISPUTE RESOLUTION

10.1. Any controversy or claim ("**Dispute**") arising out of or relating to this Agreement or the breach thereof shall be resolved in accordance with the following:

10.1.1. Any Dispute that cannot be resolved by the project managers of Owner and Garver may, at the request of either Party, be referred to the senior management of each Party. If the senior management of the Parties cannot resolve the Dispute within thirty (30) days after such request for referral, then either Party may request mediation. If both Parties agree to mediation, it shall be scheduled at a mutually agreeable time and place with a mediator agreed to by the Parties. Should mediation fail, should either Party refuse to participate in mediation, or should the scheduling of mediation be impractical, either Party may file for arbitration in lieu of litigation.

10.1.2. Arbitration of the Dispute shall be administered by the American Arbitration Association ("AAA") in accordance with its Construction Industry Arbitration Rules. EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, ANY AND ALL RIGHT TO TRIAL BY JURY. The arbitration shall be conducted by a single arbitrator, agreed to by the Parties. In no event may a demand for arbitration be made if the institution of legal or equitable proceedings based on such dispute is barred by the applicable statute of limitations.

10.1.3. The site of the arbitration shall be Rogers, Arkansas. Each Party hereby consents to the jurisdiction of the federal and state courts within whose district the site of arbitration is located for purposes of enforcement of this arbitration provision, for provisional relief in aid of arbitration, and for enforcement of any award issued by the arbitrator.

10.1.4. To avoid multiple proceedings and the possibility of inconsistent results, either Party may seek to join third parties with an interest in the outcome of the arbitration or to consolidate arbitration under this Agreement with another arbitration. Within thirty (30) days of receiving written notice of such a joinder or consolidation, the other Party may object. In the event of such an objection, the arbitrator shall decide whether the third party may be joined and/or whether the arbitrations may be consolidated. The arbitrator shall consider whether any entity will suffer prejudice as a result of or denial of the

proposed joinder or consolidation, whether the Parties may achieve complete relief in the absence of the proposed joinder or consolidation, and any other factors which the arbitrators conclude should factor on the decision.

10.1.5. The arbitrator shall have no authority to award punitive damages. Any award, order or judgment pursuant to the arbitration is final and may be entered and enforced in any court of competent jurisdiction.

10.1.6. The prevailing Party shall be entitled to recover its attorneys' fees, costs, and expenses, including arbitrator fees and costs and AAA fees and costs.

10.1.7. The foregoing arbitration provisions shall be final and binding, construed and enforced in accordance with the Federal Arbitration Act, notwithstanding the provisions of this Agreement specifying the application of other law. Pending resolution of any Dispute, unless the Agreement is otherwise terminated, Garver shall continue to perform the Services under this Agreement that are not the subject of the Dispute, and Owner shall continue to make all payments required under this Agreement that are not the subject of the Dispute.

10.1.8. Owner and Garver further agree to use commercially reasonable efforts to include a similar dispute resolution provision in all agreements with independent contractors and subconsultants retained for the project.

10.1. Litigation Assistance. This Agreement does not include costs of Garver for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by Owner, unless litigation assistance has been expressly included as part of Services. In the event Owner requests such services of Garver, this Agreement shall be amended in writing by both Owner and Garver to account for the additional services and resulting cost in accordance with Section 4.

11. TERMINATION

11.1. Termination for Convenience. Owner shall have the right at its sole discretion to terminate this Agreement for convenience at any time upon giving Garver thirty (30) days' written notice. In the event of a termination for convenience, Garver shall bring any ongoing Services to an orderly cessation. Owner shall compensate Garver in accordance with the applicable Work Order for: (i) all Services performed and reasonable costs incurred by Garver on or before Garver's receipt of the termination notice, including all outstanding and unpaid invoices, (ii) all costs reasonably incurred to bring such Services to an orderly cessation; and (iii) a cancellation fee equal to five percent (5%) of the value of the unperformed Services as a direct result of the termination.

11.2. Termination for Cause. This Agreement may be terminated by either Party in the event of failure by the other Party to perform any material obligation in accordance with the terms hereof. Prior to termination of this Agreement for cause, the terminating Party shall provide at least seven (7) business days written notice and a reasonable opportunity to cure to the non-performing Party. In all events of termination for cause due to an event of default by the Owner, Owner shall pay Garver for all Services properly performed prior to such termination in accordance with the terms, conditions and rates set forth in this Agreement.

11.3. Termination in the Event of Bankruptcy. Either Party may terminate this Agreement immediately upon notice to the other Party, and without incurring any liability, if the non-terminating Party has: (i) been adjudicated bankrupt; (ii) filed a voluntary petition in bankruptcy

or had an involuntary petition filed against it in bankruptcy; (iii) made an assignment for the benefit of creditors; (iv) had a trustee or receiver appointed for it; (v) becomes insolvent; or (vi) any part of its property is put under receivership.

12. MISCELLANEOUS

12.1. Governing Law. This Agreement is governed by the laws of the State of Arkansas, without regard to its choice of law provisions.

12.2. Successors and Assigns. Owner and Garver each bind themselves and their successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; neither Owner nor Garver shall assign, sublet, or transfer their interest in this Agreement without the written consent of the other, which shall not be unreasonably withheld or delayed.

12.3. Independent Contractor. Garver is and at all times shall be deemed an independent contractor in the performance of the Services under this Agreement.

12.4. No Third-Party Beneficiaries. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than Owner and Garver. This Agreement does not contemplate any third-party beneficiaries.

12.5. Entire Agreement. This Agreement constitutes the entire agreement between Owner and Garver and supersedes all prior written or oral understandings and shall be interpreted as having been drafted by both Parties. This Agreement may be amended, supplemented, or modified only in writing by and executed by both Parties.

12.6. Severance. The illegality, unenforceability, or occurrence of any other event rendering a portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision of this Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void.

12.7. Counterpart Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together constitute one Agreement. Delivery of an executed counterpart of this Agreement by fax or transmitted electronically in legible form, shall be equally effective as delivery of a manually executed counterpart of this Agreement.

13. EXHIBITS

13.1. The following Exhibits are attached to and made a part of this Agreement:

Exhibit A – Form of Work Order
Exhibit B – Insurance
Exhibit C – Certification of Engineer
Exhibit D – Mandatory Federal Contract Provisions for Professional Services Contracts

Owner and Garver, by signing this Agreement, acknowledges that they have independently assured themselves and confirms that they individually have examined all Exhibits, and agrees that all of the aforesaid Exhibits shall be considered a part of this Agreement and agrees to be bound to the terms, provisions, and other requirements thereof, unless specifically excluded.

Acceptance of this proposed Agreement is indicated by an authorized agent of the Owner signing in the space provided below. Please return one signed original of this Agreement to Garver for our records.

IN WITNESS WHEREOF, Owner and Garver have executed this Agreement effective as of the date last written below. The Agreement shall be in effect for three (3) years from the date last written below. This Agreement may be extended for two (2) consecutive one year periods if mutually agreed upon by both parties.

CITY OF BENTONVILLE	GARVER, LLC
By: _____ *Signature*	By: [redacted]
Name: _____ *Printed Name*	Name: Michael J. Griffin *Printed Name*
Title: _____	Title: Senior Vice President
Date: _____	Attest [redacted]
Attest: _____	

EXHIBIT A
(FORM OF WORK ORDER)

WORK ORDER NO. XX
CITY OF BENTONVILLE
Project No. XXA1319X

This WORK ORDER ("Work Order") is made by and between the **City of Bentonville** (hereinafter referred to as "Owner") and **Garver, LLC**, (hereinafter referred to as "Garver") in accordance with the provisions of the MASTER AGREEMENT FOR PROFESSIONAL SERVICES executed on [??/??/????] (the "Agreement").

Under this Work Order, the Owner intends to make the following improvements for **[Insert Project Title]**:

[Insert text here.]

Garver will provide professional services related to these improvements as described herein. Terms not defined herein shall have the meaning assigned to them in the Agreement.

SECTION 1 - SCOPE OF SERVICES

1.1 Garver shall provide the following Services:
  1.1.1 [Insert text here [or] in Appendix A as follows]
1.2 In addition to those obligations set forth in the Agreement, Owner shall:
  1.2.1 [Insert text here]

SECTION 2 - PAYMENT

For the Services set forth above, Owner shall pay Garver as follows: [Insert Text Here]

SECTION 3 - APPENDICES

1.1. The following Appendices are attached to and made a part of this Work Order:
1.2. Appendix A – Scope of Services
1.3. Appendix B – Fee Spreadsheet

This Work Order may be executed in two (2) or more counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signature Page to Follow]

DRAFT

The effective date of this Work Order shall be the last date written below.

CITY OF BENTONVILLE	GARVER, LLC
By: _____ *Signature*	By: _____ *Signature*
Name: _____ *Printed Name*	me: _____ *Prin e*
Title: _____	Tit _____
Date: _____	Attest: _____
Attest: _____	

DRAFT

EXHIBIT B
(INSURANCE)

Pursuant to Section 7.1 of the Agreement, Garver shall maintain the following schedule of insurance until completion of the Services:

Worker's Compensation	Statutory Limit
Automobile Liability	
Combined Single Limit (Bodily Injury and Property Damage)	$500,000
General Liability	
Each Occurrence	$1,000,000
Aggregate	$2,000,000
Professional Liability	
Each Claim Made	$1,000,000
Annual Aggregate	$2,000,000

EXHIBIT C
(CERTIFICATION OF ENGINEER)

STATE: ARKANSAS

I hereby certify that I am Michael J. Griffin and duly authorized representative of the firm of GARVER, LLC, whose address is 4300 South J.B. Hunt Drive, Suite 240, Rogers, AR 72758, and that neither I nor the above firm I here represent has:

(a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me of the above consultant) to solicit or secure this contract;

(b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract; or

(c) Paid or agreed to pay to any firm, organization, or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind, for, or in connection with, procuring or carrying out the contract; except as here expressly stated (if any).

I acknowledge that this certificate is to be furnished to the Federal Aviation Administration of the United States Department of Transportation, in connection with this contract involving participation of Airport Improvement Program (AIP) funds and is subject to applicable State and Federal laws, both criminal and civil.

GARVER, LLC

By__ [redacted] __

DATE:

09/24/2021

EXHIBIT D
(FAA MANDATORY CONTRACT PROVISIONS FOR PROFESSIONAL SERVICES CONTRACTS)

1. ACCESS TO RECORDS AND REPORTS

The Engineer must maintain an acceptable cost accounting system. The Engineer agrees to provide the sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives, access to any books, documents, papers, and records of the Engineer which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Engineer agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

2. BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the Engineer or its subconsultants may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

Owner will provide Engineer written notice that describes the nature of the breach and corrective actions the Engineer must undertake in order to avoid termination of the contract. Owner reserves the right to withhold payments to Engineer until such time the Engineer corrects the breach or the Owner elects to terminate the contract. The Owner's notice will identify a specific date by which the Engineer must correct the breach. Owner may proceed with termination of the contract if the Engineer fails to correct the breach by deadline indicated in the Owner's notice.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

3. CIVIL RIGHTS - GENERAL

The Engineer agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Engineer and subconsultants from the solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

4. CIVIL RIGHTS – TITLE VI ASSURANCE

During the performance of this contract, the Engineer, for itself, its assignees, and successors in interest (hereinafter referred to as the "Engineer") agrees as follows:

I. Compliance with Regulations: The Engineer (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

II. Non-discrimination: The Engineer, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The Engineer will

not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

III. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Engineer for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subconsultant or supplier will be notified by the Engineer of the Engineer's obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.

IV. Information and Reports: The Engineer will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a Engineer is in the exclusive possession of another who fails or refuses to furnish the information, the Engineer will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

V. Sanctions for Noncompliance: In the event of a Engineer's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

a. Withholding payments to the Engineer under the contract until the Engineer complies; and/or

b. Cancelling, terminating, or suspending a contract, in whole or in part.

VI. Incorporation of Provisions: The Engineer will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Engineer will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Engineer becomes involved in, or is threatened with litigation by a subconsultant, or supplier because of such direction, the Engineer may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Engineer may request the United States to enter into the litigation to protect the interests of the United States.

5. CLEAN AIR AND WATER POLLUTION CONTROL

Engineer agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). The Engineer agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

6. DEBARMENT AND SUSPENSION

By submitting a bid/proposal under this solicitation, the Engineer certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

7. DISADVANTAGED BUSINESS ENTERPRISE

The Engineer or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Engineer shall carry out applicable requirements of 49 CFR part 26 in the award and administration of Department of Transportation-assisted contracts. Failure by the Engineer to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Owner deems appropriate, which may include, but is not limited to:

1) Withholding monthly progress payments;
2) Assessing sanctions;
3) Liquidated damages; and/or
4) Disqualifying the Contractor from future bidding as non-responsible.

The prime Engineer agrees to pay each subconsultant under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime Engineer receives from the Owner. The prime contractor agrees further to return retainage payments to each subconsultant within 30 days after the subconsultant's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Owner. This clause applies to both DBE and non-DBE subcontractors.

8. DISTRACTED DRIVING

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), the FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

In support of this initiative, the Owner encourages the Engineer to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Engineer must include the substance of this clause in all sub-tier contracts exceeding $3,500 and involve driving a motor vehicle in performance of work activities associated with the project.

9. ENERGY CONSERVATION REQUIREMENTS

Engineer and subconsultant agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201et seq).

10. EQUAL EMPLOYEMENT OPPORTUNITY (E.E.O.)

I. During the performance of this contract, the Engineer agrees as follows:

(1) The Engineer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Engineer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identify or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Engineer

agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Engineer will, in all solicitations or advertisements for employees placed by or on behalf of the Engineer, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The Engineer will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Engineer's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Engineer will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Engineer will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Engineer's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Engineer may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Engineer will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subconsultant or vendor. The Engineer will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event an Engineer becomes involved in, or is threatened with, litigation with a subconsultant or vendor as a result of such direction by the administering agency the Engineer may request the United States to enter into such litigation to protect the interests of the United States.

II. Standard Federal Equal Employment Opportunity Contract Specifications

(1) As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;

d. "Minority" includes:

i. Black (all) persons having origins in any of the Black African racial groups not of Hispanic origin);

ii. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);

iii. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

iv. American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Whenever the Engineer, or any subconsultant at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

(3) If the Engineer is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Engineers shall be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Engineer or subconsultant participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Engineers or subconsultants toward a goal in an approved Plan does not excuse any covered Engineer's or subconsultant's failure to take good faith efforts to achieve the Plan goals and timetables.

(4) The Engineer shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Engineer should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction Engineers performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Engineer is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

(5) Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the Engineer has a collective bargaining agreement to refer either minorities or women

shall excuse the Engineer's obligations under these specifications, Executive Order 11246 or the regulations promulgated pursuant thereto.

(6) In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the Engineer during the training period and the Engineer shall have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained pursuant to training programs approved by the U.S. Department of Labor.

(7) The Engineer shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Engineer's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Engineer shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Engineer's employees are assigned to work. The Engineer, where possible, will assign two or more women to each construction project. The Engineer shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Engineer's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Engineer or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Engineer by the union or, if referred, not employed by the Engineer, this shall be documented in the file with the reason therefore along with whatever additional actions the Engineer may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Engineer has a collective bargaining agreement has not referred to the Engineer a minority person or female sent by the Engineer, or when the Engineer has other information that the union referral process has impeded the Engineer's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Engineer's employment needs, especially those programs funded or approved by the Department of Labor. The Engineer shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Engineer's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Engineer in meeting its EEO obligations; by including it in any policy manual and collective bargaining

agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such a superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Engineer's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Engineer's EEO policy with other Engineers and subconsultants with whom the Engineer does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the Engineer's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Engineer shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a Engineer's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Engineer's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction Engineers and suppliers, including circulation of solicitations to minority and female Engineer associations and other business

associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Engineer's EEO policies and affirmative action obligations.

(8) Engineers are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a Engineer association, joint Engineer union, Engineer community, or other similar groups of which the Engineer is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the Engineer actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Engineer's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Engineer. The obligation to comply, however, is the Engineer's and failure of such a group to fulfill an obligation shall not be a defense for the Engineer's noncompliance.

(9) A single goal for minorities and a separate single goal for women have been established. The Engineer, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, if the particular group is employed in a substantially disparate manner (for example, even though the Engineer has achieved its goals for women generally,) the Engineer may be in violation of the Executive Order if a specific minority group of women is underutilized.

(10) The Engineer shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(11) The Engineer shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

(12) The Engineer shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Engineer who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

(13) The Engineer, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Engineer fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

(14) The Engineer shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in

status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Engineers shall not be required to maintain separate records.

(15) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

11. FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The Engineer has full responsibility to monitor compliance to the referenced statute or regulation. The Engineer must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division

12. LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

The Engineer certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

I. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Engineer, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

II. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

III. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

13. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Engineer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Engineer retains full responsibility to monitor its compliance and their subconsultant's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Engineer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

14. SEISMIC SAFETY

In the performance of design services, the Consultant agrees to furnish a building design and associated construction specification that conform to a building code standard which provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the Consultant agrees to furnish the Owner a "certification of compliance" that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.

15. TERMINATION OF CONTRACT

I. Termination for Convenience. The Owner may, by written notice to the Consultant, terminate this Agreement for its convenience and without cause or default on the part of Consultant. Upon receipt of the notice of termination, except as explicitly directed by the Owner, the Engineer must immediately discontinue all services affected.

   Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

   Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

   Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

II. Termination for Default. Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach.

   The terminating party must provide the breaching party [7] days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.

a) Termination by Owner: The Owner may terminate this Agreement in whole or in part, for the failure of the Consultant to:

1. Perform the services within the time specified in this contract or by Owner approved extension;

2. Make adequate progress so as to endanger satisfactory performance of the Project;

3. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, the Consultant must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

b) Termination by Consultant: The Consultant may terminate this Agreement in whole or in part, if the Owner:

1. Defaults on its obligations under this Agreement;

2. Fails to make payment to the Consultant in accordance with the terms of this Agreement;

3. Suspends the Project for more than 180 days due to reasons beyond the control of the Consultant.

Upon receipt of a notice of termination from the Consultant, Owner agrees to cooperate with Consultant for the purpose of terminating the agreement or portion thereof, by mutual consent. If Owner and Consultant cannot reach mutual agreement on the termination settlement, the Consultant may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the Owner's breach of the contract.

In the event of termination due to Owner breach, the Engineer is entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the Consultant through the effective date of termination action. Owner agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

16. TRADE RESTRICTION CERTIFICATION

By submission of an offer, the Engineer certifies that with respect to this solicitation and any resultant contract, the Engineer –

(1) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (U.S.T.R.);

(2) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the U.S.T.R; and

(3) has not entered into any subcontract for any product to be used on the Federal on the project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

The Engineer must provide immediate written notice to the Owner if the Engineer learns that its certification or that of a subconsultant was erroneous when submitted or has become erroneous by reason of changed circumstances. The Engineer must require subconsultants provide immediate written notice to the Engineer if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to an Engineer or subconsultant:

(1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or

(2) whose subconsultants are owned or controlled by one or more citizens or nationals of a foreign country on such U.S.T.R. list or

(3) who incorporates in the public works project any product of a foreign country on such U.S.T.R. list;

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a Engineer is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Engineer agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in in all lower tier subcontracts. The Engineer may rely on the certification of a prospective subconsultant that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by U.S.T.R, unless the Engineer has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Engineer or subconsultant knowingly rendered an erroneous

certification, the Federal Aviation Administration may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

17. VETERAN'S PREFERENCE

In the employment of labor (excluding executive, administrative, and supervisory positions), the Engineer and all sub-tier Engineers must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 U.S.C. 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

18. TAX DELINQUENCY AND FELONY CONVICTIONS

The Engineer agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

1) The Engineer represents that it is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

2) The Engineer represents that it is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

Felony conviction: Felony conviction means a conviction within the preceding twenty-four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559.

Tax Delinquency: A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CLERK TO ENTER INTO A MASTER AGREEMENT WITH GARVER, LLC FOR ENGINEERING SERVICES FOR THE BENTONVILLE MUNICIPAL AIRPORT.

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 Master Agreement with Garver, LLC for engineering services related to the Bentonville Municipal Airport, 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	**10/12/2021**
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.

2021 SURPLUS LIST: LIST 2

Department	Description of Item(s)	Year	Make	Model	VIN/SN
Street	Schwarze A7000 Street Sweeper	2007	GMC	A70000	1GDM7F1377F414856
Police	Seized-Dodge Durango	1999	Dodge	Durango	1B4HS28Z9XF523341
Police	Seized-Ford Explorer	2003	Ford	Explorer	1FMZU62K73UC03053
Police	Seized-Chevrolet Silverado	2012	Chevrolet	Silverado 1500	1GCRCREA8CZ180316
Parks	Cruiser Bike	2011	Giant	Simple	NA
Parks	Cruiser Bike	2011	Giant	Simple	NA
Parks	Cruiser Bike	2011	Giant	Simple	NA
Parks	Cruiser Bike	2011	Giant	Simple	NA
Parks	Mt. Bike	2011	Giant	Revel	NA
Parks	Mt. Bike	2011	Giant	Revel	NA
Parks	Mt. Bike	2011	Giant	Revel	NA
Parks	Mt. Bike	2011	Giant	Revel	NA
Parks	Mt. Bike	2011	Giant	Revel	NA
Parks	Mt. Bike	2011	Giant	Revel	NA
Parks	Mt. Bike	2011	Giant	Revel	NA
Parks	Mt. Bike	2011	Giant	Revel	NA
Parks	Mt. Bike	2011	Giant	Revel	NA
Parks	Mt. Bike	2011	Giant	Revel	NA
Parks	Mt. Bike	2011	Giant	Revel	NA
Parks	Mt. Bike	2012	Giant	XTC	NA
Parks	Mt. Bike	2012	Giant	XTC	NA
Parks	Mt. Bike	2012	Giant	XTC	NA
Parks	Mt. Bike	2012	Giant	XTC	NA
Parks	Mt. Bike	2012	Giant	Revel Womens	NA
Parks	Mt. Bike	2012	Giant	Revel Womens	NA
Parks	Mt. Bike	2012	Giant	Revel Womens	NA
Parks	Mt. Bike	2012	Giant	Revel Womens	NA
Parks	Mt. Bike	2012	Giant	Revel Womens	NA
Parks	Mt. Bike	2012	Giant	Revel Womens	NA
Parks	(7) Motorized Pitching Machines + Accessories	Purchased 5+ years ago (no longer used)	Jugs	Jr. Pitching Machines	NA
Sewer Rehab	Pallet of Flow Monitoring Equipment (sensors (8), 920's (5), 4150's (8), 6" insertion ring (1), 8" insertion rings (5), 10" insertion rings (3), 12" insertion rings (4), and 15" insertion rings (2))	Varied	Multiple	Multiple	NA
Building	White Dodge Nitro	2011	Dodge	Nitro	1D4PU2GKOBW565065

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 public 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	**10/12/2021**
Department	**Fire**
Submitted by	**Brent Boydston**
Phone	**(479) 271-5927**

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 to enter into a contract with Jackson Brown Palculict (JBP) Architects for their services on the Fire Department Training Facility. Cost of JBP's services is $150,000.00, and paid for out of the Bond. This firm was selected following the City's standard RFQ solicitation process for procurement of professional services in accordance with state law.

Estimated Cost	**$150,000.00**
Is this Item Budgeted?	☐ Yes ☑ No

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

Bond Funds

Inter-office Memorandum

To: Mayor Orman and City Council

From: Brent Boydston, Fire Chief

CC: Camille Thompson, Staff Attorney, Gladys Shoemake, Purchasing Manager, Jake Harper, Finance Director

Date: October 12, 2021

Re: Fire Facility Architect

Fire Department is requesting City Council approval to allow the Mayor and City Clerk to enter into a contract with Jackson Brown Palculict (JBP) Architects for their services on the Fire Department Training Facility.

The cost of JBP's services is $150,000.00 and will be funded by the Bond.

Thank you for your consideration.

AIA® Document B104™ – 2017

Standard Abbreviated Form of Agreement Between Owner and Architect

AGREEMENT made as of the Fifth day of October in the year Two Thousand Twenty One
(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
305 SW "A" Street
Bentonville, AR 72712
Telephone Number: (479) 271-5966
Fax Number: (479) 271-3105

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

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

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

Fire Training Facility

The Owner and Architect agree as follows.

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

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

Init.
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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth below:
(State below details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, and other information relevant to the Project.)

N/A

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

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ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

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

§ 2.2 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 11.8:
(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 General Liability

$1,000,000 each occurrence
$300,000 damage to rented premises (each occurrence)
$5,000 medical expenses (any one person)
$2,000,000 general aggregate

.2 Automobile Liability

$1,000,000 combined single limit (each accident)
$1,000,000 bodily injury (per person)
$1,000,000 bodily injury (per accident)
$1,000,000 property damage (per accident)

.3 Workers' Compensation

$100,000 employer's limit each accident
$100,000 employer's limit disease – each employee
$500,000 employer's limit disease – policy limit

.4 Professional Liability

$1,000,000 occurrence limit
$2,000,000 aggregate limit

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 coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on (1) the accuracy and completeness of the services and information furnished by the Owner and (2) the Owner's approvals. 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.

§ 3.1.2 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. 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.

§ 3.1.3 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.

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§ 3.2 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 discuss with the Owner the Owner's program, schedule, budget for the Cost of the Work, Project site, and alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the Project requirements.

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

§ 3.2.4 Based on the Project requirements, the Architect shall prepare Design Documents for the Owner's approval consisting of drawings and other documents appropriate for the Project and the Architect shall prepare and submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

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

§ 3.3 Construction Documents Phase Services

§ 3.3.1 Based on the Owner's approval of the Design Documents, the Architect shall prepare for the Owner's approval Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.4.4.

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

§ 3.3.3 The Architect shall submit the Construction Documents to the Owner, update the estimate for the Cost of the Work and 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.

§ 3.3.4 The Architect, following the Owner's approval of the Construction Documents and of the latest estimate of the Cost of the Work, shall assist the Owner in obtaining bids or proposals and awarding and preparing contracts for construction.

§ 3.4 Construction Phase Services

§ 3.4.1 General

§ 3.4.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A104™–2017, Standard Abbreviated Form of Agreement Between Owner and Contractor. If the Owner and Contractor modify AIA Document A104–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.4.1.2 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.

§ 3.4.1.3 Subject to Section 4.2, 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.

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§ 3.4.2 Evaluations of the Work

§ 3.4.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.2, 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.

§ 3.4.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents and has the authority to require inspection or testing of the Work.

§ 3.4.2.3 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.

§ 3.4.2.4 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.

§ 3.4.2.5 The Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.4.3 Certificates for Payment to Contractor

§ 3.4.3.1 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 3.4.2 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.

§ 3.4.3.2 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.

§ 3.4.4 Submittals

§ 3.4.4.1 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 any construction means, methods, techniques, sequences or procedures.

§ 3.4.4.2 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review 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 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

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responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.4.4.3 The Architect shall review and respond to written requests for information about the Contract Documents. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness.

§ 3.4.5 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. Subject to Section 4.2.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.4.6 Project Completion

The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; 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 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.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services are not included in Basic Services but may be required for the Project. The Architect shall provide the Supplemental Services indicated below, and the Owner shall compensate the Architect as provided in Section 11.2. Supplemental Services may include programming, site evaluation and planning, environmental studies, civil engineering, landscape design, telecommunications/data, security, measured drawings of existing conditions, coordination of separate contractors or independent consultants, detailed cost estimates, on-site project representation beyond requirements of Section 4.2.2, value analysis, interior architectural design, tenant related services, preparation of record drawings, commissioning, sustainable project services, and any other services not otherwise included in this Agreement. *(Identify below the Supplemental Services that the Architect is required to provide and insert a description of each Supplemental Service, if not further described in an exhibit attached to this document.)*

Civil Engineering
Topographic Survey
Landscape Design
Geotechnical Engineering

§ 4.2 The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Upon recognizing the need to perform Additional Services, the Architect shall notify the Owner. The Architect shall not provide the Additional Services until the Architect receives the Owner's written authorization. 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.

§ 4.2.1 The Architect shall provide services necessitated by a change in the Initial Information, changes in 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 as an Additional Service.

§ 4.2.2 The Architect has included in Basic Services one (1) visit per month to the site by the Architect during construction.

§ 4.2.3 The Architect shall, as an Additional Service, provide services made necessary by a Contractor's proposed change in the Work. The Architect shall prepare revisions to the Architect's Instruments of Service necessitated by Change Orders and Construction Change Directives as an Additional Service.

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

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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 furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project; a written legal description of the site; and services of geotechnical engineers or other consultants, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project.

§ 5.4 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 require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.5 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.

§ 5.6 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.

§ 5.7 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.

§ 5.8 The Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents.

§ 5.9 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.

§ 5.10 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.

§ 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

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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, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, construction procurement activities have 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 current 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 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.

§ 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 when 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

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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 A104–2017, Standard Abbreviated Form of Agreement Between Owner and Contractor. 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 9.6.

§ 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 Mediation, 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 this Agreement. 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.

§ 8.2.3 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.)

[X] Arbitration pursuant to Section 8.3 of this Agreement

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[ ] 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 Arbitration

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

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

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

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

§ 8.3.4 Consolidation or Joinder

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

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

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

§ 8.4 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

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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.

§ 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 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, Reimbursable Expenses incurred, and all 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:

N/A

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

N/A

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

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. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A104–2017, Standard Abbreviated Form of Agreement Between Owner and Contractor.

§ 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 or consents, the proposed language of such certificates or consents shall be submitted to the Architect for review at least 14 days prior to the requested dates of

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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 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. However, the Architect's materials shall not include information the Owner has identified in writing as 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 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)

.2 Percentage Basis
(Insert percentage value)

Six and one-half percent (6.5) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6., until a lowest bona fide bid or construction sum is determined. Once established, contract increases may occur.

.3 Other
(Describe the method of compensation)

§ 11.2 For Supplemental Services identified in Section 4.1, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Compensation shall be the actual amount invoiced to the Architect plus ten percent (10%).

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

Additional services will be billed in accordance with the Architect's hourly rates as defined in Section 11.7, or as negotiated and agreed upon by both parties.

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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 ten percent (10 %), or as follows:

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

Schematic Design Phase	Twenty Five	percent (	25	%)
Design Development Phase	Twenty	percent (	20	%)
Construction Documents Phase	Forty	percent (	40	%)
Procurement Phase	Five	percent (	5	%)
Construction Phase	Ten	percent (	10	%)
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.

§ 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, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

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

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, 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;

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User Notes: (860772168)

.8 Expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally maintained by the Architect and the Architect's consultants;

.9 All taxes levied on professional services and on reimbursable expenses;

.10 Site office expenses; and

.11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ten percent (10 %) of the expenses incurred.

§ 11.9 Payments to the Architect

§ 11.9.1 Initial Payment

An initial payment of zero ($ 0) 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.

§ 11.9.2 Progress Payments

§ 11.9.2.1 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.
(Paragraphs deleted)

§ 11.9.2.2 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.

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

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

N/A

ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

.1 AIA Document B104™–2017, Standard Abbreviated Form of Agreement Between Owner and Architect

(Paragraphs deleted)
This Agreement entered into as of the day and year first written abo[redacted]

OWNER *(Signature)*	**ARCHI[redacted]** *(Signature)*
	H.F. Brown, IV, AIA, LEED AP, President
(Printed name and title)	*(Printed name, title, and license number, if required)*

Init. /

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RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CLERK TO ENTER INTO AN AGREEMENT WITH JACKSON, BROWN, PERCULICT ARCHITECTS FOR ARCHITECTURAL SERVICES RELATED TO THE BENTONVILLE FIRE DEPARTMENT 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 Jackson, Brown, Perculict Architects for the design of the Bentonville Fire Department 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	**10/12/2021**
Department	**Fire**
Submitted by	**Brent Boydston**
Phone	**(479) 271-5927**

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 to enter into a contract with Morrison Shipley for the Civil Engineering Services at the Fire Department Training Facility. Cost of Morrison Shipley's services is $40,500.00 and funded by the Bond. This firm was selected following the City's standard Annual SOQ selection process for professional services in accordance with state law.

Estimated Cost	**$40,500.00**
Is this Item Budgeted?	☐ Yes ☑ No

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

Bond Funds

Inter-office Memorandum

To: Mayor Orman and City Council

From: Brent Boydston, Fire Chief

CC: Camille Thompson, Staff Attorney, Gladys Shoemake, Purchasing Manager, Jake Harper, Finance Director

Date: October 12, 2021

Re: Fire Facility Civil Engineer

Fire Department is requesting City Council approval to allow the Mayor and City Clerk to enter into a contract with Morrison Shipley Civil Engineering for their services on the Fire Department Training Facility.

The cost of Morrison Shipley's services is $40,500.00 and will be funded by the Bond.

Thank you for your consideration.

MORRISON SHIPLEY

September 27, 2021

Chief Brent Boydston
City of Bentonville
305 S.W. “A” Street
Bentonville, AR. 72712
(479) 271-5927, Office
bboydston@bentonvillear.com

RE: Proposal for Civil Engineering Services
Training Center
Bentonville, Arkansas

Dear Chief Boydston:

At your request, Morrison-Shipley Engineers, Inc. (MSE) is providing this Proposal for civil engineering and land surveying services for the referenced project.

PROJECT UNDERSTANDING

MSE understands that you desire for us to provide civil engineering services for the departments new training facility located on Aviation Drive. Based on our correspondence, we understand the following regarding the project’s fact and objectives:

1. The development will be located on the new lot created with the Helping Hands tract split. No additional platting will be required.
2. MSE will work with the design and construction team to develop the project site layout.
3. Stormwater detention will be required with this development.
4. There will be no public infrastructure improvements associated with this project, with the exception of overlaying Aviation Drive and extending a water main across Aviation Drive.

5. MSE's construction phase services will be minimal.
6. The project may be constructed with a separate grading phase.
7. MSE will not prepare material specifications and/or Contract documents except for the information provided on our Civil plans.

If any of our understandings are incorrect or require clarification, please contact us immediately so we can revise this Proposal.

SCOPE OF SERVICES

MSE will provide the following services under this Proposal:

1. MSE will provide concept phase services, including attending meetings with you and your Architect, and prepare project layout plans as directed by you.
2. Design Team and Ownership Meetings. We will be available for as many meetings as requested by you or the design team.
3. MSE will prepare Site Development Plans prepared to City's large-scale development standards, including drainage study, site grading and drainage plans, erosion control, landscape plan and associated details, meeting City's minimum requirements, submitting to and gaining City approval. MSE will prepare a project Drainage Report and SWPPP. Once the project is approved by the Planning Commission, if required, we will submit to ADH for approval of the water main extension. Once all approvals are obtained, we will prepare an Issued for Construction plan set.
4. If requested, MSE will prepare a separate site grading plan set for the contractors use in a separate grading package for bidding and construction.
5. If requested, MSE will as built the site following separate grading only construction phase.
6. MSE will provide construction phase services to include, periodic construction observation, and addressing contractor RFIs, and collecting as built data for the city required record drawings.
7. Record Drawings and Site certifications.

Any services not listed above or that are excluded below will be considered Additional Services. All Additional Services shall be authorized in writing, and same will be billed on an hourly basis in accordance with the attached Schedule of Hourly Billing Rates time expended.

EXCLUSIONS

MSE specifically EXCLUDES the items listed below from this Proposal. **Please read these carefully since some of these may be required to complete the project.**

1. Boundary, Lot Split, ALTA, or other types of Survey Documents.
2. Variances or Conditional Use Requests.
3. Re-design due to scope changes, value engineering, budget overruns, or other reasons.
4. Fire protection systems.
5. Traffic Study.
6. Site lighting design.
7. Offsite road, drainage, water, and/or sewer improvements beyond items noted above.
8. Construction materials testing.
9. Construction staking.
10. Oversight, implementation, monitoring, reporting, and implementation of SW3P measures during construction, including all fees associated therewith.
11. Technical specifications not provided on our Civil Plans.
12. Preparation of franchise utility easement plats, including staking of franchise utilities.
13. Acquisition of off-site easements and rights-of-way.
14. Structural design, including site retaining walls greater than four (4) feet in height.
15. Review and permitting fees.
16. Management of other members of the design team.

FEES

MSE shall be paid the following fees for items listed in the Scope of Services:

Concept Phase Services:	$ 2,500.00 (Hourly Budget)
Site Development Plans:	$ 24,500.00 billed Lump Sum
Site Grading Package:	$ 3,000.00 (Hourly Budget)
As built survey post grading:	$ 3,000.00 (Hourly Budget)
Team Meetings:	$ 1,500.00 Hourly Budget
Construction Phase Services:	$ 3,500.00 (Hourly Budget)
Record Drawings:	$ 2,500.00 billed Lump Sum
Reimbursable Expenses:	Billed at MSE's cost +10%

TERMS

Morrison-Shipley will invoice for our services by email on or about the first day of each month. No paper copies of our invoices will be issued. Payment terms are **NET 30 DAYS from the invoice date**.

This Proposal, when executed by both parties, along with the noted attachments is the Contract between us for the services that MSE will provide on the project. This Contract will remain in force unless it is modified in writing and agreed to by both parties or terminated under the provisions listed in the attached Terms and Conditions. If you plan to issue a purchase order or substitute another contract form, such shall subject to our approval, and this Proposal shall be attached in full therewith. If there are discrepancies between the terms noted in MSE's Proposal and your contract document, the terms of this Proposal shall govern.

PROJECT SCHEDULE

MSE will work with you to develop a mutually acceptable project schedule after we receive an executed version of this Proposal from you. MSE schedules its services on a first-authorized, first-served basis, so any delays in your execution of this Proposal could create delays for MSE starting our work.

If you have any questions regarding this Proposal, or if you wish to schedule the work, you can reach me at (479) 273-2209.

Sincerely,

Morrison-Shipley Engineers, Inc. ***This Proposal is accepted by:***

Arkansas COA #281

[redacted]

John Wary, PE
Principal

Stephanie Orman, Mayor Date

Attachments: Schedule of Hourly Billing Rates
Terms and Conditions

MORRISON SHIPLEY

SCHEDULE OF HOURLY BILLING RATES (AR)

(Effective January 5, 2021)

Principal Engineer	$ 200.00/Hour
Senior Project Manager	$ 150.00/Hour
Project Manager	$ 130.00/Hour
Project Engineer (P.E.)	$ 120.00/Hour
Project Engineer (E.I.)	$ 100.00/Hour
Engineering Technician	$ 75.00/Hour
Landscape Architect (P.L.A.)	$ 135.00/Hour
CAD Senior Designer	$ 115.00/Hour
CAD Designer	$ 95.00/Hour
CAD Technician	$ 75.00/Hour
Professional Surveyor (P.S.)	$ 125.00/Hour
Survey Coordinator	$ 100.00/Hour
Survey Intern (S.I.)	$ 85.00/Hour
Survey Crew Chief	$ 85.00/Hour
Survey Rodman	$ 75.00/Hour
Survey Technician	$ 75.00/Hour
Survey Field Crew (1-person)	$ 125.00/Hour
Survey Field Crew (2-person)	$ 160.00/Hour
Survey Field Crew (3-person)	$ 185.00/Hour
3D Laser Scanning Field Crew (1-Person)	$ 225.00/Hour
3D Laser Scanning Manager	$ 130.00/Hour
3D Laser Scanning Technician	$ 85.00/Hour
BIM Manager	$ 130.00/Hour
BIM Designer	$ 100.00/Hour
BIM Technician	$ 85.00/Hour

Ground Penetrating Radar Field Crew	$ 185.00/Hour
Aerial Mapping Manager – Field *(Flight Ops)*	$ 200.00/Hour
Aerial Mapping Manager – Office *(Travel Time/Data Processing)*	$ 100.00/Hour
Aerial Mapping Technician	$ 85.00/Hour
Senior Construction Observer	$ 105.00/Hour
Construction Observer	$ 90.00/Hour
Administrative Assistant	$ 50.00/Hour

EXPENSES

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

PRINTING

8.5x11:	$0.16/EA B&W	$0.75/EA Color
8.5x14:	$0.22/EA B&W	$0.95/EA Color
11x17:	$0.32/EA B&W	$2.01/EA Color
Custom:	$0.40/SF B&W	$1.55/SF Color

BILLING TERMS

1. Hourly charges will be billed in 0.25-hour minimum increments. Some services may be subject to minimum charges.

2. Hourly rates include charges for personnel, equipment, and supplies, but do not include vehicle mileage charges and per diem.

3. Travel time and mileage will be billed portal to portal from MSE's office.

4. Work requested between the hours of 7:00 PM and 6:00 AM and on Saturdays, Sundays, or holidays will be charged at 125% of the noted rates.

5. Services rendered for legal proceedings, including pre-trial hearings, depositions, expert report preparation, and trial testimony, etc. will be charged at 200% of the noted rates.

TERMS AND CONDITIONS

ADDITIONAL SERVICES

Any service(s) not listed in MSE's Scope of Services will be considered Additional Services. All Additional Services, when requested, shall be authorized in writing by the Client prior to MSE proceeding with any work.

Revisions to the project scope requested by the Client which occur after MSE has been authorized to start its work, including modifications necessitated by operational or budget issues, value engineering, etc., will be considered Additional Services, and MSE's time required to make revisions to the site layout will be billed in addition to the stated fees in this agreement.

The Client shall pay MSE for all Additional Services an amount equal to the cumulative hours charged to the Project by each class of MSE's employees multiplied by the billing rate for each applicable billing class in accordance with the Schedule of Hourly Billing Rates, plus reimbursable expenses and fees charged by MSE's subconsultants.

ASSIGNMENT

Neither party to this Agreement shall transfer, sublet or assign any rights or duties under or interest in this Agreement, including but not limited to monies that are due or monies that may be due, without the prior written consent of the other party. Subcontracting to subconsultants, normally contemplated by MSE as a generally accepted business practice, shall not be considered an assignment for purposes of this Agreement.

BETTERMENT

If, due to MSE's negligence, a required item or component of the Project is omitted from MSE's construction documents, MSE shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event will MSE be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project.

CERTIFICATIONS, GUARANTEES AND WARRANTIES

MSE shall not be required to sign any documents, no matter by whom requested, that would result in MSE's having to certify, guarantee, or warrant the existence of conditions whose existence MSE cannot ascertain. The Client also agrees not to make resolution of any dispute with MSE or payment of any amount due to MSE in any way contingent upon MSE's signing any such certification. As used herein, the word "certify" shall mean an expression of MSE's professional opinion to the best of its information, knowledge and belief, and does not constitute a warranty or guarantee by MSE.

CHANGED CONDITIONS

If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to MSE are revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks, or other material terms of this Agreement, MSE may call for renegotiation of appropriate portions of this Agreement. MSE shall notify the Client of the changed conditions necessitating renegotiation, and MSE and the Client shall promptly and in good faith enter into renegotiation of this Agreement to address the changed conditions. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement in accordance with the Termination provision herein.

CHANGES IN THE WORK

MSE shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents, and may authorize minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time, which are not inconsistent with the intent of

the Contract Documents. 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 shall be considered as Additional Services, and the Client will pay MSE for these services in accordance with the Additional Services provisions of this Agreement.

CONFIDENTIALITY

MSE agrees to keep confidential and not to disclose to any person or entity, other than MSE's employees, subconsultants, and the general contractor and subcontractors, if appropriate, any data or information not previously known to and generated by MSE or furnished to MSE and marked CONFIDENTIAL by the Client. These provisions shall not apply to information in whatever form that is in the public domain, nor shall they restrict MSE from giving notices required by law or complying with an order to provide information or data when such an order is issued by a court, administrative agency or other legitimate authority, or if disclosure is reasonably necessary for MSE to defend itself from any legal action or claim.

CONSEQUENTIAL DAMAGES

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor MSE, their respective officers, directors, partners, employees, contractors, or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and MSE shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

CONSTRUCTION OBSERVATION

If included in the Scope of Services of this Agreement, MSE shall visit the site at intervals appropriate to the stage of construction, or as otherwise agreed to in writing by the Client and MSE, in order to observe the progress and quality of the work completed by the Contractor. Such visits and observation are not intended to be an exhaustive check or a detailed inspection of the Contractor's work but rather are to allow MSE to become generally familiar with the work in progress and to determine, in general, if the work is proceeding in accordance with the Contract Documents. Based on this general observation, MSE shall keep the Client informed about the progress of the Work and shall advise the Client about observed deficiencies in the Work.

If the Client desires more extensive project observation or full-time project representation, the Client shall request that such services be provided by MSE as Additional Services in accordance with the terms of this Agreement.

MSE shall not supervise, direct, or have control over the Contractor's work nor have authority over any responsibility for the construction means, methods, techniques, sequences, or procedures selected by the Contractor nor for the Contractor's safety precautions or programs in connection with the Project. These rights and responsibilities are solely those of the Contractor in accordance with Contractor's contract with the Client.

MSE shall not be responsible for any acts or omissions of the Contractor, any subcontractor, any entity performing any portions of the Work or any agents or employees of any of them or for any decision made on interpretations or clarifications of the construction contract given by Client without consultation and advice of MSE.

MSE does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its work in accordance with the Contractor's contract with the Client or any applicable laws, codes, rules, or regulations.

DESIGN WITHOUT CONSTRUCTION OBSERVATION

Unless Construction Observation is specifically noted in MSE's Scope of Services, it is understood and agreed that MSE's services do NOT include Construction Observation nor review of the Contractor's performance or any other construction phase services, and that such services will be provided by the Client. As such, the Client assumes all responsibility for interpretation of the Contract Documents and for Construction Observation, and the Client waives any claims against MSE that may be in any way connected thereto, including claims resulting from unauthorized modifications to the construction plans and construction errors or omissions.

In addition, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless MSE, its officers, directors, employees, and subconsultants (collectively, MSE) against all damages, liabilities, or costs, including reasonable attorneys' fees and defense costs, arising out of or in any way connected with the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments, or other modifications made to the Contract Documents to reflect changed field or other conditions.

DISPUTE RESOLUTION

In an effort to resolve any conflicts that arise during the design and construction of the Project or following the completion of the Project, the Client and MSE agree that all disputes between them arising out of or relating to this Agreement or the Project shall first be submitted to non-binding mediation, unless the parties mutually agree otherwise.

The Client and MSE further agree to include a similar mediation provision in all agreements with independent contractors and subconsultants retained for the Project and to require all independent contractors and subconsultants also to include a similar mediation provision in all agreements with their subcontractors, subconsultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between the parties to all those agreements.

ELECTRONIC FILES

In accepting and utilizing any drawings, reports and data on any form of electronic media generated and furnished by MSE, the Client agrees that all such electronic files are instruments of service of MSE, who shall be deemed the author, and shall retain all common law, statutory law and other rights, without limitation, including copyrights.
The Client agrees not to reuse these electronic files, in whole or in part, for any purpose other than for the Project. The Client agrees not to transfer these electronic files to others without the prior written consent of MSE. The Client further agrees that MSE shall have no responsibility or liability to Client or others for any changes made by anyone other than MSE or for any reuse of the electronic files without the prior written consent of MSE.

In addition, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless MSE, its officers, directors, employees and subconsultants (collectively, MSE) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from any changes made by anyone other than MSE or from any use or reuse of the electronic files without the prior written consent of MSE.

Under no circumstances shall delivery of electronic files for use by the Client be deemed a sale by MSE, and MSE makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall MSE be liable for indirect or consequential damages as a result of the Client's unauthorized use or reuse of the electronic files.

The Client is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by MSE and electronic files, the signed or sealed hard-copy construction documents shall govern.

GOVERNING LAW AND JURISDICTION

The Client and MSE agree that this Agreement and any legal actions concerning its validity, interpretation, and performance shall be governed by the laws of the State of Arkansas without regard to any conflict of laws provisions, which may apply the laws of other jurisdictions. It is further agreed that any legal action between the Client and MSE arising out of this Agreement or the performance of the services shall be brought in a court of competent jurisdiction in Benton County, Arkansas.

HAZARDOUS MATERIALS

Both parties acknowledge that MSE's scope of services does not include any services related to the presence of any hazardous or toxic materials. In the event MSE or any other person or entity involved in the project encounters any hazardous or toxic materials, or should it become known to MSE that such materials may be present on or about the jobsite or any adjacent areas that may affect the performance of MSE's services, MSE may, at its sole option and without liability for consequential or any other damages, suspend performance of its services under this Agreement until the Client retains appropriate qualified consultants and/or contractors to identify and abate or remove the hazardous or toxic materials and warrants that the jobsite is in full compliance with all applicable laws and regulations.

As used in this Agreement, the term “Hazardous Materials” shall mean any substances, including without limitation asbestos, toxic or hazardous waste, PCBs, combustible gases and materials, petroleum or radioactive materials (as each of these is defined in applicable federal statutes) or any other substances under any conditions and in such quantities as would pose a substantial danger to persons or property exposed to such substances at or near the Project site.

INDEMNIFICATION

MSE agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors, and employees (collectively, Client) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by MSE's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom MSE is legally liable.

The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless MSE, its officers, directors, employees, and subconsultants (collectively, MSE) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Client's negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom the Client is legally liable. Nothing contained herein shall be construed as a waiver of immunity by Client.

Neither the Client nor MSE shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence or for the negligence of others.

INFORMATION PROVIDED BY OTHERS

The Client shall furnish, at the Client's expense, all information, requirements, reports, data, surveys and instructions required by this Agreement. MSE may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof. MSE shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by the Client and/or the Client's consultants and contractors.

INSURANCE

During the term of this Agreement, MSE agrees to provide the insurance coverages noted on the sample insurance certificates that follow these Terms and Conditions. If additional coverage is required over and above the noted coverages, the Client shall reimburse MSE 100% of the premium(s) charged for the additional coverage required

over and above the noted coverage. In addition, MSE agrees to attempt to maintain continuous professional liability coverage for the period of design and construction of this project and for a period of three (3) years following substantial completion, if such coverage is reasonably available at commercially affordable premiums. For the purposes of this Agreement, "reasonably available" and "commercially affordable" shall be defined as the availability of insurance allowing more than 50% of the design professionals practicing in the State of Arkansas in this discipline being able to obtain such coverage. Insurance coverages shall be subject to all the terms, exclusions, and conditions of the policies.

JOBSITE SAFETY

Neither the professional activities of MSE, nor the presence of MSE or its employees and subconsultants at a construction/project site, shall impose any duty on MSE, nor relieve the General Contractor of its obligations, duties, and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending, and coordinating the Work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. MSE and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The Client agrees that the General Contractor shall be solely responsible for jobsite and worker safety, and warrants that this intent shall be carried out in the Client's contract with the General Contractor. The Client also agrees that the General Contractor shall defend and indemnify the Client, MSE, and MSE's subconsultants. The Client also agrees that the Client, MSE, and MSE's subconsultants shall be made additional insureds under the General Contractor's policies of general liability insurance.

LIEN RIGHTS

Client agrees that MSE shall have a lien upon real property constituting the Project site for all unpaid sums due pursuant to this Agreement or any addendums hereto. Also, MSE is authorized to perfect a lien, enforce the lien, and foreclose the lien in the manner allowed by local statutes for a mechanic and materialman's lien upon real property.

LIMITATION OF LIABILITY

In recognition of the relative risks and benefits of the Project to both the Client and MSE, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of MSE and MSE's officers, directors, partners, employees, shareholders, owners, and subconsultants for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of MSE and MSE's officers, directors, partners, employees, shareholders, owners, and subconsultants shall not exceed the total sum paid to or on behalf of MSE by MSE's insurance policies applicable thereto subject to all terms, exclusions, and conditions of the policies. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

OPINIONS OF PROBABLE CONSTRUCTION COSTS

In providing opinions of probable construction costs, the Client understands that MSE has no control over the cost or availability of labor, equipment or materials, or over market conditions or the Contractor's method of pricing, and that MSE's opinions of probable construction costs are made on the basis of MSE's professional judgment and experience. MSE makes no warranty, express or implied, that the bids or the negotiated cost of the work will not vary from MSE's opinion of probable construction cost.

OWNERSHIP OF INSTRUMENTS OF SERVICE

The Client acknowledges MSE's construction documents, including electronic files, as instruments of professional service. Nevertheless, the final construction documents prepared under this Agreement shall become the property of the Client upon completion of the services and payment in full of all monies due to MSE. The Client shall not reuse

or make any modification to the construction documents without the prior written authorization of MSE. The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless MSE, its officers, directors, employees and subconsultants (collectively, MSE) against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way connected with the unauthorized reuse or modification of the construction documents by the Client or any person or entity that acquires or obtains the construction documents from or through the Client without the written authorization of MSE.

PERMITS AND APPROVALS

MSE will assist the Client in applying for those permits and approvals normally required by law for projects similar to the one for which MSE's services are being engaged. This assistance shall consist of completing and submitting forms to the appropriate regulatory agencies having jurisdiction over the construction documents, and other services normally provided by MSE and included in the Scope of Services of this Agreement.

MSE's assistance does not include, however, special studies, special research, attendance at more than two (2) meetings with public authorities, special testing or special documentation not usually and customarily required for this type of project. MSE will provide such special services as Additional Services as authorized in writing by the Client in accordance with the compensation provisions of this Agreement.

When permit or review fees are required, the Client shall either 1) pay these directly to the requesting agency, or 2) provide MSE full payment on an instrument payable to requesting agency prior to MSE's submittal of documents requiring permit(s) or review(s). MSE may elect to pay, on behalf of the Client, permit or review fees. Same will be invoiced to Client as Reimbursable Expenses, in addition to MSE's Fees, at 110% of MSE's cost.

MSE provides no guarantee regarding the timeframe for obtaining approvals from outside agencies nor does it guarantee approval of any permits.

PRECEDENCE

These Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice to proceed, or like document regarding MSE's services.

RECORD DOCUMENTS

If included in MSE's Scope of Services, upon completion of the Work, MSE shall compile for and deliver to the Client a reproducible set of Record Documents based upon the marked-up record drawings, addenda, change orders and other data furnished by the Contractor or other third parties. These Record Documents will show significant changes made during construction. Because these Record Documents are based on unverified information provided by other parties, which MSE is entitled to assume will be reliable, MSE cannot and does not warrant their accuracy or completeness.

REJECTION OF WORK

MSE shall have the authority, but not the duty, to recommend to the Client rejection of any Work that, in the judgment of MSE, does not conform to the Construction Documents. Neither this authority nor MSE's good-faith judgment to reject or not reject any Work shall subject MSE to any liability to or cause of action by the Contractor, subcontractors, or any other suppliers or persons performing work on this project.

SEVERABILITY

If any of these Terms and Conditions shall be finally determined to be invalid or unenforceable in whole or part, the remaining provisions hereof shall remain in full force and effect, and be binding upon the parties hereto. The parties agree to reform this Agreement to replace any such invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the stricken provision.

SHOP DRAWING REVIEW

MSE shall review and approve or take other appropriate action on the Contractor submittals, such as shop drawings, product data, samples, and other data, which the Contractor is required to submit, but only for the limited purpose of checking for conformance with the design concept and the information shown in the Construction Documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the Contractor. MSE's review shall be conducted with reasonable promptness while allowing sufficient time in MSE's judgment to permit adequate review. Review of a specific item shall not indicate that MSE has reviewed the entire assembly of which the item is a component. MSE shall not be responsible for any deviations from the Construction Documents not brought to the attention of MSE in writing by the Contractor. MSE shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

STANDARD OF CARE

In providing services under this Agreement, MSE shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality. MSE makes no warranties, express or implied, as to its professional services rendered under this Agreement. Accordingly, the Client should prepare and plan for clarifications and modifications, which may impact both the cost and schedule of the Project. MSE and its subconsultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers. Nothing in this Agreement is intended to create, nor shall it be construed to create, a fiduciary duty owed by either party to the other party.

SUCCESSORS, ASSIGNS, AND BENEFICIARIES

Client and MSE each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Client and MSE are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

Neither Client nor MSE may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

SURVIVAL

These Terms and Conditions shall survive the completion of the services under this Agreement and the termination of this Agreement for any cause.

TERMINATION

In the event of termination of this Agreement by either party, the Client shall, within fifteen (15) calendar days of termination, pay MSE for all services rendered and all reimbursable costs incurred by MSE up to the date of termination, in accordance with the payment provisions of this Agreement.

The Client may terminate this Agreement for the Client's convenience and without cause upon giving MSE not less than seven (7) calendar days' written notice.

Either party may terminate this Agreement for cause upon giving the other party not less than seven (7) calendar days written notice for any of the following reasons:

1. Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;

2. Assignment of this Agreement or transfer of the Project by either party to any other entity without the prior written consent of the other party;

3. Suspension of the Project or MSE's services by the Client for more than ninety (90) calendar days, consecutive or in the aggregate;

4. Material changes in the conditions under which this Agreement was entered into, the Scope of Services or the nature of the Project, and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes.

In the event of any termination that is not the fault of MSE, the Client shall pay MSE, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by MSE in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs and all other expenses directly resulting from the termination.

THIRD PARTY BENEFICIARIES

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 Client or MSE. MSE's services under this Agreement are being performed solely for the Client's benefit, and no other party or entity shall have any claim against MSE because of this Agreement or the performance or nonperformance of services hereunder. The Client and MSE agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in this Project to carry out the intent of this provision.

VALUE ENGINEERING

If the Client retains the services of a Value Engineer (VE) to review the plans prepared by MSE, these services shall be at the Client's sole expense and shall be performed in a timely manner so as not to delay the orderly progress of MSE's services. The Client shall promptly notify MSE of the identity of the VE and shall define the VE's scope of services. All recommendations of the VE shall be given to MSE for review, and adequate time will be provided for MSE to respond to these recommendations.

If MSE objects to any recommendations made by the VE, it shall so state in writing to the Client, along with the reasons for objecting. If the Client, in spite of MSE's objections, requires the incorporation of changes in the Construction Documents, the Client agrees, to the fullest extent permitted by law, to waive all claims against MSE and to indemnify and hold harmless MSE from any damages, liabilities or costs, including reasonable attorneys' fees and costs of defense, which arise in connection with or as a result of the incorporation of such design changes required by the Client.

MSE shall be compensated for services necessary to incorporate recommended value engineering changes into reports, drawings, specifications, bidding or other documents. MSE shall be compensated as Additional Services for all time spent to prepare for, review, and respond to the recommendations of the VE. MSE's time for performance of its services shall be equitably adjusted.

END OF TERMS AND CONDITIONS

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CLERK TO ENTER INTO AN AGREEMENT WITH MORRISON-SHIPLEY CONSULTING ENGINEERS FOR PROFESSIONAL SERVICES RELATED TO THE BENTONVILLE FIRE DEPARTMENT 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 Morrison-Shipley Consulting Engineers for professional services related to the Bentonville Fire Department 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	**10/12/2021**
Department	**Fire**
Submitted by	**Brent Boydston**
Phone	**(479) 271-5927**

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 to enter into an Agreement with Clinard Construction for Pre-Construction and Phase 1 Construction (geotechnical/grading/dirt work) Services for the Fire Training Facility, in the amount of $70,000.00 ($45,000.00 for Pre-Construction Services; $25,000.00 for Phase 1 Construction Services). This firm was selected in accordance with §14-58-1001 for projects exceeding $2 million dollars.

Estimated Cost	**$70,000.00**
Is this Item Budgeted?	☐ Yes ☑ No

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

Bond funds

Inter-office Memorandum

To: Mayor Orman and City Council

From: Brent Boydston, Fire Chief

CC: Camille Thompson, Staff Attorney, Gladys Shoemake, Purchasing Manager, Jake Harper, Finance Director

Date: October 12, 2021

Re: Fire Facility Construction Management

Fire Department is requesting City Council approval to allow the Mayor and City Clerk to enter into a contract with Clinard Construction for their services on the Fire Department Training Facility.

This Agreement is for Pre-Construction and Phase 1 Construction Services. In order to keep construction of the Training Facility on schedule and avoid higher costs, it is necessary to expedite Phase 1 Construction Services so that the grading/dirt work is completed prior to the rainy season. These fees are for services only; the cost for Phase 1 Construction will be brought to Council as an Amendment once the Guaranteed Maximum Price (GMP) for Phase 1 is proposed by Clinard (any future construction after Phase 1 will also be brought as an Amendment/GMP).

The cost of Clinard Construction services is $70,000.00 and will be funded by the Bond.

Thank you for your consideration.

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 day of October in the year Two Thousand Twenty-One
(In words, indicate day, month, and year.)

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

City of Bentonville
305 SW A Street
Bentonville, Arkansas 72712
Telephone Number: (479) 271-5966

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

Clinard Construction Management, Inc.
615 N. Walton Blvd. Suite D
Bentonville, Arkansas 72712
mclinard@clinardconstruction.com
Tel: 479-271-6212
Fax: 479-271-2490

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

Bentonville Fire Training Facility
2431 SW Aviation Drive (Address to be verified with 911 Dispatch)
Bentonville, AR 72712

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

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

The Owner and Construction Manager agree as follows.

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

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

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

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ARTICLE 1 INITIAL INFORMATION

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

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

The program is based on the following preliminary elements of design and information:

1) 5 story fire training tower containing props allowing for propane type fire training and Class A burn rooms as proposed by Fire Facilities Inc. on a Proposal dated July 26, 2021 and per Preliminary Plans dated same date. This proposal and plan are subject to change based on budgetary constraints.

2) Props to be supplied and installed by Symtech as per the Proposal dated May 25, 2021 and Preliminary Installation Locations plans dated the same date. This proposal and plan are subject to change based on budgetary constraints.

3) Site layout as per a sketch done by Clinard Construction Management showing a concept site plan for the training tower, a support building with training room, restrooms, offices and other spaces as needed to support training exercises and maintenance of the facility. The site layout also gives an idea of the location of storm

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drainage and stormwater detention, street and cross use entrance locations, driveways, parking lots and equipment maneuvering areas on site during training exercises. This site plan is subject to change based on design team programming changes and budgetary constraints.

4) Preliminary off site improvements as suggested by City Staff in an email response dated February 21, 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.)

The training center site is approximately 2.25 acres, with approximately 208 feet of frontage on Aviation Drive. The site is lower than the surrounding properties and street requiring a significant amount of structural fill to bring the subgrade up to street level. No soils report for the project site has been generated at this time; however, a soils report generated for the recently completed city owned Public Works Maintenance Facility adjacent to the north has been made available and will serve to provide preliminary soils data prior to the project site soil borings being completed. It is anticipated both Civil Engineering and Architectural/Engineering design work will proceed concurrently. The site is served by city water and sewer either on site or within 100 feet of the property boundary. Natural gas, telephone and cable TV are also on site or nearby. The legal description of the site has been determined by the recent Purchase and Sale documents as approved by the city council and staff attorney.

§ 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.)

A bond issue has been approved for this facility with a maximum total cost of the project set a $3,500,000. This total is to include Architectural, Engineering and all Construction Costs including consultants and cost of Construction Management services for Pre-Construction and Construction Work. Land acquisition costs are not included in the bond issue funds for the project.

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

.1 Design phase milestone dates, if any:

TBD

.2 Construction commencement date:

TBD

.3 Substantial Completion date or dates:

TBD

.4 Other milestone dates:

TBD

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

The project is planned for a 2-phase construction schedule with Earthwork, Limited Utilities and Storm Drain Pipe and Structures in an accelerated Construction Phase 1 and all other construction completed in Phase 2 once all Large Scale Development is approved by City Council.

§ 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.)

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TBD

§ 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.)

This Agreement is for Pre-Construction Services ONLY until and upon approval of a Guaranteed Maximum Price Proposal and Amendment for Construction Phase Services upon completion of Pre-Construction Services Phase.

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

Chief Brent Boydston
305 SW A Street
Bentonville, Arkansas 72712
479-271-5927

§ 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.)

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

.1 Geotechnical Engineer:

Grubbs, Hoskyn, Baron, & Wyatt
341 West County Line Road
Springdale, AR 72764
(479) 756-5999

.2 Civil Engineer:

Morrison Shipley
2407 SE Cottonwood St Ste 1
Bentonville, AR 72712
479.273.2209

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

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

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

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

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

§ 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.)

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

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

§ 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,

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information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

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

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

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

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

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services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

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

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The 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

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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.)

§ 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 Guaranteed Maximum Price proposals for Phase 1 Construction and Phase 2 Construction for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposals shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2 for each Phase. A Guaranteed Maximum Price proposal shall be provided and approved for the Work of Phase 1 and Phase 2 prior to commencement of Work of each Construction Phase.

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

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

.1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;

.2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;

.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;

.4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and

.5 A date by which the Owner must accept the Guaranteed Maximum Price.

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

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

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal for Phase 1 and later for Phase 2 in writing before the date specified in the Guaranteed Maximum Price proposal,

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

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

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

§ 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 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 otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

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

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

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

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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§ 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.)

Forty-five Thousand and no/100 dollars ($45,000) payable on a monthly basis for five months at a rate of $9,000 per month for five months or prorated over the Pre-Construction Phase time period more or less.

§ 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.)

Casey Roberts, Superintendent - $55 per hour for any on site meetings, coordination of activities such as testing, survey, layout or any other time on site as needed to assist in developing preliminary budgeting and scheduling or other design assistance to the design team.

Greg Alexander, Superintendent - $60 per hour for any on site meetings, coordination of activities such as testing, survey, layout or any other time on site as needed to assist in developing preliminary budgeting and scheduling or other design assistance to the design team.

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 ( ) 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 ( ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

(Insert rate of monthly or annual interest agreed upon.)

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ARTICLE 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.)

Phase 1 Construction – Twenty Five Thousand and no/100 dollars ($25,000) prorated over the Construction Phase 1 schedule payable on a monthly basis.

Phase 2 Construction – Ninety Thousand and no/100 dollars ($90,000) prorated over the Construction Phase 2 schedule payable on a monthly basis.

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

Changes in the Contract Sum that add cost to the Contract Sum will result in an increase in the Construction Manager's Fee in the amount of 10% of the added cost approved by the City of Bentonville.

Reductions in the Contract Sum will have no affect on the Construction Manager's Fee.

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

§ 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.

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

§ 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 inure to the benefit of 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.

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

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

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

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

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

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

§ 7.2 Labor Costs

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

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

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

Casey Roberts, Superintendent - $55 per hour for any on site meetings, coordination of activities such as testing, survey, layout or any other time on site as needed to assist in developing preliminary budgeting and scheduling or other design assistance to the design team.

Greg Alexander, Superintendent - $60 per hour for any on site meetings, coordination of activities such as testing, survey, layout or any other time on site as needed to assist in developing preliminary budgeting and scheduling or other design assistance to the design team.

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

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

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

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

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction
§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

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

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

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

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

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

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

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

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

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

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

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§ 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.

§ 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

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be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

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

- **.1** Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- **.2** Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- **.3** Expenses of the Construction Manager's principal office and offices other than the site office;
- **.4** Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- **.5** The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- **.6** Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- **.7** Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- **.8** Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- **.9** Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, 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.

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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.

ARTICLE 10 ACCOUNTING RECORDS

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

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

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

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

§ 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.

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§ 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 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.)

Zero percent retainage

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

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

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

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

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

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

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

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

.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

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Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

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

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

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

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ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 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: Mediation

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

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

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

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an 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.

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§ 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 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.)

Prorated as to fees earned up to the time of Termination plus 10% of any remaining unpaid fees whether Pre-Construction of Construction Phase fees.

§ 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 obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

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§ 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 One Million Dollars ($ 1,000,000) for each occurrence and One Million Dollars ($ 1,000,000) 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 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.

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

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than Five Hundred Thousand Dollars ($ 500,000.) each accident, Five Hundred Thousand Dollars ($ 500,000) each employee, and Five Hundred Thousand Dollars ($ 500,000.) 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 -0- ($ -0-) per claim and -0- ($ -0-) 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
Builders Risk All Risk Insurance	Available Upon Request if Needed

§ 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:

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/

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

§ 14.5 Other provisions:

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

.1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

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

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

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

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

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

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

[ ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

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

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

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/

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OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
Stephanie Orman Mayor	J. Mark Clinard President
(Printed name and title)	*(Printed name and title)*

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Additions and Deletions Report for
AIA® Document A133™ – 2019

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.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 12:08:05 ET on 09/24/2021.

PAGE 1

AGREEMENT made as of the day of October in the year Two Thousand Twenty-One

...

City of Bentonville
305 SW A Street
Bentonville, Arkansas 72712
Telephone Number: (479) 271-5966

...

(Name, legal status, address, and other information)

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

...

Tel: 479-271-6212
Fax: 479-271-2490

...

Bentonville Fire Training Facility
2431 SW Aviation Drive (Address to be verified with 911 Dispatch)
Bentonville, AR 72712

...

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

PAGE 2

The program is based on the following preliminary elements of design and information:

1) 5 story fire training tower containing props allowing for propane type fire training and Class A burn rooms as proposed by Fire Facilities Inc. on a Proposal dated July 26, 2021 and per Preliminary Plans dated same date. This proposal and plan are subject to change based on budgetary constraints.

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2) Props to be supplied and installed by Symtech as per the Proposal dated May 25, 2021 and Preliminary Installation Locations plans dated the same date. This proposal and plan are subject to change based on budgetary constraints.

3) Site layout as per a sketch done by Clinard Construction Management showing a concept site plan for the training tower, a support building with training room, restrooms, offices and other spaces as needed to support training exercises and maintenance of the facility. The site layout also gives an idea of the location of storm drainage and stormwater detention, street and cross use entrance locations, driveways, parking lots and equipment maneuvering areas on site during training exercises. This site plan is subject to change based on design team programming changes and budgetary constraints.

4) Preliminary off site improvements as suggested by City Staff in an email response dated February 21, 2021.

PAGE 3

The training center site is approximately 2.25 acres, with approximately 208 feet of frontage on Aviation Drive. The site is lower than the surrounding properties and street requiring a significant amount of structural fill to bring the subgrade up to street level. No soils report for the project site has been generated at this time; however, a soils report generated for the recently completed city owned Public Works Maintenance Facility adjacent to the north has been made available and will serve to provide preliminary soils data prior to the project site soil borings being completed. It is anticipated both Civil Engineering and Architectural/Engineering design work will proceed concurrently. The site is served by city water and sewer either on site or within 100 feet of the property boundary. Natural gas, telephone and cable TV are also on site or nearby. The legal description of the site has been determined by the recent Purchase and Sale documents as approved by the city council and staff attorney.

...

A bond issue has been approved for this facility with a maximum total cost of the project set a $3,500,000. This total is to include Architectural, Engineering and all Construction Costs including consultants and cost of Construction Management services for Pre-Construction and Construction Work. Land acquisition costs are not included in the bond issue funds for the project.

...

TBD

...

TBD

...

TBD

...

TBD

...

The project is planned for a 2-phase construction schedule with Earthwork, Limited Utilities and Storm Drain Pipe and Structures in an accelerated Construction Phase 1 and all other construction completed in Phase 2 once all Large Scale Development is approved by City Council.

PAGE 4

TBD

...

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This Agreement is for Pre-Construction Services ONLY until and upon approval of a Guaranteed Maximum Price Proposal and Amendment for Construction Phase Services upon completion of Pre-Construction Services Phase.

...

Chief Brent Boydston
305 SW A Street
Bentonville, Arkansas 72712
479-271-5927

...

Grubbs, Hoskyn, Baron, & Wyatt
341 West County Line Road
Springdale, AR 72764
(479) 756-5999

...

Morrison Shipley
2407 SE Cottonwood St Ste 1
Bentonville, AR 72712
479.273.2209

PAGE 5

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

...

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

PAGE 8

§ 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~~ Guaranteed Maximum Price proposals for Phase 1 Construction and Phase 2 Construction for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the ~~proposal~~ proposals shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section ~~6.1.2.~~6.1.2 for each Phase. A Guaranteed Maximum Price proposal shall be provided and approved for the Work of Phase 1 and Phase 2 prior to commencement of Work of each Construction Phase.

...

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal for Phase 1 and later for Phase 2 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~~ a 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.

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

...

Forty-five Thousand and no/100 dollars ($45,000) payable on a monthly basis for five months at a rate of $9,000 per month for five months or prorated over the Pre-Construction Phase time period more or less.

...

Casey Roberts, Superintendent - $55 per hour for any on site meetings, coordination of activities such as testing, survey, layout or any other time on site as needed to assist in developing preliminary budgeting and scheduling or other design assistance to the design team.

Greg Alexander, Superintendent - $60 per hour for any on site meetings, coordination of activities such as testing, survey, layout or any other time on site as needed to assist in developing preliminary budgeting and scheduling or other design assistance to the design team.
PAGE 12

Phase 1 Construction – Twenty Five Thousand and no/100 dollars ($25,000) prorated over the Construction Phase 1 schedule payable on a monthly basis.

Phase 2 Construction – Ninety Thousand and no/100 dollars ($90,000) prorated over the Construction Phase 2 schedule payable on a monthly basis.

...

Changes in the Contract Sum that add cost to the Contract Sum will result in an increase in the Construction Manager's Fee in the amount of 10% of the added cost approved by the City of Bentonville.

Reductions in the Contract Sum will have no affect on the Construction Manager's Fee.

...

All savings inure to the benefit of the Owner.
PAGE 13

Casey Roberts, Superintendent - $55 per hour for any on site meetings, coordination of activities such as testing, survey, layout or any other time on site as needed to assist in developing preliminary budgeting and scheduling or other design assistance to the design team.

Greg Alexander, Superintendent - $60 per hour for any on site meetings, coordination of activities such as testing, survey, layout or any other time on site as needed to assist in developing preliminary budgeting and scheduling or other design assistance to the design team.
PAGE 17

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the First day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the Fifteenth 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) calendar days after the Architect receives the Application for Payment.
PAGE 18

Zero percent retainage
PAGE 20

[X] Other: ~~(Specify)~~ Mediation

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PAGE 22

Prorated as to fees earned up to the time of Termination plus 10% of any remaining unpaid fees whether Pre-Construction of Construction Phase fees.

PAGE 23

§ 14.3.1.1 Commercial General Liability with policy limits of not less than One Million Dollars ($ 1,000,000) for each occurrence and One Million Dollars ($ 1,000,000) 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 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.

...

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than Five Hundred Thousand Dollars ($ 500,000.) each accident, Five Hundred Thousand Dollars ($ 500,000) each employee, and Five Hundred Thousand Dollars ($ 500,000.) 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 -0- ($ -0-) per claim and -0- ($ -0-) in the aggregate.

...

Builders Risk All Risk Insurance Available Upon Request if Needed

PAGE 25

Stephanie Orman Mayor

J. Mark Clinard President

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, J. Mark Clinard, 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 12:08:05 ET on 09/24/2021 under Order No. 9914671531 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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RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CLERK TO ENTER INTO AN AGREEMENT WITH CLINARD CONSTRCUTION MANAGEMENT FOR SERVICES RELATED TO THE BENTONVILLE FIRE DEPARTMENT 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 Clinard Construction for Pre-construction and Phase 1 Construction services associated with the Bentonville Fire Department 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	**10/12/2021**
Department	**Fire**
Submitted by	**Brent Boydston**
Phone	**(479) 271-5927**

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 in the amount of $27,435.00 to Banner Fire Equipment Inc. to repair the hydraulic ladder turn table on a 2000 Model fire truck, and transportation to and from Roxana Illinois.

Estimated Cost	**$27,435.00**
Is this Item Budgeted?	☐ Yes ☑ No

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

General Fund Reserves.

Budget Adjustment Request

Date of City Council Meeting	**10/12/2021**
Department	**Fire Department**
Submitted by	**Brent Boydston**
Phone	**(479) 271-5927**

Purpose of Budget Adjustment ***(Enter purpose in space below):***

Repair the hydraulic ladder turn table on a 2000 Model Ladder Truck, and transportation to and from Roxana Illinois.

General Ledger Account Information*				
Org (Department)	**Object**	**Account Description**	**Revenue + (-)**	**Expense + (-)**
102020	**44420**	**Vehicle Repairs & Maintenance**		**$ 27,435.00**
		Totals	**$ -**	**$ 27,435.00**
		Net Impact on Fund Balance	**$**	**(27,435.00)**

***Final Account Number will be determined by Accounting Department after approval and purchase**

Inter-office Memorandum

To: Mayor Orman and City Council

From: Brent Boydston, Fire Chief

CC: Camille Thompson, Staff Attorney, Gladys Shoemake, Purchasing Manager, Jake Harper, Finance Director

Date: October 12, 2021

Re: Repairs to 2000 Model Ladder Truck

Fire Department is requesting a budget adjustment in the amount of $27,435.00 to repair the turn table on a 2000 Model Ladder Truck.

The 21 year old ladder truck needs to have the turn table for the hydraulic ladder rebuilt. The turn table and ladder will have to be removed to accomplish the repairs, so the truck will have to be trailered to Roxana Illinois and back.

Thank you for your consideration.

BANNER
FIRE EQUIPMENT, INC

4289 INDUSTRIAL DRIVE
ROXANA, ILLINOIS 62084
WWW.BANNERFIRE.COM
888-BAN-FIRE

*** Customer Review ***
Date / Time: 9/29/2021 10:56:43AM
Repair Order: 756
Customer: 10161
Branch: MAIN
Invoice Total: $27,434.13

Charge

Bill To: City of Bentonville
1000 SW 14th St

Bentonville, AR 72712
Shop: 479-271-3115

Ship To: City of Bentonville
800 SW A Street
Station 1
Bentonville, AR 72712

Customer P/O: randyp

Completion Date:

Task: 1 77-000148 ROTATION GEAR DAMAGED

Department: Service

Complaint: Estimate to replace rotation bearing

Supp.	Part	Description / Ref Number		U/M	Quantity	Price	Extended Price
	SUPPLIES	Misc hardware/supplies	Misc		1.00	625.00	625.00
	LU201	12oz OPEN GEAR & WIRE ROPE LUBRICANT (SPRAYON)	Part	Each	1.00	19.99	19.99
	AW-32	HYDRAULIC OIL GALLON	Part	Each	50.00	17.99	899.50
	PARTS IN	Shipping and Handling Inbound - Parts	Misc		1.00	350.00	350.00
	360177	GEAR TT 34.24 110 75	Part	Each	1.00	7,458.26	7,458.26

Task Subtotals

Parts:	$8,377.75
Core Chg:	$0.00
Core Ret:	$0.00
EHC:	$0.00
Labor:	$12,500.00
Miscellaneous:	$975.00
Task 1 Subtotals:	$21,852.75

Estimate

Task: 2 86-000001 Misc truck repair

Department: Service

Complaint: Estimate to flatbed vehicle to Banner facility

Supp.	Part	Description / Ref Number		U/M	Quantity	Price	Extended Price
	SUPPLIES	Misc hardware/supplies	Misc		1.00	7.50	7.50
	Sublet	Sublet Vendor repair	Misc		1.00	5,000.00	5,000.00

Task Subtotals

Parts:	$0.00
Core Chg:	$0.00
Core Ret:	$0.00
EHC:	$0.00
Labor:	$0.00
Miscellaneous:	$5,007.50
Task 2 Subtotals:	$5,007.50

BANNER
FIRE EQUIPMENT, INC
4289 INDUSTRIAL DRIVE
ROXANA, ILLINOIS 62084
WWW.BANNERFIRE.COM
888-BAN-FIRE

*** Customer Review ***
Date / Time: 9/29/2021 10:56:43AM
Repair Order: 756
Customer: 10161
Branch: MAIN
Invoice Total: $27,434.13

Charge

Bill To: City of Bentonville
1000 SW 14th St

Bentonville, AR 72712
Shop: 479-271-3115

Ship To: City of Bentonville
800 SW A Street
Station 1
Bentonville, AR 72712

Customer P/O: randyp

Completion Date:

Customer Tax ID:

Payment Method
Charge

Totals	
Total Parts:	$8,377.75
Total Core Chg:	$0.00
Total Core Ret:	$0.00
Total EHC:	$0.00
Total Labor:	$12,500.00
Total Miscellaneous:	$5,982.50
Invoice Subtotal:	$26,860.25
Total Tax:	$573.88
Invoiced Total:	$27,434.13

ESTIMATE ONLY!
PRICES SUBJECT TO CHANGE. CUSTOMER WILL BE NOTIFIED OF ANY CHANGES PRIOR TO ADDITIONAL WORK BEING PERFORMED. PRICING GOOD FOR (90) DAYS. STOCK PARTS RETURNED AFTER (30) DAYS ARE SUBJECT TO 25% RESTOCK FEE. ELECTRONIC COMPONENTS AND SPECIAL ORDER PARTS ARE NOT RETURNABLE. DUE TO VARIANCES IN COSTS AND AVAILABILITY THIS ESTIMATE CAN VARY UP TO 5%. IF ANY QUESTIONS, PLEASE CALL 618-251-4200.
THANK YOU FOR YOUR BUSINESS!

Agenda Item Form

Date of City Council Meeting	**10/12/2021**
Department	**Fire**
Submitted by	**Brent Boydston**
Phone	**(479) 271-5927**

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 surplus of a 2015 Dodge Ram Pickup (VIN 1C6RR7FT0FS680042) that was totaled in a motor vehicle accident. This vehicle will be sold either salvage or online public auction.

Estimated Cost	
Is this Item Budgeted?	☐ Yes ☐ No

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

Inter-office Memorandum

To: Mayor Orman and City Council

From: Brent Boydston, Fire Chief

CC: Camille Thompson, Staff Attorney, Gladys Shoemake, Purchasing Manager, Jake Harper, Finance Director

Date: October 12, 2021

Re: Surplus Wrecked 2015 Dodge Pickup

Fire Department is requesting to surplus a 2015 Dodge Pickup Truck that was involved in a motor vehicle accident and was totaled by the insurance adjuster.

Insurance will pay the insured amount ($21,000.00) for the truck, and will either be sold via salvage or auction.

Thank you for your consideration.

RESOLUTION NO. _____

A RESOLUTION DECLARING CERTAIN PROPERTY BELONGING TO THE CITY OF BENTONVILLE FIRE DEPARTMENT AS SURPLUS PROPERTY.

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

Section 1: That certain property of the City of Bentonville Fire Department, more particularly described in the attached memo, is hereby declared to be surplus and the Fire Department is authorized to dispose of by online public auction or exchange such property as authorized by law and more particularly described therein.

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

PASSED and APPROVED this _____ day of _____, 2021.

APPROVED:

_____
MAYOR

ATTEST:

_____
CITY CLERK

Agenda Item Form

Date of City Council Meeting	**10/12/2021**
Department	**Fire**
Submitted by	**Brent Boydston**
Phone	**(479) 271-5927**

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 in the amount of $31,061.00 to replace a vehicle in the Building and Fire Safety Division. The vehicle that will be replaced was involved in an accident, and the insurance adjuster totaled the truck.

Estimated Cost	**$31,061.00**
Is this Item Budgeted?	☐ Yes ☑ No

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

Insurance Payment and General Fund Reserves.

Budget Adjustment Request

Date of City Council Meeting	**10/12/2021**
Department	**Fire**
Submitted by	**Brent Boydston**
Phone	**(479) 271-5927**

Purpose of Budget Adjustment ***(Enter purpose in space below):***

Building and Fire Safety Division had a vehicle totaled in an accident.

General Ledger Account Information*				
Org (Department)	**Object**	**Account Description**	**Revenue + (-)**	**Expense + (-)**
102050	47420	Capital Vehicle		$ 31,061.00
102050	37520	Misc. Income	$ 21,000.00	
		Totals	$ 21,000.00	$ 31,061.00
		Net Impact on Fund Balance	$	(10,061.00)

***Final Account Number will be determined by Accounting Department after approval and purchase**

Inter-office Memorandum

To: Chief Brent Boydston

From: Deputy Chief Kevin Boydston

CC:

Date: October 12, 2021

Re: Building Inspection Vehicle Replacement

We currently need to replace a 2015 Ram Quad Cab 4x4 that was totaled in an automobile accident on September 9th. I have visited with Mike Haley, the fleet salesperson for Red River Dodge/Ram in Jacksonville since they had the 2021 state contract on the Ram truck we are needing to replace. He does not have any in inventory and their data base search only shows Superior in Siloam Springs as having any within 500 miles. I have also visited with Rick Lathon at Steve Landers Chrysler in Little Rock. He affirmed the information that I received from Mr. Haley with the caveat next year will be a bleak year for fleet vehicles. The only fleet vehicles that exist are in Siloam Springs.

I priced similar, Ram Tradesman trucks in our area and found three, 2021's that are RWD at McClarty-Daniel and priced $28,908 & $32,540. These are rear wheel drive which are troublesome when going through construction sites. I located a 2021 Ram Quad Cab 4x4 at Breeden Dodge in Ft. Smith with a price of $34,200.

In the current market, the 2021 Ram Quad Cab 4x4 at Superior in Siloam Springs is our most cost effective option at $31,061.

Insurance will be writing a check to the City for the insured amount of $21,000.00 for the truck.

Agenda Item Form

Date of City Council Meeting	**10/12/2021**
Department	**Parks and Recreation**
Submitted by	**Josh Stacey**
Phone	**(479) 696.0204**

Item Type: (*Check All That Apply)*

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

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

Ordinance for a Waiver of Bid to enter into a contract with Ozark Tennis Academy as the Parks and Recreation Department's Tennis Professional for 2022 tennis programing. The initial contract term will be one year, renewable annually for a maximum term of five years. Proposals were requested through a formal Request for Proposals (RFP) process (RFP-21-59). One submission was received in response to the RFP; a Selection Committee evaluated the submission and selected Ozark Tennis Academy as the highest rated submitter based on their proposed programs and offerings to participants and past performance with the City.

Estimated Cost	**$146,456**
Is this Item Budgeted?	☑ Yes ☐ No

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

Waiver of Bid Request

Date of City Council Meeting	**10/12/2021**
Department	**Bentonville Parks and Recreation**
Submitted by	**Josh Stacey**
Phone	**(479) 696.0204**

Vendor	**Ozark Tennis Academy**
Total Cost	**$146,456**

Description of Purchase ***(This should include a detailed description of the type of material, equipment or service that is being requested including make, model, year & options if applicable. Enter details in space below):***

Bentonville Parks and Recreation offers youth and adult tennis programs for the community. Ozark Tennis Academy (OTA) has been our Tennis Professional for over 10 years and averages over 1,500 participants each year. OTA offers participants a unique learning experience by bringing in coaches from all over the country and the world to instruct and lead the program. OTA has become the premiere tennis coaching organization in Northwest Arkansas and has helped to grow our youth tennis program to the largest in the state of Arkansas.

Justification ***(Enter justification in space below):***

Due to the specialized nature of work and professional skills required to provide tennis professional services, it is not feasible or practicable to competitively bid these services. The Request for Proposals (RFP) process was used to competitively solicit proposals for a Tennis Professional program provider (RFP-21-59). One submission was received; a Selection Committee evaluated the submission and selected OTA as the highest rated submitter based on their proposed programs, offerings to participants and past performance with the City.

Memo

To:	City Council, Mayor Orman
From:	Josh Stacey, Recreation Services Manager
Through:	David Wright, Parks and Recreation Director
Date:	September 29, 2021
Re:	Ozark Tennis Academy Tennis Professional

Bid waiver in the amount of $146,456 to Ozark Tennis Academy (OTA) for the service of providing Professional Tennis Services for Bentonville Parks and Recreation.

Bentonville Parks and Recreation utilizes a professional tennis provider to offer comprehensive tennis programming for the community. OTA was chosen through an RFP process based on previous experience, price, and quality of services.

The agreement attached, allows Bentonville Parks and Recreation to enter into a contract with OTA of providing Professional Tennis Services for Bentonville Parks and Recreation.
Due to the demand and number of participants in this program, OTA is anticipated to be paid more than $35,000. Bentonville Parks and Recreation is anticipating OTA being paid $146,456 for this service. This expense is fully recouped through registration fees for this program and is a budgeted item.

If you have any questions regarding this item, please let me know. Please call me at 696.0204, or email jstacey@bentonvillear.com.

SERVICE CONTRACT: RFP-21-59-TENNIS PROFESSIONAL

THIS CONTRACT is made in Benton County, Arkansas, by and between the City of Bentonville, Arkansas, hereinafter "City," and Ozark Tennis Academy, hereinafter "Contractor" (collectively, the "Parties"), Witnesseth:

1. **DESCRIPTION.** This Contract has been awarded to Contractor as a result of Contractor's Proposal, attached hereto as **Exhibit A (Proposal)**, and **Exhibit B (Final Price Negotiated)**, submitted to the City's solicitation, Request for Proposals(RFP)-21-59-Tennis Professional, attached hereto as **Exhibit C**. The services shall consist of providing the Tennis Professional services, as described herein and in all attached Exhibits.

2. **PRIMARY CONTACTS.** The primary contact for the Contractor shall be _____. The primary contact for the City shall be the City of Bentonville Recreation Manager, or their designated assignee.

3. **CONTRACT TERM.** The initial term for this Contract shall be one (1) year, commencing on **October (month)____(day), 2021, and ending on October (month)_____(day),2022.** The Contract shall be renewable annually in one (1) year increments upon mutual written agreement for a total Contract Term of five (5) years.

4. **PROCEDURES.** The services shall be conducted in accordance with this Contract and all Exhibits attached hereto.

5. FEES, EXPENSES, AND SCHEDULE. The City agrees to pay Contractor based upon the fee scheduled outlined in **Exhibit B**, summarized as follows:

Type of Program (Description)	Fee Paid to Contractor (Payment Plan)	Notes
Tournaments	**85% Net Program Profit***	***Net Program Profit includes the deduction of: all third party fees (transaction/credit card fees, BPR staffing, BPR supplies.**
Camps	**$90.00 Per Camper**	**For all camps.**
Lessons, Drills & Leagues	**90% Gross Program Profit***	**Gross Program Profit: Program Profit minus the third party fees (transaction/credit card fees)**

Clarifications:

- **Non-Resident Fees are not considered a Program Fee; these are maintenance fees charged to non-residents to help support the routine maintenance of the courts/facilities that residents otherwise pay through taxes. No BPR contractor is paid non-resident fees.**

There shall be no change in fees permitted during the original Term of this Contract or for any extension or renewal of this Contract unless executed as an Amendment and approved by the Bentonville City Council prior to any change. Contractor agrees to only perform the type of services outlined in this Contract and the Exhibits attached hereto.

6. METHOD OF WORK. The services and work under this Contract shall be performed as described herein and all attached Exhibits, and as is industry standard when performing professional tennis programming services.

a. All Contractor's employees or agents, and anyone performing services under this Contract on-site, are required to pass a mandatory background check prior to participating in the camps.

7. ADDITIONAL SERVICES. Any service outside of the services stated herein and in the Exhibits attached hereto, must be pre-approved by the City, in writing, and in accordance with applicable procurement laws and the City's Purchasing Policy prior to any additional work proceeding.

8. INVOICING. Contractor shall submit invoices to the City's Contact upon completion of each program for approval. Contractor will be paid only for participants whom actually attend programs.

9. PAYMENT.

a. Inaccurate Invoicing. In the event that the City becomes credibly informed that any representations of Contractor provided in its invoicing are wholly or partially inaccurate, the City may withhold payment of sums then, or in the future, otherwise due to Contractor until the inaccuracy and the cause thereof is corrected to the City's reasonable satisfaction.

b. Service Failure. In the event of a service failure, where the service performed is not in accordance with this Contract, the City may withhold sums otherwise due to Contractor that are specifically for the area in which the service failure occurred, until correction of the service failure is confirmed.

10. TERMINATION FOR LACK OF FUNDS. If, for whatever reason, adequate funding is not made available by City to support or justify continuation of the level of services to be provided by Contractor under this Contract, City may terminate or reduce the amount of services to be provided by Contractor under this Contract. In such event, City will notify Contractor in writing at least thirty (30) days in advance of such termination or reduction of services for lack of funds.

11. TERMINATION (GENERAL): Additional termination/cancellation/rescheduling procedures shall be in accordance with **Exhibit C**.

12. DISPUTE RESOLUTION. City and Contractor 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 the dispute may take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute, Contractor will proceed with the services as per this Contract as if no dispute existed, and City will continue to make payment for Contractor's completed services; and provided further that no dispute will be submitted to arbitration without both Parties' express written consent.

13. SUBCONTRACTING. Contractor may not subcontract or assign any of the services to be performed under this Contract.

14. INSURANCE. Contractor will maintain, throughout the duration of this Contract and any subsequent renewal year, insurance as set forth in the Exhibits attached hereto and in accordance with State and Federal laws, which includes Workers' Compensation insurance, as required by Arkansas Statute, for all Contractor's employees or personnel. In the event that any interruption or change in insurance coverage may occur, the Contractor shall provide the City with thirty (30) days written notice of any such interruptions or changes. Failure to maintain the required insurance, as set forth herein will result in the direct breach of this Contract and subsequent termination.

15. INDEMNIFICATION AND HOLD HARMLESS. For purposes of this Contract, Contractor agrees to indemnify, defend and hold harmless the City, its officers, appointees, employees, and agents from any and all loss, damage, liability or expense, of any nature whatsoever caused or incurred as a result of the negligence or other actionable fault of Contractor, its affiliates, subsidiaries, employees, agents, assignees, and subcontractors and their respective employees and agents. Contractor is not required hereunder to defend 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.

16. TAXES, LICENSES AND PERMITS. The Contractor shall pay all Local, State and Federal taxes required by law and shall secure and maintain all permits and licenses necessary for the execution of the services described herein.

17. ENTIRE CONTRACT. This Contract, including all documents and exhibits included by reference herein, constitutes the entire Contract between the Parties and supersedes all prior agreements, whether oral

or written, covering the same subject matter. This Contract may not be modified or amended except in writing mutually agreed upon and accepted by both Parties to this Contract.

18. NO THIRD PARTY BENEFICIARIES. Nothing contained herein will create a contractual relationship with, or any rights in favor of, any Third Party.

19. INDEPENDENT CONTRACTOR. Contractor and any of Contractor's employees are independent contractors and are not an agent or employee of City.

20. COMPLIANCE WITH LAWS. Contractor will abide by all applicable federal, state and local laws, ordinances and regulations applicable at the time the services are rendered.

21. APPLICABLE LAW, JURISDICTION, VENUE. Interpretation of this Contract and disputes arising out of or related to this Contract 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 Contract will be in the District Court of Benton County, Arkansas.

22. SEVERABILITY. If any provision of this Contract is determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) will be null and void; provided, however, that the remaining provisions of this Contract will be unaffected and will continue to be valid and enforceable.

23. AMBIGUITY. If any ambiguity, inconsistency or conflict arises in the interpretation of this Contract, the same will be resolved by reference first to the terms and conditions of this Contract and then to the Exhibits attached hereto.

24. FREEDOM OF INFORMATION ACT. Contractor understands that City is subject to ACA 25-19-105, which makes City records available to citizens of Arkansas, including but not limited to this Contract and all Exhibits attached hereto.

SIGNATURE PAGE

The Parties hereto have caused this Contract to be executed this _____ (day) of October (month), 2021.

CITY OF BENTONVILLE, ARKANSAS

By: _____

Stephanie Orman, Mayor

By: _____

Name (printed):_____

Title: _____

Ozark Tennis Academy

Address: _____

_____

EXHIBIT A

Ozark Tennis Academy Proposal

Submitted to RFP-21-59

CITY OF BENTONVILLE TENNIS COMPLEX PROPOSAL

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OTA Team for City of Bentonville Tennis Complex

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Resumes:

- Matias De Genaro
- Beau Basham

City of Bentonville Tennis Complex Proposal
from
Ozark Tennis Academy



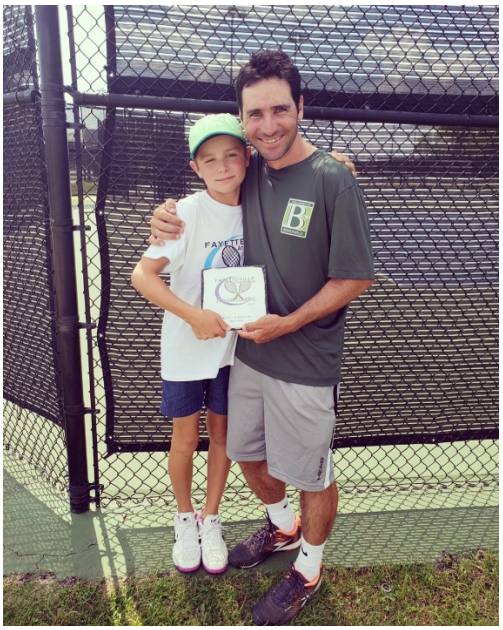
About Ozark Tennis Academy

Ozark Tennis Academy was founded in January 2006 by Christy and Jared Ward, USPTA Elite teaching professionals. In 2021, OTA was acquired by Carmen De Genaro, Matias De Genaro and Beau Basham. For the first half of its existence, it was exclusively junior-based, becoming one of the powerhouse programs in the state of Arkansas. Over 50 of their students have been ranked in the top 10 in the state, while more than 20 have cracked the top 100 in the Southern Section. They have also coached over 30 individual state champions, and currently have 3 Nationally ranked.

In 2011, OTA was chosen to direct the Bentonville Parks and Recreation program out of the newly built Memorial Park Tennis Complex. This expansion has seen them run adult and junior programs for every experience level, host USTA tournaments, and manage an ever-growing staff of highly respected coaches, including Matias De Genaro and Beau Basham. Matias took over as Director and Beau as Head Pro in 2016, continuing to lead OTA and the City of Bentonville forward with the same focus on community that has been at the heart of their programs for over a decade.

Ozark Tennis Academy Team for City of Bentonville Tennis Complex

Carmen De Genaro – Management Executive/Communications Coordinator
Site Director and High Performance Coach – Matias De Genaro
Site Director and Head Coach- Beau Basham
Staff Pros – John Doohan, Matt Tabler, Ben Allison, Rodrigo Martinez and Seth Grady
Ozark Tennis Academy Owners – Carmen and Matias De Genaro, and Beau Basham
Advisors: Juan Pablo Vidour, Christy and Jared Ward



Matias De Genaro joined the OTA family in 2015. Originally from Argentina, he spent 9 years coaching in Spain, the last five as the Director of Tennis at Club de Campo Santa Barbara. He played professionally, reaching ATP rankings of 845 in singles and 624 in doubles. Since his playing career ended, he has been a training partner for 2 players who are currently ranked in the Top 100 in the world (and another in the Top 135) and have played in Grand Slam Tournaments.

As a coach certified in both the Spanish system (RPT) and as a USPTA Elite Professional, he has worked with a woman who reached WTA rankings of 591 in singles and 535 in doubles. When he left Spain, Matias was coaching the #1 ranked U14 boy in the country, the #15 ranked U16 boy, and the #77 ranked U16 boy.

Currently, he is the lead coach for some players who are top 100 in the Southern Section:

- Darby Allison – 67 in Girls 14s
- Mercedes Merino – 35 in Girls 12s
- Hayden Shoemake – 29 in Boys 16s (Currently playing tennis at Citadel University at South Carolina)
- Brooke Killingsworth – 2 in Girls 16s, Top 72 in the country (Currently playing tennis at Wake Forest University at North Carolina)



This success has helped Ozark Tennis Academy and the Bentonville Parks and Recreation program become recognized as one of the top junior programs in the South.



Beau Basham is the longest tenured OTA coach on staff, joining as an assistant in 2013. He was one of the top ranked juniors in Arkansas growing up and ranked Top 50 in the Southern Section. He went on to play for the University of Arkansas – Ft. Smith on a full scholarship. Upon finishing his playing career, he immediately began to work as a teaching professional. Prior to joining the OTA family, he was coaching at the Central Arkansas Junior Tennis Academy, where he not only taught lessons and drills, but also traveled with junior players all over the South.

He arrived at OTA as an assistant, quickly rose to one of the lead coaches, before taking on Head Pro duties when Jared and Christy handed over the reins of the program. Beau has been connected to the growth of the Bentonville Parks and Recreation program in a major way, and his continued efforts have provided a link to OTA's past, while guiding the Bentonville Parks and Recreation program into an increasingly brighter future.

For a program to experience the type of growth that the Bentonville Parks and Recreation has seen, there has to be a high degree of professional expertise. As importantly, however, is a corresponding level of organization that allows those coaching abilities to shine. With the OTA team, there is an impressive infrastructure already in place: Matias, Beau and Carmen manage the staff, schedule, and program direction, while John, and Matt have all had integral

instruction roles. Ben runs the summer camps, Carmen keeps players (and parents) informed, does the books and – along with Matias and Beau – lends counsel on topics ranging from program direction to scheduling to staff management.

The Bentonville Parks and Recreation tennis program has become the largest parks and recreation program in the state under the guidance of Ozark Tennis Academy. While Matias and Beau have provided the leadership and structure to allow the program to flourish, it has truly been a team effort, and every current member of the staff has contributed. Considering the experience and familiarity that each has with the Parks and Recreation program, there is simply no other teaching professional (or team of professionals) more equipped to continue the success at Memorial Park, Citizens Park and Wildwood Park, and the new Osage Park.



Proposed Programming

Adult Tennis:

- Playing opportunities through leagues, USTA Team Tennis (matches and optional team practices), USTA tournaments, and open play.
- Training options through group drills and private (or semi-private) lessons.
- Health and fitness with Cardio Tennis.

Beginner/Intermediate Junior Tennis:

- Full spectrum of age division lessons, utilizing the ROGY training methods as recommended by the United States Tennis Association (USTA).
    - 4-5 year olds – Foam or Red ball, 36' court
    - 6-8 year olds – Red ball, 36' court
    - 9-10 year olds – Orange ball, 60' court
    - 11+ year olds – Green or Yellow ball, 72' court
- Playing options through USTA Junior Team Tennis and open play.
- Fun events such as summer camps, socials, and other special events.

Advanced Junior Tennis:

- This covers more advanced tournament (or tournament prep) players from ages 6-18. It incorporates the same USTA system, but with more vigorous training and playing schedules.
- The bulk of playing opportunities for this level of player requires traveling to various areas of the state/South.
- Still includes fun events such as summer camps, socials, and other special events.

Camps:

- 1 camp during Spring Break
- 5 camps during Summer
- 1 camp during Christmas Break

Pickleball:

- Pickleball is a paddle/racquet sport that combines the elements of badminton, tennis and ping-pong. The game is easy for beginners to learn.
- Leagues
- Tournaments
- Privates

Court Usage

The basic premise is to work with the existing structure, while continuing to grow the program to reflect the needs of an evolving Memorial Park community. This is a peak-season schedule; the winter session – and Sundays throughout the year – will include daily Open/Reserved court time, Team Tennis (adult and/or junior), and drills/lessons for both Adults and Juniors. Reserved court time will generally be for USTA Adult Team Tennis.

School year (Late March-May & Late August-October)

Monday-Friday:
7am-3pm – Adult time almost exclusively – leagues, USTA Team Tennis, lessons, drills, Cardio Tennis, open and reserved play

3-6pm – Junior Time almost exclusively – Beginner through Advanced drills and lessons

6-8:30pm – Blend of programming, to include Open/Reserved court time, Adult leagues, and drills/lessons for both Adults and Juniors

Saturday:
7am-8:30pm – Blend of programming, to include Open/Reserved court time, Team Tennis (adult and/or junior), and drills/lessons for both Adults and Juniors

Summer (June-Late August)

Monday-Saturday:

7am-1pm – Blend of programming, to include Open/Reserved court time, Adult Leagues, Team Tennis (adult and/or junior), and drills/lessons for both Adults and Juniors; and camps.

1pm-5pm – Open play almost exclusively

5-8:30pm – Blend of programming, to include Open/Reserved court time, Adult Leagues, Team Tennis (adult and/or junior), and drills/lessons for both Adults and Juniors

Sundays (Late March-October)

7am-8:30pm – Blend of programming, to include Open/Reserved court time, Team Tennis (adult and/or junior), and drills/lessons for both Adults and Juniors

Split for Program

OTA

- 85% of gross profit for all oncourt programming (lessons, drills, and leagues)
- 85% of net profit for tournaments and camps
- Responsible for teaching materials (balls, baskets, teaching aids, etc) and payment for coaches
- Lessons, drills and leagues can be based off of the charge to the customer, but tournaments and camps require prizes, awards, food, and additional staff, so they need to be split after the costs are calculated

Bentonville Parks and Recreation

- 15% of gross profit for all oncourt programming (lessons, drills, and leagues)
- 15% of net profit for tournaments and camps

Behind the numbers

Here is an important amount to consider:

- $0 – Amount the City of Bentonville would have to pay for a complete coaching team.

OTA's capacity to teach multiple lessons/drills is very large and limitless. We have always been able to keep up with demand no matter how large a task or growth of a program.

In addition, the numbers for the Bentonville Parks and Recreation program have continued to grow year after year with Ozark Tennis Academy running it, to the point that it has become not only one of the largest overall programs in the state of Arkansas, but also one of the most revered. Junior drills, adult drills, summer camps, USTA Adult Team Tennis teams, adult leagues, private lessons, and USTA sanctioned tournament are just some of the options that we are continuing to offer year after year.

In the end, with Matias and Beau continuing to oversee operations, and with the staff responsible for those numbers returning intact, Ozark Tennis Academy is the only team that can claim to continue the success of the Tennis Complex program and have the empirical data to support that claim.

Why Ozark Tennis Academy?



First and foremost, we are a team. Carmen De Genaro, Matias De Genaro and Beau Basham oversee the entire company. Matias is the Director and lead High Performance coach, Beau is the Director and Head Pro, Ben runs summer camps (and younger juniors year-round), Carmen is our management executive and communications coordinator while Matt, and John, have all been with the program for a minimum of 5 years. Recently we added Rodrigo Martinez to our team. When the program grows – or coaches move on – and more help is needed, Parks and Recreation will not have a moment of concern, as we will always make sure that we are staffed with capable and qualified coaches that meet city approval.

We are professional. Our coaches understand that players come to us because we have a good reputation. We have a good reputation not just because of our level of expertise, but also because we are on time, dependable, and customer service oriented.

We are knowledgeable. All our permanent staff have at the very least played collegiate tennis. More importantly – because good players have not always proven to be good coaches – 5 of our coaches have gone through the USPTA certification. Some programs lean on club level players, former/current high school players, or even former college players with no coaching credentials to run their programs, but we have higher expectations for OTA.

We are fun. While we take our jobs seriously and want to do the best we can to help our players each and every time we step onto the court, we also strive to remember one very

important thing: tennis is a game! We enjoy each other, we enjoy our jobs, and that enthusiasm spills over, helping create a welcoming, open environment.

Parting Shot

The Mission Statement on our website reads:

At OTA, we are Family. We work hard and manage our time to reach our goals. We have FUN! We believe in ourselves, our teammates, and the OTA Way. We give ourselves space to dream. And then we put our dreams into action.

So yes, we are an expert, professional, fun-loving team. But above all we value family. It starts with our coaches, extends to our players, and ends up creating a community that has meaning.

Building this type of community at the Memorial Park Tennis Complex has been significant to our program and carries more meaning for us than it would for others. For all of the coaches, the relationships developed with each other and all of our players is very real and incredibly important.

For us, Bentonville is not just a place to work – it's home.

Family. Hard work. Fun. Belief. Dreams. Action. It is the OTA Way.



Ozark Tennis Academy Staff Bios



Originally from Argentina, Matias has spent 9 years coaching in Spain, the last five at Club de Campo Santa Barbara. He played professionally, reaching ATP rankings of 845 in singles and 624 in doubles. Since his playing career ended, he has been a training partner for 2 players who are currently ranked in the Top 100 in the world (and another in the Top 135), and have played in Grand Slam Tournaments.

As a coach certified in both the Spanish system (RPT) and as a USPTA Elite Professional, he has worked with a woman who reached WTA rankings of 591 in singles and 535 in doubles. When he left Spain, Matias was coaching the #1 ranked U14 boy in the country, the #15 ranked U16 boy, and the #77 ranked U16 boy.



Beau Basham was one of the top ranked juniors in Arkansas, and ranked Top 50 in the Southern Section. Like Christy, he was the recipient of the Hershal Friday Award presented by the Arkansas Tennis Association to the top junior in the state. He went on to play for the University of Arkansas – Ft. Smith on a full scholarship.

Upon finishing his playing career, he immediately began a career as a teaching professional. Beau has taught players of all ages as a teaching pro at Fort Smith Athletic Club and Fianna Hills Country Club. He also taught for a summer in Maine at Camp Mataponi, as well as a summer in New South Wales, Australia under former Arkansas National Champion Peter Doohan. Prior to joining the OTA family, he was coaching at the Central Arkansas Junior Tennis Academy, where he not only taught lessons and drills, but also traveled with junior players all over the South.



Matt Tabler hails from an entire OTA family! Older brother Martin and younger sister Mallory also came through the program, both top-ranked Arkansas juniors who went on to play college tennis. Matt was a 3-time state champion at BHS, winning the 7A doubles title as a sophomore, and the overall doubles title as a senior. He attended UA-Ft Smith, where he was named All-Conference as a freshman. In addition to being an OTA summer coach, Matt has taught 3 years at the Tiger Tennis Academy at Ouachita Baptist University.



John Doohan has been playing tennis his whole life after being trained by his father, Peter Doohan, who is the 1982 NCAA Doubles National Champion. John was the top ranked 18s junior in both singles and doubles. In 2011, John was ranked number 1 Arkansas Men's Open Doubles. John currently holds an NTRP of 5.0.

John has taught junior and adult drills as well as summer camps for Pinnacle Country Club in Rogers Arkansas and the Nelson Bay Tennis Center in New South Wales, Australia, before joining the tennis staff for Bentonville Parks and Recreation. John has also spent time as an assistant Pro at the Fianna Hills Country Club and the Fort Smith Country Club teaching private tennis lessons to all ages.



Ben Allison played collegiate tennis at Hardin Simmons University, Abilene Texas, prior to joining the US Navy in 1994. He has an Undergraduate Degree in Elementary Education from West Texas A&M University and a Masters Degree in Education Administration from Wayland Baptist University. Ben coached for 10 years in Texas and Colorado, winning multiple Regional and State Tennis Titles at the High School level (both in Teams and Individuals competition).



Seth Grady attended Missouri Baptist University in the fall of 2017. Started playing as a freshman and played all 3 years while he was there. During his last year, he was team captain, and lead his team to semi finals in their regional conference.
Prior to attending college, Seth trained at Ozark Tennis Academy under Beau and Matias. He has been playing tennis for the last 8 years and have a lot of experience and expertise to share.



Rodrigo Martinez was born in Argentina where he coached, mentored and volunteer in different tennis academies:
-Anguilla Tennis Academy as a Summer Instructor / Mentor
Olivos Tennis Club Buenos Aires, Argentina
-Don Torcuato Tennis Don Torcuato, Argentina - Alejandro Echague
He also coached in Venezuela and Brasil:
-Altamira Tennis Club Caracas, Venezuela - Jorge Andrews
-Esporte Clube Pinheiros Sao Paolo, Brasil - Armando Cornejo



Carmen De Genaro is responsible for the day in, day out operations of Ozark Tennis Academy. Her tasks include communicating with coaches, coordinating and scheduling lessons, as well as, answering emails/calls about programming. Carmen also handles all billing, invoicing, and accounting for the business. Her education is business focused and has helped prepare her to carry out the many roles of her position. As the general liaison for OTA, Carmen's love of helping people shines through in her daily interactions with players and parents. She is a "jack of all trades" and is dedicated to managing OTA with passion and enthusiasm!

Advisors

Juan Pablo Vidour

Academy and Tennis Director JP Vidour was born and raised in Rosario, Argentina. During his tennis career, he was ranked Top 20th Junior Player in Argentina. He toured South America and Europe playing ITF futures events. After his tennis travels in Europe, he was awarded a full tennis scholarship to Shorter University where he served as Captain of the Men's Tennis team. His highest ranking in college was 15th in the nation, and he was awarded All American. He received a B.A and MBA degree from Shorter. He is a highly qualified USPTA certified Level 1 coach and certified in Sports Science. For the last 13 years, JP has developed top level Jr. Players in Georgia many of which have gone on to play at the college/pro level.

Christy and Jared Ward

Christy and Jared will continue to be involved as consultants.

Matias De Genaro

Certifications

2015	USPTA Elite Certification
2015	RPT Certification (Spain)

Professional experience

2005-2009 Club de Campo Santa Bárbara Valencia, Spain

Staff Pro

- Organized and taught adult clinics.
- Taught private lessons to all ages.

2000-2015 Escuela de Tenis del Club de Campo Santa Bárbara

Director

- Create lesson plans and lesson schedules for all players and coaches
- Travel to tournaments all over the country
- Manage staff to cover all programming, including any and all necessary training

Individual Coach

- Jenny Kryvoruchko´s private coach (Ranking WTA 650) during 2009 and 2010
- Pablo Caffarena´s private coach (Spanish Absolute Ranking 600) 2011-2015

2015-present Ozark Tennis Academy/Bentonville Parks & Rec Bentonville, AR

Director

- Teach private lessons and group drills to all ages.
- Create lesson plans and lesson schedules for entire program
- Travel to tournaments all over the country
- Manage and train staff

Individual Coach

- Brooke Killingsworth – #2 in Southerns Girls 16s, #72 Nationally
- Hayden Shoemake – #36 in Southerns Girls 16s, #932 Nationally
- Darby Brandon – #36 in Southerns Girls 12s, #258 Nationally

Playing Experience

- Ranking ATP singles: 865
- Ranking ATP doubles: 624
- Played International Club Tennis for:

Argentina: Club Harrods Gath y Chaves (2002)

Club Banco Provincia (2003)
France: Sarcelles Tennis Club (de 2004 a 2007)
La Roche Posay (2008)
Italy: Club River, Venecia. (2008)

Beau Basham

Education

2006 - 2009 Alma High School Alma, AR

2009 - 2011 University of Arkansas- Fort Smith Fort Smith, AR

Business Major

2011 - 2013 University of Arkansas Fayetteville, AR

Certifications

2016 USPTA Professional Certification

Professional experience

2008 – 2009 Fort Smith Athletic Club Fort Smith, AR

Assistant Pro

- Taught junior clinics.
- Taught private lessons to all ages.

2010-2011 Fianna Hills Country Club Fort Smith, AR

Head Pro Assistant

- Helped organize and run junior camps
- Taught private and group lessons to all ages

Summer 2012 Nelson Bay Country Club NSW, Australia

Head Pro Assistant

- In charge of court maintence
- Taught high level juniors.
- Helped run social events.

- Taught adult lessons.

2012-2013 Central Arkansas Tennis Academy Little Rock, AR

Head Coach

- Taught advanced junior lessons and clinics
- Traveled with juniors to tournaments all across the South

2013-2016 Ozark Tennis Academy Bentonville, AR

Coach

- Taught adult and junior clinics
- Taught adult and junior privates
- Traveled across the South with advanced juniors
- In charge of junior clinics at local schools and parks

2016-Present Ozark Tennis Academy Bentonville, AR

Co-Director

- In charge of running USTA adult and junior tournaments.
- Help manage coaching staff and lesson plans.
- Help with the scheduling of all programming.
- Teach adults and juniors of all ages.

Playing Experience

- Part of a state championship team for Alma High School, won state singles titles his freshman & senior year.
- In USTA play he was ranked #1 in the state in 18s in singles. He reached top 50 in the South his last year of junior tennis.
- In 2009 he won the Hershal Friday Award, the highest award in Arkansas junior tennis.
- Full scholarship to University of Arkansas-Fort Smith. Where he played #2 and #3 singles as a sophomore, before transferring to the University of Arkansas to focus on academics.
- NTRP 5.0

References

Randy Hollis, Owner of Fort Smith Athletic Club- 918-906-3667

Peter Doohan, Former NCAA national champion. Reached #1 ATP ranking in doubles and top 50 in the world in singles.

011-61-466-626-943

Bryan Colton, Owner of Central Arkansas Tennis Academy and Stuttgart Tennis Academy – 870-405-7697

CITY OF BENTONVILLE, ARKANSAS

PURCHASING OFFICE – (479) 271-3115 – PURCHASING@BENTONVILLEAR.COM
ADMINISTRATIVE SERVICES BUILDING -1000 SW 14TH ST. BENTONVILLE, ARKANSAS 72712

FOR PUBLICATION

PUBLICATION DATES: July 4

NOTICE
REQUEST FOR PROPOSALS
Request for Proposals (RFP)-21-59

The City of Bentonville, Arkansas is accepting formal, sealed Proposals from properly qualified, licensed and trained individuals for the Tennis Professional Services associated with the Bentonville Parks and Recreation Tennis Program.

Proposals will be evaluated by a Selection Committee and rated according to the Evaluation Factors outlined in the Request for Proposals (RFP) Document. The Evaluation Factors outlined will be used to evaluate all eligible, responsive Proposers in comparing Proposals and selecting the successful Proposer.

The City reserves the right to reject any or all Proposals and to waive informalities.

Pursuant to Arkansas Code Annotated § 22-9-203, the City encourages all qualified small, minority owned, and women owned business enterprises to submit Proposals for capital improvements. Encouragement is also made to all general (prime) contractors that in the event they subcontract portions of their work, consideration is given to the identified groups.

The City of Bentonville Purchasing Department encourages qualified small, minority and women owned businesses to participate and submit Proposals for City projects/purchases.

Interested parties can obtain the required Response Packet by emailing purchasing@bentonvillear.com, by calling 479-271-3115, or from the Purchasing Office located at the address below. The Response Packet may also be downloaded from the Purchasing Page of the City's website (http://www.bentonvillear.com/211/Purchasing) by clicking 'Review Open RFQs/RFPs'; however, Proposers are encouraged to notify Purchasing that they have downloaded the Response Packet to ensure they are on the distribution list for Addenda and/or Q&A.

Proposers who wish to hand deliver a Submission prior to the Submission Deadline date/time may do so by delivering the Submission to the Purchasing Office located on the 2nd floor of the City of Bentonville Administrative Services Building, located at 1000 SW 14th Street Bentonville, AR 72712. Proposers who choose to mail their Submissions should use this same information for mailing. Proposers are reminded that Proposal Submissions must be sealed upon delivery to the Purchasing Office, with the outermost envelope containing the RFP number (RFP-21-59) and the Proposers name; the outermost envelope includes the Fed Ex, UPS, USPS or other carrier envelope containing the Submission. The City of Bentonville is not responsible for Submissions which are not received by the deadline due to being improperly labeled.

The Submission Deadline for RFP-21-59 is 4:30pm CST on Thursday, July 22, 2021. All Submissions must be received by Purchasing prior to the Submission Deadline time. Late Submissions and unsigned Submissions will be rejected, without exception. In accordance with Arkansas Procurement Law and Rules, it is the responsibility of vendors to submit responses at the designated location on or before the Submission Deadline date and time. Responses received after the designated Submission Deadline date and time will be considered late and will be rejected.

CITY OF BENTONVILLE, ARKANSAS
PURCHASING DEPARTMENT
2ND FLOOR ADMINISTRATIVE SERVICES BUILDING
1000 SW 14TH ST
BENTONVILLE, ARKANSAS 72712
RFP-21-59

REQUEST FOR PROPOSAL

SOLICITATION INFORMATION			
Proposal Number:	**RFP-21-59**	Date of Issuance:	**JULY 4, 2021**
Brief Description:	The City of Bentonville is accepting formal, sealed Proposals for a Tennis Professional service provider.		
Agency:	The City of Bentonville, Parks and Recreation Department		

SUBMISSION DEADLINE FOR RESPONSE			
Proposal Submission Deadline: (Date)	**JULY 22, 2021**	Proposal Submission Deadline: (Time)	**4:30 P.M.**
Proposals must be received by the Purchasing Department prior to 4:30 P.M., JULY 22, 2021. In accordance with Arkansas Procurement Law and Rules, it is the responsibility of vendors to submit Proposals at the designated location on or before the Proposal submission deadline. Proposals received after the designated Proposal submission deadline will be considered late and will be rejected.			

DELIVERY OF RESPONSE DOCUMENTS	
Delivery Address: *Prospective vendors assume all risk for timely, properly submitted deliveries.	City of Bentonville Administrative Services Building Attn: Purchasing Department – 2nd Floor 1000 SW 14th ST Bentonville, Arkansas 72712
Proposal's Outer Packaging:	Outer packaging must be sealed and properly marked with the following information: • Proposal Number: **RFP-21-59** • Vendor's name and return address Proposals which must be opened to be identified will be considered incomplete and may be rejected.
Number of Copies for Submission:	**(1) One signed original and one (1) digital copy** in the form of a CD or USB storage device for a total of two (2) copies of the Proposal are to be delivered by the specified date and time of the Proposal deadline listed herein. Failure to deliver the specified number of originals and copies will be considered an incomplete submission and may be rejected. Digital copies may not be submitted via email; digital copies received via email will be deleted upon receipt and will not be acknowledged as submitted.

CITY OF BENTONVILLE, ARKANSAS PURCHASING OFFICE CONTACT INFORMATION			
Purchasing Manager:	Gladys Shoemake	Purchasing Email:	purchasing@bentonvillear.com
Purchasing Phone Number:	(479) 271-3115	Purchasing Address:	City Hall 117 West Central Ave. Bentonville, AR 72712
Questions regarding this Proposal should be directed solely to the Purchasing Office via written communication (email or mail). The deadlinb ne for submitting questions related to this Request for Proposal is July 16 , 2021 at 4:30 P.M.			

EXECUTION OF PROPOSAL

Upon signing this Proposal, the proposer certifies that he or she has read and agrees to the requirements set forth in this Proposal including specifications, conditions and pertinent information regarding the articles being proposed on. *Unsigned Proposals will be rejected without exception.*

NAME OF FIRM: OZARK TENNIS ACADEMY	PHONE NUMBER: 479 721 8062	FAX NUMBER:	EMAIL: OZARKTENNISACADEMY06@gmail.com
BUSINESS STREET ADDRESS: 802 SW GREEN WORLD ST	CITY: BENTONVILLE	STATE: AR	ZIP: 72712
SIGNATURE OF AUTHORIZED PERSON: [redacted]		DATE: 07/13/2021	
PRINTED OR TYPED NAME: CARMEN DE GENARO		TITLE: OWNER / COMMUNICATIONS COORDINATOR MANAGEMENT EXECUTIVE	
ARKANSAS SALES OR USE TAX NUMBER: 27-229345		STATE CONTRACTORS LICENSE NUMBER:	

CITY OF BENTONVILLE, ARKANSAS
PURCHASING DEPARTMENT
2ND FLOOR ADMINISTRATIVE SERVICES BUILDING
1000 SW 14TH ST
BENTONVILLE, ARKANSAS 72712
RFP-21-59

Request for Proposal

TENNIS PROFESSIONAL

The City of Bentonville is now accepting formal, sealed Proposals from properly qualified, licensed and trained individuals for the Tennis Professional Services associated with the Bentonville Parks and Recreation Tennis Program.

Proposals will be evaluated by a Selection Committee and rated according to the Evaluation Factors outlined in this Request for Proposals (RFP) Document. The Evaluation Factors outlined will be used to evaluate all eligible, responsive Proposers in comparing Proposals and selecting the successful Proposer.

Estimated Schedule:

- Publish notice for Request for Proposals: July 4, 2021
- **Deadline for submitting questions (RFIs) to the Purchasing Department: July 16, 2021(4:30 P.M)**
- **Deadline for Proposal submissions: July 22, 2021 (4:30 P.M)**

[This space has been intentionally left blank]

1. Terms and Conditions

1. Firms responding to this Request for Proposal ("RFP") must submit their Proposals by the deadline provided herein.
2. The City of Bentonville, Arkansas will be referred to as "City". The Proposer submitting a Proposal in response to this RFP will be referred to as "Proposer" and "Facility Tennis Pro" periodically throughout this RFP.
3. Proposals must be submitted in a sealed package or envelope, clearly listing the following information on the outer envelope:
    - **RFP Number:** RFP-21-59
    - **Proposer's Information:** Name and address

    No telephone, electronic, or facsimile Proposals will be considered.
4. Proposers may provide additional supporting documentation pertinent to clarification of the Proposal.

    There are no Proposal format restrictions, except as stated herein.
5. The City reserves the right to:
    - Reject any and all Proposals received as a result of this RFP.
    - Waive or decline to waive any informalities and any irregularities in any Proposal or responses received.
    - Adopt all or any part of the Proposal.
    - Negotiate changes in the scope of work or services to be provided.
    - Withhold the award of contract.
    - Select the Proposer it deems to be in the best interest of the City and most qualified to fulfill the needs of the City. The Proposer with the lowest costs offered may not necessarily be selected for award.
6. Any and all inquiries or requests for explanation in regard to the City's requirements, or any other information pertaining to this Request for Proposal, should be made to the Purchasing Office via the information on page one (1) of this RFP document. Only written requests will be considered. No oral interpretations or clarifications will be given as to the meaning of any part of this RFP. All questions, clarifications, and requests, together with answers, if any, will be provided to all firms that have indicated an interest or intention to submit proposals, but the names of any firms submitting any questions, clarifications, or requests will not be disclosed until after the deadline for submitting Proposals.
7. It shall be clearly understood that any costs incurred by the Proposer in responding to this Request for Proposal is at the Proposer's risk and expense as a cost of doing business. The City is not responsible for any reimbursement to the Proposer for any expense so incurred, regardless of acceptance of Proposal or issuance of award.

8. All Proposals and other materials submitted shall become the property of the City and as such are subject to being released under the Arkansas Freedom of Information Act.
9. Any conditions or expectations on the part of the Proposer for performance by the City Of Bentonville must be set forth in the Proposal. The City is not obligated to consider the Proposer's post submittal terms and conditions.
10. This Proposal must contain the signature of a duly authorized officer or agent of the Proposer's company empowered with the right to bind and negotiate on behalf of the Proposer for the amounts and terms proposed.
11. Any information provided herein is intended to assist the Proposer in the preparation of Proposals necessary to properly respond to this RFP. This RFP is designed to provide the qualified Proposers with sufficient basic information to submit Proposals meeting minimum specifications and test requirements, but is not intended to limit an RFP's content or to exclude any relevant or essential information.
12. At the discretion of the City, one or more Proposers may be asked for more detailed information before final ranking and/or award of the Proposal.
13. The selected Proposer will exercise due professional care in understanding the type of engagement and in performing the services described herein.
14. While the City reserves the right to interview any or all Proposers, award of a contract may be made without discussion with Proposer after proposals are received. Proposals should, therefore, be submitted on the most favorable terms available.
15. The City of Bentonville requires all vendors and contractors doing business with the City not to discriminate against any person on the basis of race, age, color, religion, sex, ancestry, non-job-related handicaps, or national origin.
16. **Insurance:** The awarded Proposer shall provide proof of the following insurance requirements:

    Proposers are required to include proof that they maintain or have the ability to obtain the insurance, as described herein, after the Notice of Award has been issued and upon execution of the contract in their Proposal submission. Proposal submittals that do not include proof of the required insurance or the ability to obtain the required insurance may be rejected. The awarded Proposer shall purchase and maintain, at minimum, such insurance as defined herein and furnish Certificates of Insurance to the City naming the City of Bentonville as additionally insured. The insurance shall be appropriate for the performance of the work, as described herein, and shall provide protection from damage occurring to City owned property and from, and any other claims which may arise out of or result from the awarded Proposer's performance of the work; whether it is to be performed by the awarded Proposer, any subcontractor or supplier, or by anyone directly or indirectly employed by any of them to perform any of the work, or by anyone for whose acts any of them may be liable:

    The policies of insurance required are as follows:

    1) Workers' Compensation:
        a. State: Statutory
        b. Applicable Federal: Statutory
    2) Comprehensive or Commercial General Liability: $1,000,000.00 (one million dollars) aggregate

17. **Term:** The Contract awarded to the selected Proposer will be for an initial term of one (1) year, renewable annually upon mutual written agreement for a maximum term of five (5) years. There shall be no change in the terms of the contract during the original contract term, or any renewal term thereafter, unless mutually agreed upon in writing and in accordance with the City of Bentonville Purchasing Policy and all applicable laws.
18. **Criminal Background Checks:** The awarded Proposer and any employee or representative of the awarded proposal who will be performing work under the awarded contract may be subject to a criminal background check, to be administered by the City of Bentonville.
19. **Credit Report:** The awarded Proposer may be subject to a credit check, performed by the City of Bentonville.
20. **Location:** The location shall be determined by the City, inside the City Limits of Bentonville, Arkansas.
21. **Timeline:** The City intends to award the contract prior to September 1, 2021; the awarded Proposal shall be available to perform the services within two (2) weeks from award.

2. Scope of Services

The scope of work for the Tennis Professional Services will include all necessary services associated with the Bentonville Parks and Recreation Tennis Program. Services will include and be in compliance with, but not be limited to the following:

1. Operation of the courts at Citizens Park, Memorial Park and Wildwood Tennis Complexes. Additional court space at Wildwood courts may be reserved for programming and special events if mutually agreed upon by the Facility Tennis Pro and the Director of Parks and Recreation.
2. The awarded Proposer will utilize the Citizens, Memorial and Wildwood Tennis Complex, or any future public tennis complex/facility owned and operated by the City, for tennis programming to accommodate different demographics and locations.
3. Adherence to the previously signed Agreement between the City of Bentonville and the Bentonville High School(s) Tennis Program (Agreement available upon request).
4. Promote the City of Bentonville and Bentonville Parks and Recreation in a professional manner, enhancing the Department and the Tennis Facility (facilities).
5. Work collaboratively with the Parks and Recreation staff to develop a comprehensive Facility Tennis Program that includes recreational opportunities for youth and adult participants. These programs may include, but will not be limited to including: leagues, lessons (private and group), events, tournaments and open recreation.
6. The awarded Proposer will assist the City in determining the dates and times for programs and special events. The program schedules will be determined seasonally by the following dates between the awarded Proposer and the City:
    a. Spring Season Programming: Planned and designed no later than December 1 prior to the spring.
    b. Summer Season Programming: Planned and designed no later than February 1 prior to the summer.
    c. Fall Season Programming: Planned and designed no later than April 1 prior to the fall.

7. The awarded Proposer will partner with Camp Bentonville to put on, at least, four (4) tennis camp programs during each year.
8. The awarded Proposer will be responsible for staffing the tennis complexes to operate any program offered by the award of this Contract.
9. The awarded Proposer and their staff will work with Parks and Recreation to perform one (1) free Facility Tennis Promotion day annually.
10. The awarded Proposer and Parks and Recreation staff will meet bi-weekly, or more often as needed, to ensure all parties are up to date on the status of the tennis program and of upcoming events and programs at their facility.
11. The Facility Tennis Pro shall abide by and enforce all regulations of the City applicable to the premises of the Tennis Complex. Days and hours of operation of the complex shall be recommended by the Facility Tennis Pro with final approval from the Director of Parks and Recreation or his assignee.
12. The Facility Tennis Pro and their staff shall be responsible for keeping the playing courts and Tennis Complex clean, neat and orderly. The City shall furnish cleaning supplies or materials to assist with the upkeep of the complexes. The Facility Tennis Pro will be responsible for normal daily maintenance of the complex.
13. All rules and regulations, administrative policies, and all fees to be charged at the Tennis Complex shall be recommended by the Facility Tennis Pro and approved by the Director of Parks and Recreation or his assignee.
14. The Facility Tennis Pro will work with the Parks and Recreation Director or his assignee to determine the overall direction of the Tennis Complex. The Facility Tennis Pro hours will be determined by leagues and scheduled lessons that will be approved by the Director of Parks and Recreation or his assignee.
15. The Facility Tennis Pro will be available to assist with third party events and tournaments when assigned by the Parks and Recreation Supervisor or his assignee.
16. The awarded Proposer shall comply with all Federal, State, and local laws, and Ordinances. They shall also comply with the Americans with Disabilities Act which prohibits discrimination against individuals with disabilities and providing public services. The City of Bentonville is an equal opportunity employer and requires that the awarded Proposer be as well; the City of Bentonville requires all vendors and contractors doing business with the City to not discriminate against any person on the basis of race, age, religion, sex, ancestry, non-job-related handicaps, or national origin. The City requires every vendor and contractor to be familiar with and comply in every aspect with Civil Rights Laws.
17. The awarded Proposer will not be permitted to accept or receive payment for any tennis programming at the Park or Facility unless approved in advance by the Bentonville Parks and Recreation Director or his assignee.

The City of Bentonville will provide the following for this Contract:

1. Bentonville Parks and Recreation (BPR) will provide marketing and advertising to help promote tennis programming at all tennis facilities in the City of Bentonville, AR.
2. BPR will produce and receive registrations and payments for the programs conducted at all tennis facilities in the City of Bentonville.
3. Approve and set programming, working with the awarded Proposer.
4. Approve and set patron/customer fees, working with the awarded Proposer.

3. Investigation

It shall be the responsibility of the Proposer to make any and all investigations necessary to become thoroughly informed of what is required and specified in the Proposal. No plea of ignorance by the Proposer of conditions that exist or may hereafter exist as a result of failure or omission on the part of the Proposer to make necessary examinations and investigations will be accepted as a basis for varying the requirements of the City of the compensation to the Proposer or performance of the Contract.

Each Proposer submitting a Proposal is responsible for examining the complete Proposal package and any Addenda, and is responsible for informing itself of all of the conditions that might in any way affect the cost of the performance of any work or requirements related to the work described herein. Failure to do so will be at the sole risk of the Proposer.

4. Proposer Qualifications

The City reserves the right to award Contract to the highest rated Proposer, as determined through Proposal evaluation and the evaluation criteria, who furnishes evidence satisfactory to the City that Proposer has the necessary facilities, abilities, experience, equipment, and financial and physical resources available to fulfill the conditions of the contract and execute the work (as described herein and as is industry standard for commercial pyrotechnic services).

Although product an/or service quality is a major consideration, references, service, and past experience, if applicable, will also be considered and part of the Proposal evaluation. The City reserves the right to use any and all information provided in Proposer's Proposal in the evaluation of Proposals for award.

In determining the responsibility of any Proposer, the City reserves the right and may take into account other factors in addition to financial responsibility, such as past records of its or other entities transactions with the Proposer, experience, ability to complete performance within the necessary time limits, and other pertinent considerations such as, but not limited to, reliability, reputation, competency, skill, efficiency, facilities and resources. The Proposal will be awarded in the City's best interests based on these and other legally-allowable considerations.

The City reserves the right and may make any investigations deemed necessary to determine the ability of the Proposer to perform the work. The Proposer agrees to furnish any information and data requested by the City for this purpose.

The City reserves the right to and may require the Proposer to provide proof of its capability to perform the work as described and required herein; however, prequalification of the Proposer shall not be required.

5. Cancellation/Rescheduling

The City reserves the right to cancel the whole or any part of the Contract if the Contractor fails to perform any of the provisions of the Contract or fails to make delivery within the time stated. The Contractor will not be liable to perform if situations arise by reason of strikes, acts of God or public enemy, acts of the City, fires or floods.

The City reserves the right to postpone or reschedule programs/camps, at any time, to provide for the welfare and safety of the general public, with rescheduled or makeup program/camps dates at an agreed upon time, at no additional expense to the City and at a time acceptable to the City.

6. Evaluation and Award

A Selection Committee will evaluate the Proposals based on the criteria outlined below, with assigned point values totaling 100% (one hundred percent). Additional information may be requested from the three Proposers deemed to be the most highly qualified to provide the services required. A Contract will be negotiated with the Proposer ranked the most qualified by the Selection Committee. If the Selection Committee is unable to negotiate a satisfactory Contract with the top ranked Proposer, negotiations with that Proposer shall be terminated, and negotiations shall begin with the next highest ranked Proposer.

1. **RESPONSE:** Response in relation to how complete, thorough and responsive the Proposer is to the Proposal document.	**20%**
2. **EXPERIENCE, COMPETENCE AND CAPACITY:** Experience, competence and capacity for performance of the work described herein. Information reflecting the names and qualifications (including experience) of the major personnel who will be employed by the Proposer to provide this service.	**20%**
3. **PROPOSED WORK METHOD:** Proposed method of providing the Tennis Professional tennis services. Proposed tennis programs plan including, but not limited to: structure of leagues, lessons, camps and tournaments. Proposer should indicate how they would set up each mentioned program, including scheduling and prices to be charged.	**25%**
4. **PAST PERFORMANCE:** Previous evaluations shall be considered a significant factor. If previous evaluations with the City are not available, past performance records with other employers will be used, including quality of work, timely performance, diligence, ability to meet past budgets, and any other pertinent information. Proposer will provide a list of similar jobs performed and a contact person for each job with contact information.	**20%**
5. **PRICE:** Proposed percentage the Tennis Professional will pay the City of Bentonville on a monthly basis. This proposed price should be a percentage of all gross sales made at the Memorial Park Tennis Facility. The City of Bentonville expects the Proposer to pay all relevant City taxes, in addition to the proposed price for leasing the facility.	**15%**

EXHIBIT B

Negotiated (Final) Pricing for

Tennis Professional Services

Administrative Services
Purchasing Department
1000 SW 14th Street
Bentonville, AR 72712

CITY OF BENTONVILLE, ARKANSAS

City Hall
305 SW A Street
Bentonville, AR 72712

Type of Program (Description)	Fee Paid to Contractor (Payment Plan)	Notes
Tournaments	85% Net Program Profit*	*Net Program Profit includes the deduction of: all third party fees (transaction/credit card fees, BPR staffing, BPR supplies.
Camps	$90.00 Per Camper	For all camps.
Lessons, Drills & Leagues	90% Gross Program Profit*	Gross Program Profit: Program Profit minus the third party fees (transaction/credit card fees)

Clarifications:

- **Non-Resident Fees are not considered a Program Fee; these are maintenance fees charged to non-residents to help support the routine maintenance of the courts/facilities that residents otherwise pay through taxes. No BPR contractor is paid non-resident fees.**

EXHIBIT C

RFP-21-59 Solicitation

CITY OF BENTONVILLE, ARKANSAS

PURCHASING OFFICE – (479) 271-3115 – PURCHASING@BENTONVILLEAR.COM
ADMINISTRATIVE SERVICES BUILDING -1000 SW 14TH ST. BENTONVILLE, ARKANSAS 72712

FOR PUBLICATION

PUBLICATION DATES: July 4

NOTICE
REQUEST FOR PROPOSALS
Request for Proposals (RFP)-21-59

The City of Bentonville, Arkansas is accepting formal, sealed Proposals from properly qualified, licensed and trained individuals for the Tennis Professional Services associated with the Bentonville Parks and Recreation Tennis Program.

Proposals will be evaluated by a Selection Committee and rated according to the Evaluation Factors outlined in the Request for Proposals (RFP) Document. The Evaluation Factors outlined will be used to evaluate all eligible, responsive Proposers in comparing Proposals and selecting the successful Proposer.

The City reserves the right to reject any or all Proposals and to waive informalities.

Pursuant to Arkansas Code Annotated § 22-9-203, the City encourages all qualified small, minority owned, and women owned business enterprises to submit Proposals for capital improvements. Encouragement is also made to all general (prime) contractors that in the event they subcontract portions of their work, consideration is given to the identified groups.

The City of Bentonville Purchasing Department encourages qualified small, minority and women owned businesses to participate and submit Proposals for City projects/purchases.

Interested parties can obtain the required Response Packet by emailing purchasing@bentonvillear.com, by calling 479-271-3115, or from the Purchasing Office located at the address below. The Response Packet may also be downloaded from the Purchasing Page of the City's website (http://www.bentonvillear.com/211/Purchasing) by clicking 'Review Open RFQs/RFPs'; however, Proposers are encouraged to notify Purchasing that they have downloaded the Response Packet to ensure they are on the distribution list for Addenda and/or Q&A.

Proposers who wish to hand deliver a Submission prior to the Submission Deadline date/time may do so by delivering the Submission to the Purchasing Office located on the 2nd floor of the City of Bentonville Administrative Services Building, located at 1000 SW 14th Street Bentonville, AR 72712. Proposers who choose to mail their Submissions should use this same information for mailing. Proposers are reminded that Proposal Submissions must be sealed upon delivery to the Purchasing Office, with the outermost envelope containing the RFP number (RFP-21-59) and the Proposers name; the outermost envelope includes the Fed Ex, UPS, USPS or other carrier envelope containing the Submission. The City of Bentonville is not responsible for Submissions which are not received by the deadline due to being improperly labeled.

The Submission Deadline for RFP-21-59 is 4:30pm CST on Thursday, July 22, 2021. All Submissions must be received by Purchasing prior to the Submission Deadline time. Late Submissions and unsigned Submissions will be rejected, without exception. In accordance with Arkansas Procurement Law and Rules, it is the responsibility of vendors to submit responses at the designated location on or before the Submission Deadline date and time. Responses received after the designated Submission Deadline date and time will be considered late and will be rejected.

CITY OF BENTONVILLE, ARKANSAS
PURCHASING DEPARTMENT
2ND FLOOR ADMINISTRATIVE SERVICES BUILDING
1000 SW 14TH ST
BENTONVILLE, ARKANSAS 72712
RFP-21-59

REQUEST FOR PROPOSAL

SOLICITATION INFORMATION			
Proposal Number:	**RFP-21-59**	Date of Issuance:	**JULY 4, 2021**
Brief Description:	The City of Bentonville is accepting formal, sealed Proposals for a Tennis Professional service provider.		
Agency:	The City of Bentonville, Parks and Recreation Department		

SUBMISSION DEADLINE FOR RESPONSE			
Proposal Submission Deadline: (Date)	**JULY 22, 2021**	Proposal Submission Deadline: (Time)	**4:30 P.M.**
Proposals must be received by the Purchasing Department prior to 4:30 P.M., JULY 22, 2021. In accordance with Arkansas Procurement Law and Rules, it is the responsibility of vendors to submit Proposals at the designated location on or before the Proposal submission deadline. Proposals received after the designated Proposal submission deadline will be considered late and will be rejected.			

DELIVERY OF RESPONSE DOCUMENTS	
Delivery Address: *Prospective vendors assume all risk for timely, properly submitted deliveries.	City of Bentonville Administrative Services Building Attn: Purchasing Department – 2nd Floor 1000 SW 14th ST Bentonville, Arkansas 72712
Proposal's Outer Packaging:	Outer packaging must be sealed and properly marked with the following information: • Proposal Number: **RFP-21-59** • Vendor's name and return address Proposals which must be opened to be identified will be considered incomplete and may be rejected.
Number of Copies for Submission:	**(1) One signed original and one (1) digital copy** in the form of a CD or USB storage device for a total of two (2) copies of the Proposal are to be delivered by the specified date and time of the Proposal deadline listed herein. Failure to deliver the specified number of originals and copies will be considered an incomplete submission and may be rejected. Digital copies may not be submitted via email; digital copies received via email will be deleted upon receipt and will not be acknowledged as submitted.

CITY OF BENTONVILLE, ARKANSAS PURCHASING OFFICE CONTACT INFORMATION			
Purchasing Manager:	Gladys Shoemake	Purchasing Email:	purchasing@bentonvillear.com
Purchasing Phone Number:	(479) 271-3115	Purchasing Address:	City Hall 117 West Central Ave. Bentonville, AR 72712
Questions regarding this Proposal should be directed solely to the Purchasing Office via written communication (email or mail). The deadlinb ne for submitting questions related to this Request for Proposal is July 16 , 2021 at 4:30 P.M.			

EXECUTION OF PROPOSAL

Upon signing this Proposal, the proposer certifies that he or she has read and agrees to the requirements set forth in this Proposal including specifications, conditions and pertinent information regarding the articles being proposed on. *Unsigned Proposals will be rejected without exception.*

NAME OF FIRM:	PHONE NUMBER:	FAX NUMBER:	EMAIL:
BUSINESS STREET ADDRESS:	CITY:	STATE:	ZIP:
SIGNATURE OF AUTHORIZED PERSON:		DATE:	
PRINTED OR TYPED NAME:		TITLE:	

ARKANSAS SALES OR USE TAX NUMBER:		STATE CONTRACTORS LICENSE NUMBER:	

Request for Proposal

TENNIS PROFESSIONAL

The City of Bentonville is now accepting formal, sealed Proposals from properly qualified, licensed and trained individuals for the Tennis Professional Services associated with the Bentonville Parks and Recreation Tennis Program.

Proposals will be evaluated by a Selection Committee and rated according to the Evaluation Factors outlined in this Request for Proposals (RFP) Document. The Evaluation Factors outlined will be used to evaluate all eligible, responsive Proposers in comparing Proposals and selecting the successful Proposer.

Estimated Schedule:

- Publish notice for Request for Proposals: July 4, 2021
- **Deadline for submitting questions (RFIs) to the Purchasing Department: July 16, 2021(4:30 P.M)**
- **Deadline for Proposal submissions: July 22, 2021 (4:30 P.M)**

[This space has been intentionally left blank]

1. Terms and Conditions

1. Firms responding to this Request for Proposal ("RFP") must submit their Proposals by the deadline provided herein.
2. The City of Bentonville, Arkansas will be referred to as "City". The Proposer submitting a Proposal in response to this RFP will be referred to as "Proposer" and "Facility Tennis Pro" periodically throughout this RFP.
3. Proposals must be submitted in a sealed package or envelope, clearly listing the following information on the outer envelope:
    - **RFP Number:** RFP-21-59
    - **Proposer's Information:** Name and address

    No telephone, electronic, or facsimile Proposals will be considered.
4. Proposers may provide additional supporting documentation pertinent to clarification of the Proposal.

    There are no Proposal format restrictions, except as stated herein.
5. The City reserves the right to:
    - Reject any and all Proposals received as a result of this RFP.
    - Waive or decline to waive any informalities and any irregularities in any Proposal or responses received.
    - Adopt all or any part of the Proposal.
    - Negotiate changes in the scope of work or services to be provided.
    - Withhold the award of contract.
    - Select the Proposer it deems to be in the best interest of the City and most qualified to fulfill the needs of the City. The Proposer with the lowest costs offered may not necessarily be selected for award.
6. Any and all inquiries or requests for explanation in regard to the City's requirements, or any other information pertaining to this Request for Proposal, should be made to the Purchasing Office via the information on page one (1) of this RFP document. Only written requests will be considered. No oral interpretations or clarifications will be given as to the meaning of any part of this RFP. All questions, clarifications, and requests, together with answers, if any, will be provided to all firms that have indicated an interest or intention to submit proposals, but the names of any firms submitting any questions, clarifications, or requests will not be disclosed until after the deadline for submitting Proposals.
7. It shall be clearly understood that any costs incurred by the Proposer in responding to this Request for Proposal is at the Proposer's risk and expense as a cost of doing business. The City is not responsible for any reimbursement to the Proposer for any expense so incurred, regardless of acceptance of Proposal or issuance of award.

8. All Proposals and other materials submitted shall become the property of the City and as such are subject to being released under the Arkansas Freedom of Information Act.

9. Any conditions or expectations on the part of the Proposer for performance by the City Of Bentonville must be set forth in the Proposal. The City is not obligated to consider the Proposer's post submittal terms and conditions.

10. This Proposal must contain the signature of a duly authorized officer or agent of the Proposer's company empowered with the right to bind and negotiate on behalf of the Proposer for the amounts and terms proposed.

11. Any information provided herein is intended to assist the Proposer in the preparation of Proposals necessary to properly respond to this RFP. This RFP is designed to provide the qualified Proposers with sufficient basic information to submit Proposals meeting minimum specifications and test requirements, but is not intended to limit an RFP's content or to exclude any relevant or essential information.

12. At the discretion of the City, one or more Proposers may be asked for more detailed information before final ranking and/or award of the Proposal.

13. The selected Proposer will exercise due professional care in understanding the type of engagement and in performing the services described herein.

14. While the City reserves the right to interview any or all Proposers, award of a contract may be made without discussion with Proposer after proposals are received. Proposals should, therefore, be submitted on the most favorable terms available.

15. The City of Bentonville requires all vendors and contractors doing business with the City not to discriminate against any person on the basis of race, age, color, religion, sex, ancestry, non-job-related handicaps, or national origin.

16. **Insurance:** The awarded Proposer shall provide proof of the following insurance requirements:

Proposers are required to include proof that they maintain or have the ability to obtain the insurance, as described herein, after the Notice of Award has been issued and upon execution of the contract in their Proposal submission. Proposal submittals that do not include proof of the required insurance or the ability to obtain the required insurance may be rejected. The awarded Proposer shall purchase and maintain, at minimum, such insurance as defined herein and furnish Certificates of Insurance to the City naming the City of Bentonville as additionally insured. The insurance shall be appropriate for the performance of the work, as described herein, and shall provide protection from damage occurring to City owned property and from, and any other claims which may arise out of or result from the awarded Proposer's performance of the work; whether it is to be performed by the awarded Proposer, any subcontractor or supplier, or by anyone directly or indirectly employed by any of them to perform any of the work, or by anyone for whose acts any of them may be liable:

The policies of insurance required are as follows:

1) Workers' Compensation:
   a. State: Statutory
   b. Applicable Federal: Statutory
2) Comprehensive or Commercial General Liability: $1,000,000.00 (one million dollars) aggregate

17. **Term:** The Contract awarded to the selected Proposer will be for an initial term of one (1) year, renewable annually upon mutual written agreement for a maximum term of five (5) years. There shall be no change in the terms of the contract during the original contract term, or any renewal term thereafter, unless mutually agreed upon in writing and in accordance with the City of Bentonville Purchasing Policy and all applicable laws.
18. **Criminal Background Checks:** The awarded Proposer and any employee or representative of the awarded proposal who will be performing work under the awarded contract may be subject to a criminal background check, to be administered by the City of Bentonville.
19. **Credit Report:** The awarded Proposer may be subject to a credit check, performed by the City of Bentonville.
20. **Location:** The location shall be determined by the City, inside the City Limits of Bentonville, Arkansas.
21. **Timeline:** The City intends to award the contract prior to September 1, 2021; the awarded Proposal shall be available to perform the services within two (2) weeks from award.

2. Scope of Services

The scope of work for the Tennis Professional Services will include all necessary services associated with the Bentonville Parks and Recreation Tennis Program. Services will include and be in compliance with, but not be limited to the following:

1. Operation of the courts at Citizens Park, Memorial Park and Wildwood Tennis Complexes. Additional court space at Wildwood courts may be reserved for programming and special events if mutually agreed upon by the Facility Tennis Pro and the Director of Parks and Recreation.
2. The awarded Proposer will utilize the Citizens, Memorial and Wildwood Tennis Complex, or any future public tennis complex/facility owned and operated by the City, for tennis programming to accommodate different demographics and locations.
3. Adherence to the previously signed Agreement between the City of Bentonville and the Bentonville High School(s) Tennis Program (Agreement available upon request).
4. Promote the City of Bentonville and Bentonville Parks and Recreation in a professional manner, enhancing the Department and the Tennis Facility (facilities).
5. Work collaboratively with the Parks and Recreation staff to develop a comprehensive Facility Tennis Program that includes recreational opportunities for youth and adult participants. These programs may include, but will not be limited to including: leagues, lessons (private and group), events, tournaments and open recreation.
6. The awarded Proposer will assist the City in determining the dates and times for programs and special events. The program schedules will be determined seasonally by the following dates between the awarded Proposer and the City:
    a. Spring Season Programming: Planned and designed no later than December 1 prior to the spring.
    b. Summer Season Programming: Planned and designed no later than February 1 prior to the summer.
    c. Fall Season Programming: Planned and designed no later than April 1 prior to the fall.

7. The awarded Proposer will partner with Camp Bentonville to put on, at least, four (4) tennis camp programs during each year.
8. The awarded Proposer will be responsible for staffing the tennis complexes to operate any program offered by the award of this Contract.
9. The awarded Proposer and their staff will work with Parks and Recreation to perform one (1) free Facility Tennis Promotion day annually.
10. The awarded Proposer and Parks and Recreation staff will meet bi-weekly, or more often as needed, to ensure all parties are up to date on the status of the tennis program and of upcoming events and programs at their facility.
11. The Facility Tennis Pro shall abide by and enforce all regulations of the City applicable to the premises of the Tennis Complex. Days and hours of operation of the complex shall be recommended by the Facility Tennis Pro with final approval from the Director of Parks and Recreation or his assignee.
12. The Facility Tennis Pro and their staff shall be responsible for keeping the playing courts and Tennis Complex clean, neat and orderly. The City shall furnish cleaning supplies or materials to assist with the upkeep of the complexes. The Facility Tennis Pro will be responsible for normal daily maintenance of the complex.
13. All rules and regulations, administrative policies, and all fees to be charged at the Tennis Complex shall be recommended by the Facility Tennis Pro and approved by the Director of Parks and Recreation or his assignee.
14. The Facility Tennis Pro will work with the Parks and Recreation Director or his assignee to determine the overall direction of the Tennis Complex. The Facility Tennis Pro hours will be determined by leagues and scheduled lessons that will be approved by the Director of Parks and Recreation or his assignee.
15. The Facility Tennis Pro will be available to assist with third party events and tournaments when assigned by the Parks and Recreation Supervisor or his assignee.
16. The awarded Proposer shall comply with all Federal, State, and local laws, and Ordinances. They shall also comply with the Americans with Disabilities Act which prohibits discrimination against individuals with disabilities and providing public services. The City of Bentonville is an equal opportunity employer and requires that the awarded Proposer be as well; the City of Bentonville requires all vendors and contractors doing business with the City to not discriminate against any person on the basis of race, age, religion, sex, ancestry, non-job-related handicaps, or national origin. The City requires every vendor and contractor to be familiar with and comply in every aspect with Civil Rights Laws.
17. The awarded Proposer will not be permitted to accept or receive payment for any tennis programming at the Park or Facility unless approved in advance by the Bentonville Parks and Recreation Director or his assignee.

The City of Bentonville will provide the following for this Contract:

1. Bentonville Parks and Recreation (BPR) will provide marketing and advertising to help promote tennis programming at all tennis facilities in the City of Bentonville, AR.
2. BPR will produce and receive registrations and payments for the programs conducted at all tennis facilities in the City of Bentonville.
3. Approve and set programming, working with the awarded Proposer.
4. Approve and set patron/customer fees, working with the awarded Proposer.

3. Investigation

It shall be the responsibility of the Proposer to make any and all investigations necessary to become thoroughly informed of what is required and specified in the Proposal. No plea of ignorance by the Proposer of conditions that exist or may hereafter exist as a result of failure or omission on the part of the Proposer to make necessary examinations and investigations will be accepted as a basis for varying the requirements of the City of the compensation to the Proposer or performance of the Contract.

Each Proposer submitting a Proposal is responsible for examining the complete Proposal package and any Addenda, and is responsible for informing itself of all of the conditions that might in any way affect the cost of the performance of any work or requirements related to the work described herein. Failure to do so will be at the sole risk of the Proposer.

4. Proposer Qualifications

The City reserves the right to award Contract to the highest rated Proposer, as determined through Proposal evaluation and the evaluation criteria, who furnishes evidence satisfactory to the City that Proposer has the necessary facilities, abilities, experience, equipment, and financial and physical resources available to fulfill the conditions of the contract and execute the work (as described herein and as is industry standard for commercial pyrotechnic services).

Although product an/or service quality is a major consideration, references, service, and past experience, if applicable, will also be considered and part of the Proposal evaluation. The City reserves the right to use any and all information provided in Proposer's Proposal in the evaluation of Proposals for award.

In determining the responsibility of any Proposer, the City reserves the right and may take into account other factors in addition to financial responsibility, such as past records of its or other entities transactions with the Proposer, experience, ability to complete performance within the necessary time limits, and other pertinent considerations such as, but not limited to, reliability, reputation, competency, skill, efficiency, facilities and resources. The Proposal will be awarded in the City's best interests based on these and other legally-allowable considerations.

The City reserves the right and may make any investigations deemed necessary to determine the ability of the Proposer to perform the work. The Proposer agrees to furnish any information and data requested by the City for this purpose.

The City reserves the right to and may require the Proposer to provide proof of its capability to perform the work as described and required herein; however, prequalification of the Proposer shall not be required.

5. Cancellation/Rescheduling

The City reserves the right to cancel the whole or any part of the Contract if the Contractor fails to perform any of the provisions of the Contract or fails to make delivery within the time stated. The Contractor will not be liable to perform if situations arise by reason of strikes, acts of God or public enemy, acts of the City, fires or floods.

The City reserves the right to postpone or reschedule programs/camps, at any time, to provide for the welfare and safety of the general public, with rescheduled or makeup program/camps dates at an agreed upon time, at no additional expense to the City and at a time acceptable to the City.

6. Evaluation and Award

A Selection Committee will evaluate the Proposals based on the criteria outlined below, with assigned point values totaling 100% (one hundred percent). Additional information may be requested from the three Proposers deemed to be the most highly qualified to provide the services required. A Contract will be negotiated with the Proposer ranked the most qualified by the Selection Committee. If the Selection Committee is unable to negotiate a satisfactory Contract with the top ranked Proposer, negotiations with that Proposer shall be terminated, and negotiations shall begin with the next highest ranked Proposer.

1. RESPONSE: Response in relation to how complete, thorough and responsive the Proposer is to the Proposal document.	**20%**
2. EXPERIENCE, COMPETENCE AND CAPACITY: Experience, competence and capacity for performance of the work described herein. Information reflecting the names and qualifications (including experience) of the major personnel who will be employed by the Proposer to provide this service.	**20%**
3. PROPOSED WORK METHOD: Proposed method of providing the Tennis Professional tennis services. Proposed tennis programs plan including, but not limited to: structure of leagues, lessons, camps and tournaments. Proposer should indicate how they would set up each mentioned program, including scheduling and prices to be charged.	**25%**
4. PAST PERFORMANCE: Previous evaluations shall be considered a significant factor. If previous evaluations with the City are not available, past performance records with other employers will be used, including quality of work, timely performance, diligence, ability to meet past budgets, and any other pertinent information. Proposer will provide a list of similar jobs performed and a contact person for each job with contact information.	**20%**
5. PRICE: Proposed percentage the Tennis Professional will pay the City of Bentonville on a monthly basis. This proposed price should be a percentage of all gross sales made at the Memorial Park Tennis Facility. The City of Bentonville expects the Proposer to pay all relevant City taxes, in addition to the proposed price for leasing the facility.	**15%**

7. Contract Document (to be executed upon award)

SERVICE CONTRACT: RFP-21-59 Tennis Professional

THIS CONTRACT is made in Benton County, Arkansas, by and between the City of Bentonville, Arkansas, hereinafter "City," and _____, hereinafter "Contractor" (collectively, the "Parties"), Witnesseth:

1. DESCRIPTION. Contractor submitted a Proposal to the City's solicitation, Request for Proposals (RFP-21-59), attached hereto as **EXHIBIT A**; Contractor and Contractor's Proposal were selected by the City's Selection Committee in accordance with the Evaluation Factors outlined in the City's solicitation, attached hereto as **EXHIBIT B**, for the tennis professional services associated with the Bentonville Parks and Recreation (BPR) Tennis Program. This Contract has been awarded to Contractor as result of Contractor's submitted Proposal. The services shall consist of providing professional tennis services for the BPR Tennis Program, as set forth herein and in all attached Exhibits.

SAMPLE CONTRACT

2. PRIMARY CONTACTS. The primary contact for the Contractor shall be _____. The primary contact for the City shall be the BPR Recreation Supervisor or his assignee.

3. CONTRACT TERM. The term for this Contract shall be one (1) year, commencing on **_____ (month)____(day), 2021, and ending on _____ (month)_____(day), 2022, renewable annually upon mutual written agreement for a maximum term of five (5) years.** Any changes to the Term of this Contract shall be executed as an Amendment and signed by the Parties, and shall be in accordance with all applicable procurement laws and City's Purchasing Policy. Any agreed upon changes may require approval from the Bentonville City Council.

4. PROCEDURES. The services shall be conducted in accordance with this Contract, all Exhibits attached hereto, as mutually agreed upon in writing between the Parties and as are the standard of excellence in the applicable industry.

a. General. The Contractor shall conduct its operations in a manner consistent with industry standards and best practices in providing professional tennis instruction, programming and program planning for the type of work included in this Contract and all attached Exhibits.

5. FEES, EXPENSES, AND SCHEDULE. Fees shall be in accordance with **EXHIBIT A**. Contractor agrees

to only perform the type of services outlined in this Contract and the Exhibits attached hereto.

a. Registration for all programs will occur at Bentonville Parks and Recreation facilities or online at Bentonville Parks and Recreation websites. All registration funds will come directly to Bentonville Parks and Recreation and will be distributed to Contractor once payment is received and once City has received an invoice.

b. All expenses for the program are the responsibility of the Contractor.

6. ADDITIONAL SERVICES. Any service outside of the services stated herein and in the Exhibits attached hereto must be pre-approved by the City, in writing, and in accordance with applicable procurement laws and the City's Purchasing Policy prior to any additional work proceeding.

7. INVOICING. Contractor shall submit invoices to the City's contact for review and approval, only for tennis programming and/or services that have occurred and/or been performed, on the 1st (first) and 15th (fifteenth) of each month, or on the first business day following. Payment for approved invoices will be made within two-weeks.

SAMPLE CONTRACT

8. PAYMENT.

a. Inaccurate Invoicing. In the event that the City becomes credibly informed that any representations of Contractor provided in its invoicing are wholly or partially inaccurate, the City may withhold payment of sums then, or in the future, otherwise due to Contractor until the inaccuracy and the cause thereof is corrected to the City's reasonable satisfaction.

b. Service Failure. In the event of a service failure, where the service performed is not in accordance with this Contract, the City may withhold sums otherwise due to Contractor that are specifically for the area in which the service failure occurred, until correction of the service failure is confirmed.

9. TERMINATION FOR LACK OF FUNDS. If, for whatever reason, adequate funding is not made available by City to support or justify continuation of the level of services to be provided by Contractor under this Contract, City may terminate or reduce the amount of services to be provided by Contractor under this Contract. In such event, City will notify Contractor in writing at least thirty (30) days in advance of such termination or reduction of services for lack of funds.

10. DISPUTE RESOLUTION. City and Contractor 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 the dispute may take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute, Contractor will proceed with the services as per this Contract as if no dispute existed, and City will continue to make payment for Contractor's completed services; and provided further that no dispute will be submitted to arbitration without both Parties' express written consent.

11. SUBCONTRACTING. Contractor may not subcontract or assign any of the services to be performed under this Contract without first obtaining the written approval of the City. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge Contractor from any obligation under this Contract. Any person or firm proposed for subcontracting services under this Contract will maintain throughout the duration of the Contract, insurance as provided herein and will additionally maintain Professional Liability Insurance in a minimum amount of $1,000,000.00 and provide the City with certification thereof. Failure to obtain the City's written approval to subcontract any portion of this Contract shall be grounds for immediate termination of the Contract.

SAMPLE CONTRACT

12. INSURANCE. Contractor will maintain, throughout the duration of this Contract and any subsequent renewal year, insurance as set forth below, which includes Workers' Compensation insurance, as required by Arkansas Statute, for all Contractor's employees or independently contracted workers. In the event that any interruption or change in insurance coverage may occur, the Contractor shall provide the City with thirty (30) days written notice of any such interruptions or changes. Failure to maintain the required insurance, as set forth herein will result in the direct breach of this Contract and subsequent termination.

a. Minimum Insurance Requirements.

I. Workers' Compensation: Statutory Limits

II. Comprehensive General Liability (Broad Form): $1,000,000.00

13. CONDUCT. Contractor shall understand the programs being offered are by way of Bentonville Parks and Recreation. Contractor is expected to promote the City of Bentonville and Bentonville Parks and Recreation in a professional manner, enhancing the department and the tennis facility. If inappropriate actions are being performed, this Contract can be terminated by the Director of Parks and Recreation or his assignee. At all times the

Contractor, or any employees of the Contractor, who are present at any City of Bentonville tennis facility or are otherwise performing the services stated herein on City property are to reflect the representation of Bentonville Parks and Recreation and such programming. This includes promotion of only Bentonville Parks and Recreation programming, wearing Bentonville Parks and Recreation uniforms, or any other forms of program promotion.

14. BACKGROUND CHECKS. Contractor and all of Contractor's employees performing work for the City must pass a background check annually performed by the City.

15. INDEMNIFICATION AND HOLD HARMLESS. For purposes of this Contract, Contractor agrees to indemnify, defend and hold harmless the City, its officers, appointees, employees, and agents from any and all loss, damage, liability or expense, of any nature whatsoever caused or incurred as a result of the negligence or other actionable fault of Contractor, its affiliates, subsidiaries, employees, agents, assignees, and subcontractors and their respective employees and agents. Contractor is not required hereunder to defend 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.

SAMPLE CONTRACT

16. TAXES, LICENSES AND PERMITS. The Contractor shall pay all Local, State and Federal taxes required by law and shall secure and maintain all permits and licenses necessary for the execution of the services described herein.

17. ENTIRE CONTRACT. This Contract, including all documents and exhibits included by reference herein, constitutes the entire Contract between the Parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Contract may not be modified or amended except in writing mutually agreed upon and accepted by both Parties to this Contract.

18. NO THIRD PARTY BENEFICIARIES. Nothing contained herein will create a contractual relationship with, or any rights in favor of, any Third Party.

19. INDEPENDENT CONTRACTOR. Contractor is an independent contractor and is not an agent or employee of City. Contractor's employees and staff otherwise used to perform the services awarded under this Contract are Contractor's employees and sole responsibility. All payments made and benefits provided to Contractor's employees and staff otherwise shall be the sole responsibility of the Contractor.

20. COMPLIANCE WITH LAWS. Contractor will abide by all applicable federal, state and local laws, ordinances and regulations applicable at the time the services are rendered.

21. APPLICABLE LAW, JURISDICTION, VENUE. Interpretation of this Contract and disputes arising out of or related to this Contract 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 Contract will be in the District Court of Benton County, Arkansas.

22. SEVERABILITY. If any provision of this Contract is determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) will be null and void; provided, however, that the remaining provisions of this Contract will be unaffected and will continue to be valid and enforceable.

23. AMBIGUITY. If any ambiguity, inconsistency or conflict arises in the interpretation of this Contract, the same will be resolved by reference first to the terms and conditions of this Contract and then to Exhibit A.

The Parties hereto have caused this Contract to be executed this _____ (day) of _____(month), 2021.

SAMPLE CONTRACT

CITY OF BENTONVILLE, ARKANSAS

By: _____.

Stephanie Orman, Mayor

By: _____

Name(printed):_____

Title:_____

Company:_____

Address:_____

_____

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE MAYOR AND THE CITY CLERK TO ENTER INTO AN AGREEMENT WITH OZARK TENNIS ACADEMY FOR TENNIS PROGRAMMING FOR THE CITY OF BENTONVILLE PARKS AND RECREATION DEPARTMENT AND WAIVING THE REQUIREMENT OF COMPETITIVE BIDDING.

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

Section 1: That the Mayor and City Clerk be and are hereby authorized to enter into an agreement with Ozark Tennis Academy for Tennis Programming Services for the City of Bentonville Parks and Recreation Department, as set forth in the agreement attached hereto as Exhibit "A."

Section 2: Because Ozark Tennis Academy provides a unique learning experience by bringing in national and international coaches to instruct and lead the program, and because this provider has successfully managed the City's Tennis Program for more than ten (10) years and averages 1,500 participants annually, it would be neither practical nor feasible to advertise for competitive bidding, and that requirement is herein waived.

PASSED and APPROVED this _____ day of _____, 2021.

APPROVED:

_____
MAYOR

ATTEST:

_____
CITY CLERK

Agenda Item Form

Date of City Council Meeting	**10/12/2021**
Department	**Parks and Recreation**
Submitted by	**Josh Stacey**
Phone	**(479) 696.0204**

Item Type: (*Check All That Apply)*

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

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

Resolution authorizing the Mayor to enter into an agreement with Active Network LLC to serve as a Point of Sale system and provide registration and membership software management for Bentonville Parks and Recreation.

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:	Josh Stacey, Recreation Services Manager
Through:	David Wright, Parks and Recreation Director
Date:	September 29, 2021
Re:	Recreation Management Software Agreement with Active Net

Bentonville Parks and Recreation offers numerous programming, event, and membership opportunities for the community. Annually, Bentonville Parks and Recreation (BPR) offers over 150 programs and events and manages over 6,900 memberships and 20,000+ members at our facilities. To provide our participants with an easy and consistent registration process, BPR has partnered with Active Network LLC (Active) since 2014 to provide recreation software services.

All revenue processed through these purchases is processed and captured by Active and then paid to BPR in bi-monthly installments. Due to this, no money is actually paid directly from BPR to Active. In order to pay for this service, Active collects a set percentage of each payment to cover third-party processing fees and management fees and then pays the remaining balance to BPR. All of these fees are built into our annual budget to show the true reflection of our net revenue and our expense is fully recouped through registration fees.

Active Network is one of the top recreation software companies in the country. Over the last seven years, Active has worked to solve solutions and improve their product to custom fit our software to meet our participant's needs. As part of this new agreement, Active has offered new lighting integration for sports fields and facilities and a product service review, a combined $13,000 value, for free. This agreement will be for a term of five years with annual renewal options available thereafter.

If you have any questions regarding this item, please let me know. Please call me at 696.0204, or email jstacey@bentonvillear.com.

DocuSign Envelope ID: AED10B19-BC60-437C-9AEB-32D7D3F99145

PRODUCT AND SERVICES AGREEMENT

CLIENT INFORMATION			
ORGANIZATION FULL LEGAL NAME:	City of Bentonville, AR	**ADDRESS:**	215 SW "A" Street Bentonville, AR 72712
CONTACT NAME:	Josh Stacey	**TELEPHONE:**	479-696-0204
EMAIL:	jstacey@bentonvillear.com		

OVERVIEW OF AGREEMENT
This Agreement consists of this cover page, the Schedule, the General Terms, and the following Product Attachments:
Recreation Management Product Attachment

NOTE: If Client is tax exempt, certificate must be provided along with signed contract.

In consideration of the mutual promises and covenants contained in this Agreement, Client and Active hereby agree to be bound by this Agreement. By signing below, Client acknowledges and confirms that it has read this Agreement.

CLIENT	ACTIVE NETWORK, LLC
Signature: _____	Signature: DocuSigned by: [redacted]
Name: _____	Name: Andrea Facini
Title: _____	Title: President
Date: _____	Date: 9/1/2021 | 2:06 PM PDT

Active Network, LLC
717 N Harwood Street, Suite 2500, Dallas, TX 75201
Telephone: (469) 291-0300

Products and Services General Terms

Your relationship with Active and your use of Active's products and services (including your licensing of Active's SaaS and/or Desktop Software, your use of Services, and/or your purchase or leasing of Hardware) are subject to the terms and conditions set forth herein and are between you and Active. Capitalized terms are defined in Section 7 below, unless otherwise defined within the body of this Agreement, the applicable Product Attachment, or Schedule. In order to use the Products, you (referred to herein as "**Client**") must first agree to this Agreement. You represent and warrant that you have the necessary and full right, power, authority, and capability to accept this Agreement, to bind your organization, and to perform your obligations hereunder. You can accept this Agreement by: (a) clicking to accept or agree to this Agreement, where this option is made available to you by Active in the user interface for any Product; (b) where a link to this Agreement appears in an order form, Schedule, or other document provided to you by Active, by signing such document; (c) by signing this Agreement, if there is a designated area to sign; or (d) by actually using the Products. In the case of (d), you understand and agree that Active will treat your use of the Products as acceptance of this Agreement from that point onwards. You may not use the Products and may not accept this Agreement if (i) you are not of legal age to form a binding contract with Active, or (ii) you are a person barred from receiving the Products under the laws of the United States or other countries, including the country in which you are a resident or from which you use the Products. You may not use the Products if you do not accept this Agreement. By accepting this Agreement, you agree as follows:

1. AGREEMENT STRUCTURE AND SCOPE.

1.1. General Terms and Incorporation of Product Terms. This Agreement establishes the general terms and conditions to which the parties have agreed to in order to facilitate the licensing of Software and the provision of Products. Additional Product-specific terms and conditions are set forth in one or more documents referenced in the applicable Schedule, each of which is incorporated herein (each, a "**Product Attachment**"). All references to the "**General Terms**" mean this document, exclusive of Product Attachments and Schedules.

1.2. Incorporation of Schedules. The parties may enter into new Schedules from time to time. Each Schedule incorporates the terms of these General Terms and the applicable Product Attachment.

1.3. Incorporation of EULAs. Client's use of any Third Party Products hereunder may be subject to, and Client will comply with, this Agreement and any applicable Third Party EULA(s).

1.4. Affiliates. Client's Affiliates may order Products from Active (or one of Active's Affiliates) by entering into a Schedule. In the event that a Client Affiliate enters into a Schedule with Active (or an Affiliate of Active), reference in this Agreement to "**Client**" and "**Active**" will mean the respective entity that accepts (as described in the Preamble) the applicable Schedule. Each such Schedule will be deemed to be a separate agreement.

2. FINANCIAL TERMS.

2.1. Fees; Payment Terms; Currency. Fees, currency, and payment terms are specified in the applicable Schedule. Unless otherwise specified in the Schedule, all amounts owed by Client that are not directly collected by Active are due from Client within 30 days from either (a) the end of the remittance cycle during which the fees accrued (if related to registrations or transaction processing), or (b) the date of the applicable invoice. Past due fees will accrue interest at the lesser of the annual rate of 10% per annum or the maximum amount permitted by applicable law. In the event of any non-payment or delay in paying a fee, Client agrees to reimburse Active for any fees and expenses incurred in its collection efforts. Payment of fees is under no circumstances subject to or conditioned upon the delivery of future Products or functionality. Except as otherwise provided in a Schedule, Active may modify the fees once per calendar year upon 30 days' notice, provided that any such increase will not exceed 5% over the then-current transaction fees or 5% over the then-current subscription fees. Notwithstanding the foregoing, Client will not be subject to fee increases during the first 12 calendar months from the Agreement Effective Date.

2.2. Taxes. The prices in this Agreement do not include Taxes. Client is responsible for and agrees to pay any and all Taxes. If Client is tax-exempt, Client will send Active a copy of its valid tax-exempt certificate (or, as applicable, its reseller's certificate) prior to execution of any Schedule. Client is solely responsible for determining which, if any, Taxes apply to Client's use of the Products and for collecting, remitting, and reporting the correct amounts of all such Taxes to the applicable governmental authorities, even if Active provides Client with tools that assist Client in doing so. In the event that a governmental authority requires Active to pay any Taxes attributable to Client's use of the Products, Client agrees to defend, indemnify, and hold Active harmless from all such Taxes and all costs and expenses related thereto.

3. LIMITED RIGHTS AND OWNERSHIP; INDEMNIFICATION.

3.1. Reservation of Rights. All rights not expressly granted in this Agreement are reserved by Active and its licensors. Client acknowledges that: (a) all Protected Materials are licensed and not sold; (b) Client acquires only the right to use the Products in accordance with this Agreement, and Active and/or its licensors will retain sole and exclusive ownership of and all rights, title, and interests in the Products, including the following: (i) all Intellectual Property embodied or associated with the Products, (ii) all deliverables and work product associated with the Products, and (iii) all copies and derivative works thereof; and (c) the Products, including the source and object codes, logic, and structure, contain and constitute valuable trade secrets of Active and its licensors.

3.2. Restrictions. Unless otherwise set forth in a EULA, Product Attachment, or Schedule, Client will not itself, or through any Affiliate, employee, consultant, contractor, agent, or other third party: (a) sell, resell, distribute, host, lease, rent, license, or sublicense, in whole or in part, the Protected Materials; (b) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer, or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure, or other elements of the Products in whole or in part, for competitive purposes or otherwise; (c) allow access to, provide, divulge, or make available the Protected Materials to any user other than those who are licensed to have such access; (d) write or develop any derivative works based upon the Products; (e) modify, adapt, translate, or otherwise make any changes to the Products or any part thereof; (f) use the Protected Materials to provide processing services to third parties, or otherwise use the same on a service bureau basis; (g) disclose or publish, without Active's prior written consent, (i) performance or capacity statistics, or the results of any benchmark test performed on the Products, or (ii) the terms (but not the existence) of this Agreement or other valuable trade secrets of Active or its licensors; (h) without Active's prior written consent, perform or disclose or cause to be performed or disclosed any information related to any security penetration or similar tests; (i) disclose or otherwise use or copy the Protected Materials except as expressly permitted herein; (j) remove from any Products identification, patent, copyright, trademark, or other notices or circumvent or disable any security devices' functionality or features; (k) contest or do or aid others in contesting or doing anything which impairs the validity of any proprietary or Intellectual Property rights, title, or interests of Active in and to any Products; (l) use the Products for other than authorized and legal purposes, consistent with all applicable laws, regulations, and the rights of others; (m) take any steps to avoid or defeat the purpose of security

measures associated with the Products, such as sharing of login and password information, or attempt to circumvent any use restrictions; or (n) except as expressly permitted by this Agreement, use the Protected Materials for hosting purposes.

3.3. Enforcement. Client will (a) ensure that all users of Products comply with the terms and conditions of this Agreement; (b) promptly notify Active of any actual or suspected violation thereof; and (c) cooperate with Active with respect to any investigation and enforcement of this Agreement.

3.4. Intellectual Property Indemnification. Active agrees to defend, settle, and pay damages (including reasonable attorneys' fees) relating to any third party claim, demand, cause of action, or proceedings (whether threatened, asserted, or filed) ("**Claims**") against Client to the extent that such Claim is based upon Active's proprietary Products (excluding Third Party Products) directly infringing a United States patent, registered United States copyright, or registered United States trademark, provided that the Products are used in compliance with this Agreement.

4. DISCLAIMERS AND LIMITATION OF LIABILITY.

4.1 EXCEPT AS OTHERWISE SET FORTH HEREIN AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOU ACKNOWLEDGE AND AGREE THAT THE PRODUCTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. THE WARRANTIES, IF ANY, SET FORTH HEREIN AND IN THE PRODUCT ATTACHMENTS ARE LIMITED TO THEIR EXPRESS TERMS AND ARE IN LIEU OF, AND ACTIVE, ITS LICENSORS, AND SUPPLIERS EXPRESSLY DISCLAIM TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING ANY (a) WARRANTY THAT THE PRODUCTS ARE ERROR-FREE OR "BUG"-FREE, ACCURATE, SECURE, OR RELIABLE; (b) WARRANTY THAT THE PRODUCTS WILL OPERATE WITHOUT INTERRUPTION; (c) WARRANTY THAT ALL ERRORS WILL BE CORRECTED OR THAT THE PRODUCTS WILL COMPLY WITH ANY LAW, RULE, OR REGULATION; (d) IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT; (e) IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE; AND (f) WARRANTY THAT THE PRODUCTS WILL MEET CLIENT'S REQUIREMENTS. ACTIVE WILL NOT BE LIABLE FOR INDIRECT DAMAGES OR LOSSES (IN CONTRACT, STATUTE, TORT, OR OTHERWISE), INCLUDING DAMAGES FOR LOST PROFITS, LOST SAVINGS, COST OF REPLACEMENT SERVICES, LOST DATA, LOSS OF USE OF INFORMATION OR SERVICES, OR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR SPECIAL DAMAGES, WHETHER OR NOT ACTIVE HAS PREVIOUSLY BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. HOWEVER, SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION ONLY APPLIES WHERE ALLOWED. TO THE EXTENT PERMITTED BY APPLICABLE LAW, ACTIVE'S TOTAL AGGREGATE LIABILITY FOR ALL MATTERS ARISING FROM OR RELATED TO THIS AGREEMENT IS LIMITED TO (I)THE AMOUNT OF FEES ACTUALLY PAID BY CLIENT AS CONSIDERATION FOR THE SPECIFIC PRODUCT UNDER THE APPLICABLE SCHEDULE GIVING RISE TO SUCH CLAIMS DURING THE 12 MONTH PERIOD PRECEDING THE DATE ON WHICH THE FIRST CAUSE OF ACTION AROSE, OR (II) IF NO SUCH PAYMENTS HAVE BEEN MADE OR SUCH AMOUNTS CANNOT BE CALCULATED, 10,000 U.S. DOLLARS (OR THE EQUIVALENT THERETO AS DETERMINED BY THE APPLICABLE COUNTRY'S CURRENCY), AS APPLICABLE. NOTWITHSTANDING THE ABOVE, IF YOU RESIDE OUTSIDE OF THE U.S., THIS DOES NOT AFFECT ACTIVE'S LIABILITY FOR DEATH OR PERSONAL INJURY ARISING FROM ITS NEGLIGENCE, NOR FOR FRAUDULENT MISREPRESENTATION, MISREPRESENTATION AS TO A FUNDAMENTAL MATTER, OR ANY OTHER LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

4.2 TO THE EXTENT THIS AGREEMENT IS GOVERNED BY ENGLISH LAW, THE FOLLOWING APPLIES: ACTIVE IS LIABLE UNDER APPLICABLE STATUTORY PROVISIONS FOR INTENT AND GROSS NEGLIGENCE. THE SAME APPLIES TO ASSUMPTIONS OF GUARANTEES, STRICT LIABILITY, OR INJURY TO LIFE, LIMB, OR HEALTH. ACTIVE IS LIABLE FOR ANY NEGLIGENT BREACHES OF ESSENTIAL CONTRACTUAL OBLIGATIONS BY ACTIVE BUT THE AMOUNT SHALL BE LIMITED TO THE TYPICALLY OCCURRING FORESEEABLE DAMAGE. ANY ADDITIONAL LIABILITY OF ACTIVE IS EXCLUDED.

4.3 TO THE EXTENT THIS AGREEMENT IS GOVERNED BY AUSTRALIAN LAW, THE FOLLOWING APPLIES: EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT AND EXCEPT FOR ANY CONDITION OR WARRANTY THE EXCLUSION OF WHICH COULD BE VOID OR OTHERWISE CONTRAVENE THE TRADE PRACTICES ACT 1974 (CTH) OR ANY OTHER APPLICABLE LAW ("NON EXCLUDABLE CONDITION"), ALL SOFTWARE AND SERVICES OF ACTIVE ARE PROVIDED TO YOU ON AN "AS-IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT FOR ANY NON-EXCLUDABLE CONDITION OR OTHERWISE AS CONTAINED IN THIS AGREEMENT, ACTIVE EXPRESSLY DISCLAIMS ANY WARRANTY THAT THE USE OF ITS SOFTWARE OR SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR THAT THE SPECIFICATIONS WILL MEET YOUR REQUIREMENTS. WHERE LEGISLATION IMPLIES INTO THIS AGREEMENT ANY NON-EXCLUDABLE CONDITION, ACTIVE'S LIABILITY FOR ANY BREACH OF SUCH NON-EXCLUDABLE CONDITION WILL BE LIMITED AT ACTIVE'S SOLE DISCRETION TO ONE OR MORE OF THE FOLLOWING: (1) IN THE CASE OF GOODS, ANY ONE OR MORE OF THE FOLLOWING: (I) THE REPLACEMENT OF THE GOODS OR THE SUPPLY OF EQUIVALENT GOODS; (II) THE REPAIR OF THE GOODS; (III) THE PAYMENT OF THE COST OF REPLACING THE GOODS OR OF ACQUIRING EQUIVALENT GOODS; OR (IV) THE PAYMENT OF THE COST OF HAVING THE GOODS REPAIRED; (2) IN THE CASE OF SERVICES: (I) THE SUPPLYING OF THE SERVICES AGAIN; OR (II) THE PAYMENT OF THE COST OF HAVING THE SERVICES SUPPLIED AGAIN. (B) ACTIVE SHALL NOT BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL OR PUNITIVE DAMAGES INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFIT, LOSS OF GOODWILL, WORK STOPPAGE, DATA LOSS, ANTICIPATED SAVINGS OR COMPUTER FAILURE WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF ACTIVE OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH LOSS OUGHT REASONABLY TO HAVE BEEN IN THE CONTEMPLATION OF THE PARTIES AT THE AGREEMENT DATE. DESPITE ANY OTHER PROVISION CONTAINED IN THIS AGREEMENT, ACTIVE'S TOTAL AGGREGATE LIABILITY FOR ALL MATTERS ARISING FROM OR RELATED TO THIS AGREEMENT IS LIMITED TO THE AMOUNT OF FEES ACTUALLY PAID BY YOU AS CONSIDERATION FOR THE SOFTWARE AND SERVICES GIVING RISE TO SUCH CLAIM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION AROSE.

4.4 FOR THE PURPOSES OF THIS SECTION 4 AND ANY INDEMNIFICATION PROTECTING ACTIVE UNDER THIS AGREEMENT, REFERENCE TO ACTIVE WILL ALSO INCLUDE ITS SUPPLIERS AND LICENSORS.

5. TERM AND TERMINATION.

5.1. Term. The term of this Agreement will be set forth in the applicable Product Attachment.

5.2. Termination. Either party may terminate this Agreement, including any or all Product Attachments and Schedules executed hereunder, immediately upon written notice: (a) in the event that the other party commits a non-remediable material breach of this Agreement and/or the applicable Product Attachment or Schedule, or if

the other party fails to cure any remediable material breach or provide a written plan of cure acceptable to the non-breaching party within 30 days of being notified in writing of such breach, except for breach of Section 2 of these General Terms which will have a 10 day cure period; or (b) in the event of institution of bankruptcy, receivership, insolvency, reorganization, or other similar proceedings by or against either party under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar laws or statutes of the United States or any state thereof, if such proceedings have not been dismissed or discharged within 30 days after they are instituted; or the insolvency or making of an assignment for the benefit of creditors or the admittance by either party of any involuntary debts as they mature or the institution of any reorganization arrangement or other readjustment of debt plan of either party not involving the United States Bankruptcy Code. Where a party has the right to terminate this Agreement, such party may at its discretion either terminate the entire Agreement or the applicable Product Attachment or Schedule; provided however, that termination of a Product Attachment will automatically terminate all Schedules entered into pursuant to such Product Attachment. Product Attachments and Schedules that are not terminated will continue in full force and effect under the terms of these General Terms. Following termination of this Agreement or a Product Attachment (for whatever reason), if requested by Active, Client will certify that it has returned or destroyed all copies of the applicable Protected Materials and acknowledges that its rights to use the same are relinquished. Termination for any reason will not excuse Client's obligation to pay in full any and all amounts due, nor will termination by Active result in a refund of fees paid.

6. GENERAL PROVISIONS.

6.1. U.S. Government Restricted Rights. The Products are provided with restricted rights. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c) of The Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, or subparagraphs (b)(1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19, as applicable. The Manufacturer is Active Network, LLC or one of its Affiliates or subsidiaries.

6.2. Suspension. Active will be entitled to suspend any or all Services or deactivate Client's account, including suspending its performance and obligation to remit payments hereunder, upon 10 days' written notice to Client in the event Active reasonably believes that Client is in breach of this Agreement.

6.3. Force Majeure. Neither party will incur any liability to the other party on account of any loss, claim, damage, or liability to the extent resulting from any delay or failure to perform all or any part of this Agreement, if and to the extent such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the reasonable control and without any negligence on the part of the party seeking protection under this subsection, including internet service provider or third party payment delays or failures, acts of God, strikes, lockouts, riots, acts of war, terrorism, earthquake, fire, or explosions. Dates by which performance obligations are scheduled to be met will be extended for a time equal to the time lost due to the delay so caused.

6.4. Assignment. Active may assign this Agreement and any or all of its rights and obligations herein without Client's approval. Except as provided in an applicable Product Attachment, Client may not assign or transfer this Agreement without the prior written consent of Active.

6.5. Export; Anti-Bribery. The Products may include encryption software or other encryption technologies that may be controlled for import, transfer, export, or other purposes under Export Laws. Client may not export, re-export, transfer, or re-transfer or assist or facilitate in any manner the export, re-export, transfer, or re-transfer of or provide access to any portion of the Products in violation of Export Laws, as determined by the laws under which Client operates, including: (a) to any country on Canada's Area Control List; (b) to any country subject to U.N. Security Council embargo or action; (c) contrary to Canada's Export Control List Item 5505; (d) to countries subject to U.S. economic sanctions and embargoes; and (e) to persons or entities prohibited from receiving U.S. exports or U.S.-origin items, including, to any person or entity appearing on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List; the Bureau of Industry and Security's Denied Persons List, Entity List, or Unverified List; or the Department of State Debarred List. Client hereby represents and covenants that: (i) Client is eligible to access the Products under Export laws and all other applicable laws; and (ii) Client will import, export, re-export, transfer, or re-transfer the Products to, or use or access the Products in, any country or territory only in accordance with Export Laws and all other applicable laws. Furthermore, Client hereby represents and covenants that, in connection with its respective activities conducted under this Agreement, it will comply with the U.S. Foreign Corrupt Practices Act of 1977, as amended, the U.K. Bribery Act of 2010, as amended, and the Convention on Combating Bribery of Foreign Public Officials and has not and will not make or receive, directly or indirectly, any payments or gifts, or offers or promises of payments or gifts or things of value in exchange for anything that may arise out of this Agreement in a manner that would violate these laws and rules or any other applicable anti-corruption or anti-bribery laws or regulations.

6.6. Notices. Any notices required to be given under this Agreement will be in writing sent to the address on file with Active for Client or, in the case of Active, to the address set forth in Section 7 of these General Terms to the attention of Legal Department. Notices will be deemed received the next day if sent via overnight mail or courier with confirmation of receipt, or 3 days after deposited in the mail sent certified or registered.

6.7. Relationship. This Agreement is not intended to create a partnership, franchise, joint venture, agency, or a fiduciary or employment relationship. Neither party may bind the other party or act in a manner which expresses or implies a relationship other than that of independent contractor.

6.8. Severability. If any part or provision of this Agreement is held to be unenforceable, illegal, or invalid by a court of competent jurisdiction for any reason whatsoever, (a) the validity, legality, and enforceability of the remaining provisions of this Agreement (including all portions of any provisions containing any such unenforceable provision that are not themselves unenforceable) will not in any way be affected or impaired thereby, and (b) to the fullest extent possible, the unenforceable, illegal, or invalid provision will be deemed modified and replaced by a provision that approximates the intent and economic effect of the unenforceable, illegal, or invalid provision and this Agreement will be deemed amended accordingly.

6.9. Survival. The following provisions will survive any termination, cancellation, or expiration of this Agreement: Sections 1, 2, 3.2, 4, 5.2, 6, and 7 of these General Terms, and such other provisions that should reasonably survive termination, cancellation, or expiration hereof.

6.10. Amendments; No Waiver. No amendment or waiver of any provision of this Agreement will be effective unless it is in writing and signed by the party against which it is sought to be enforced.

6.11. Entire Agreement. This Agreement constitutes the parties' entire agreement relating to its subject matter. It cancels and supersedes all prior or contemporaneous oral or written communications, agreements, requests for proposals, proposals, conditions, representations, and warranties, or other communication between the parties relating to its subject matter as well as any prior contractual agreements between the parties. No modification to this Agreement will be binding unless it is in writing and includes a signature by an authorized representative of each party. All pre-printed terms of any Client purchase order, business processing document, or

on-line terms will have no effect. There have been no material representations or statements by any person or party to this Agreement as an inducement for a party hereto to accept this Agreement other than what is expressly set forth in writing herein.

6.12. No Third Party Beneficiaries. This Agreement is for the benefit of the parties and their successors and permitted assigns, and does not confer any rights or benefits on any third party, including any employee of a party, any client of a party, or any employee of a client of a party. Notwithstanding the above, the parties acknowledge that all rights and benefits afforded to Active under this Agreement will apply equally to its licensors and suppliers, and the owner of the Third Party Products with respect to the Third Party Products, and such third parties are intended third party beneficiaries of this Agreement, with respect to the Third Party Products as applicable.

6.13 Governing Law and Venue. Except as set forth below, this Agreement will be governed by the laws of the State of Texas, without giving effect to the conflict of law provisions thereof. The parties irrevocably agree that any legal action or proceeding relating to this Agreement will be instituted only in any state or federal court in Dallas County, Texas. Neither the United Nations Convention of Contracts for the International Sale of Goods nor the Uniform Computer Information Transactions Act will apply to this Agreement. THE PARTIES HERETO IRREVOCABLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT. Notwithstanding the above, for purposes of this Agreement, certain of the terms and conditions will vary depending on the location of the Client. If a country or term is not specified below, then the Governing Law and Venue set forth above shall apply.

If your principal place of business is in:	The governing law is:	The courts having exclusive jurisdiction are:
Canada	Province of British Columbia	Province of British Columbia
United Kingdom, Ireland, Germany, France, or Austria	England	England
Singapore	Singapore	Singapore
New Zealand	England	England
Hong Kong	Hong Kong	Hong Kong
Australia	New South Wales	Sydney, New South Wales
Switzerland	England	England
Denmark	England	England
Netherlands	England	England
Spain	England	England
Sweden	England	England

6.14 Order of Precedence. To the extent any terms and conditions of these General Terms conflict with the terms and conditions of any Product Attachment, the provisions of the Product Attachment will control. To the extent any provision of these General Terms or any Product Attachment conflict with the provisions of a Third Party EULA, the Third Party EULA will control. In the event of a conflict between a Schedule and these General Terms or the applicable Product Attachment, the General Terms or the applicable Product Attachment (as applicable) will control, provided, however, that such standard variable terms such as price, quantity, license scope, payment terms, shipping instructions, and the like will be specified on each Schedule.

6.15 Interpretation. Any reference to a statutory provision includes a reference to any modification or re-enactment of it from time to time. The headings and pronouns contained herein are for convenience and ease of reference only and will not affect the construction or interpretation of this Agreement. The word "including" in this Agreement means "including, without limitation." All references to days means calendar days. This Agreement will not be construed in favor of or against a party based on the author of the document.

6.16 Counterparts. These General Terms and each Product Attachment, Schedule, and any exhibits thereto may be executed in one or more counterparts, each of which will constitute an enforceable original of this Agreement, and the parties agree that electronic or digital signatures, as well as pdf scanned copies of signatures, will be as effective and binding as original signatures.

6.17 Remedies Cumulative; Injunctive Relief. All rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights or remedies that may be available to the parties, whether provided by law, equity, statute, in any other agreement between the parties or otherwise. Furthermore, in the event of a breach or threatened breach of the intellectual property obligations in this Agreement, Active, in addition to any and all other rights (at law or in equity) which may be available, will have the right of injunctive relief and other appropriate equitable remedies to restrain any such breach or threatened breach, without the requirement of posting a bond.

7. DEFINITIONS.

"**Active**" means Active Network, LLC, with a principal place of business at 717 N. Harwood St., Suite 2500, Dallas, TX, 75201, together with its Affiliates, or, if your principal place of business is in Canada, Active Network Ltd., with a principal place of business at 2925 Virtual Way, Unit 310, Vancouver BC V5M 4X5.

"**Affiliates**" of a designated corporation, company, partnership, or other entity means all entities which control, are controlled by, or are under common control with the named entity, whether directly or through one or more intermediaries. For purposes of this definition "controlled" and "control" mean ownership of more than 50% of the voting capital stock or other interest having voting rights with respect to the election of the board of directors or similar governing authority.

"**Agreement**" means these General Terms, together with all Product Attachments and Schedules accepted by the parties (as described in the Preamble).

"**Client**" means the individual who accepts this Agreement (as described in the Preamble) and any business entity on behalf of which such individual accepts this Agreement.

"**Desktop Software**" means each Active-developed and/or Active-owned software product in machine readable object code (not source code) that is installed on desktop(s) or server(s) controlled by Client, the Documentation for such product, and any Updates and Upgrades thereto.

"**Documentation**" means the user instructions, release notes, manuals, or on-line help files in the form generally made available by Active, regarding the use of the applicable Software or Services, as updated by Active from time to time.

"**Effective Date**" means the date that Client accepts this Agreement (as described in the Preamble).

"**Export Laws**" means export control laws and regulations of the countries and/or territories in which Active operates or in which the Products are used, accessed, or from which the Products are provided.

"**Hardware**" means computer hardware, equipment, and/or utilities supplied by Active pursuant to a Schedule.

"**Intellectual Property**" means any and all intellectual property and proprietary rights (in whole or in part) recognized in any country or jurisdiction in the world, now or hereafter existing, and whether or not perfected, filed, or recorded, including inventions, technology, patent rights (including patent applications, divisions, and disclosures), copyrights and all works of authorship (whether or not copyrightable), moral rights, trade secrets, trademarks and other indicators of source (and the goodwill associated therewith), service marks, trade dress, logos, methodologies, procedures, processes, know-how, tools, utilities, techniques, protocols, various concepts, ideas, methods, models, templates, software, source code, algorithms, tools, utilities, the generalized features of the structure, sequence and organization of software, user interfaces and screen designs, layouts, general purpose consulting and software tools, utilities and routines, and logic, coherence and methods of operation of systems, training methodology and materials, which Active has created, acquired, or otherwise has rights in, and may, in connection with the Products or the performance of Services hereunder, create, employ, provide, modify, create, acquire, or otherwise obtain rights in, and in each case includes any derivative works, alterations, and other modifications using, incorporating, based on, or derived from the foregoing.

"**Maintenance Services**" means the provision of Updates and Upgrades related to the Software all as more particularly set out in the applicable Product Attachment and/or Schedule.

"**Preamble**" means the first paragraph of these General Terms.

"**Products**" means, collectively, SaaS, Desktop Software, Services, Hardware, and all other services, products, or materials provided by Active to Client under the terms of this Agreement.

"**Professional Services**" means the implementation, site planning, configuration, integration, and deployment of the Software or SaaS, training, project management, and other consulting services.

"**Protected Materials**" means Products, except for Hardware.

"**SaaS**" means (a) the software as a service which is hosted by Active or its hosting providers and which is accessed by Client and its users via the internet; (b) Active's web sites; and (c) associated services, as more fully described in the applicable Product Attachment. SaaS functionality is subject to change from time to time at Active's sole discretion.

"**Services**" means, collectively, (a) Professional Services; (b) Maintenance Services; (c) Support Services; and (d) any other services set forth in a Schedule.

"**Schedule**" means the document, schedule, quote, pricing form, web page, order form, or similar document and the terms and conditions contained therein "accepted" (as described in the Preamble) by the parties that describes order-specific information, such as a description of Products ordered, features, options, license details, and fees.

"**Software**" means the SaaS and the Desktop Software, collectively.

"**Support Services**" means the provision of technical assistance for Software or Hardware as further described in an applicable Product Attachment and/or Schedule.

"**Taxes**" means any and all applicable taxes, including sales, use, excise, withholding, assessments, stamp, transfer, value-added, duties, tariffs, export charges, import charges, and other taxes or assessments (however designated) imposed by any foreign, federal, provincial, state, or local governmental authority upon or applicable to Products arising out of this Agreement, other than those based on Active's net income.

"**Third Party EULA**" means the end user license agreement, if any, that accompanies the Third Party Products, which governs the use of or access by Client to the applicable Third Party Products.

"**Third Party Products**" means those hardware, firmware and/or software products, including updates and enhancements thereto, if any, owned by third parties, together with all user manuals and other documents accompanying the delivery of the Third Party Products.

"**Updates**" means bug fixes, patches, error corrections, minor releases, or modifications or revisions that enhance existing performance of the Software that are provided as part of Maintenance Services. Updates exclude Upgrades.

"**Upgrades**" means a new Software release that contains major functionality enhancements or improvements; and which is designated by an incremental increase in the release number to the left of the decimal point (by way of example only, release 5.0 designates an Upgrade from release 4.x). Upgrades exclude new products, modules or functionality for which Active generally charges a separate fee.

Recreation and Membership Management Product Attachment

This document is a "Product Attachment" as defined in the General Terms entered into by Client and Active and is subject to and incorporates by reference the provisions of the General Terms. This Product Attachment is effective as of the date it is "accepted" (in accordance with the Preamble to the General Terms). Any capitalized terms not defined herein have the meaning ascribed to them in the General Terms.

1. SERVICES. Active will provide Services related to events, camps, licenses, classes, tickets, contests, permits, facility/equipment use, transactions, sales, memberships, reservations, donations, and/or activities (together, "**Events**"), including without limitation access to its SaaS. Client agrees to cooperate with Active and to provide Active with certain information relating to Client's organization as necessary for Active to provide the Services and SaaS. SaaS provided hereunder are deemed delivered when access is made available to Client.

2. LICENSE TO INTELLECTUAL PROPERTY/PROMOTION.

2.1. Active hereby grants to Client a limited, non-exclusive, non-transferable, non-sublicensable license during the term of this Product Attachment (a) to use the SaaS for the purposes of offering, promoting, managing, tracking, and collecting fees in connection with Client's Event(s) solely in accordance with the Agreement and the Schedule, which for purposes hereof will include the support and maintenance handbook applicable to the Products, as may be updated from time to time, such handbook being available for review in the Client portal, and (b) to display, reproduce, distribute, and transmit in digital form Active's name and logo solely for the purposes set forth in this Section 2. Client hereby grants to Active a limited license to use information provided by Client relating to Client's organization and Event, which may include content regarding the Event, Client's organization's name, trademarks, service marks, and logo, in connection with the promotion of Client's organization or Events and the Services that Active provides.

2.2. Client will make reasonable efforts to promote and encourage the use and availability of the SaaS in connection with the promotion of Events. During the term of this Product Attachment, Active will be the sole and exclusive provider of registration software and other services similar to the Software and Services provided to Client hereunder for all of Client's Events for which registration begins during the term of this Product Attachment until the Event occurs. Client expressly understands and agrees that the exclusivity set forth in this Section 2.2 is consideration in exchange for the pricing and other benefits being provided to Client hereunder.

2.3. Active may present commerce offers to users who register for, sign up, or otherwise use the SaaS in connection with the Events ("**End Users**"). Any such End Users may opt in to receive information, items, or promotions/deals from Active or third parties, in which case, Active or such third party will be responsible for fulfillment and providing customer service for any such offers. Client will not present any competing offers to End Users.

2.4. Client will: (a) not use the SaaS to transmit, publish, or distribute any material or information: (i) for which Client does not have all necessary rights and licenses, including any material or information that infringes, violates, or misappropriates the intellectual property rights of any third party; (ii) that contains a computer virus or other code, files, or programs designed to disrupt or interfere with the functioning of the SaaS; (iii) that is inaccurate or misleading; (iv) that is or that may reasonably be perceived as being harmful, threatening, offensive, obscene, or otherwise objectionable; (v) that contains a virus or malicious code; or (vi) that includes the private information of another without express permission, including but not limited to contact information, social security numbers, credit card numbers or other information which a reasonable person would consider private in nature; (b) not attempt to gain access to any systems or networks that connect to the Services and SaaS except for the express purpose of using the SaaS for their intended use; (c) not engage in any activity that interferes with or disrupts the SaaS; (d) not use the SaaS in violation of the CAN-SPAM Act, Canadian Anti-Spam Legislation, or any other applicable laws pertaining to unsolicited email, SMS, text messaging or other electronic communications.

3. INFORMATION COLLECTION.

3.1. Active collects certain information from End Users (collectively, "**Participant Information**"). Client may login to Active's data management system to access the Participant Information. Client is responsible for the security of its login information and for the use or misuse of such information. Client will immediately disable a user's access who is using the SaaS on its behalf or notify Active in writing if any such user is no longer authorized or is using such information without Client's consent. Active may rely, without independent verification, on such notice, and Client, inclusive of Client's parent, subsidiaries, and affiliated entities, as applicable, and each of their respective officers, directors, managers, shareholders, owners, agents, employees, contractors, and representatives covenant not to sue and agree to defend, indemnify, and hold harmless Active from any claims arising from Active providing, denying, suspending, or modifying access to or use of the SaaS and Services of any individual as directed by Client or by someone who Active reasonably, under the circumstances, believes is authorized to act on behalf of Client. In the event of any dispute between two or more parties as to account ownership, Client agrees that Active will be the sole arbiter of such dispute in its sole discretion and that Active's decision (which may include termination or suspension of any account subject to dispute) will be final and binding on all parties. Client agrees not to use the Software or Services to collect or elicit (a) any special categories of data (as defined in the European Union Data Protection Directive, as may be amended from time to time), including, but not limited to, data revealing racial or ethnic origin, political opinions, religious or other beliefs, trade-union membership, as well as personal data concerning health or sexual life or criminal convictions other than as expressly directed by Active, and in such event, only in pre-defined fields within the Software that are intended for that purpose; or (b) credit card information other than in pre-defined fields within the Software that are intended for that purpose.

3.2. Both parties agree to use the collected information in compliance with (a) all applicable laws, rules and regulations, including, without limitation, those governing privacy and personal information (e.g., by including an appropriate CAN-SPAM Act and Canadian Anti-Spam Legislation opt out mechanism in email communications) and the use of credit card data (e.g., using credit card information only for purposes authorized by the cardholder); (b) applicable credit card network rules and Payment Card Industry Data Security Standards; and (c) Active's privacy policy, as published on its website or otherwise provided by Active from time to time.

4. FEES.

4.1. Client will pay the fees as more fully described in the applicable Schedule. Unless otherwise set forth in the applicable Schedule, Active will charge registration fees to individuals who register for the Events or purchase goods or services online, and will process and collect such fees as a merchant of record according to the card networks. On a bi-weekly basis, unless otherwise set forth in the applicable Schedule, Active will pay Client sums due to Client based on the total fees collected, net of Active's service fees as set forth in the applicable Schedule and any other deductions provided herein. The applicable currency will be set forth in the Schedule.

4.2. Active may suspend its performance hereunder, including remitting payments, or terminate the Agreement or this Product Attachment in the event it reasonably believes that Client's use of the Services or SaaS is not in compliance with applicable law or the Agreement, is fraudulent, or is otherwise suspect, or if there is a dispute as to the legal authority of a Client-associated party to perform hereunder. If Active reasonably believes that a transaction may be fraudulent or otherwise contrary to law, Active may issue an invoice or offset an equivalent amount from Client's account or any payment Active owes to Client and return the value to the End User (as set forth below) and if sufficient funds are not available, Client must reimburse Active on demand. Active will notify Client of the reason for such offset provided that it is lawful to do so.

4.3. If the Schedule indicates that Client is paying on a subscription basis, Client will be invoiced for the first year of subscription fees upon the date of the first live operational use of the SaaS for the Event(s) ("**Go-Live Date**"), with subsequent annual subscription fees being invoiced upon each anniversary of the Go-Live Date.

4.4. If (a) there are any overdue amounts owed by Client; or (b) there are returned charges or items, including those resulting from any error or complaint related to an Event, Active has the right to charge fees owed to Active by Client by issuing an invoice, or by offsetting the deficiency from any account balance Client maintains with Active or any payment Active owes Client.

4.5. All fees described in the applicable Schedule are in consideration of the SaaS and Services that Active provides. Active and Client acknowledge that certain credit card network rules and laws prohibit imposing a surcharge that is based on the type of payment method used (e.g., having a different fee for the use of a credit card vs. debit card), and therefore, each agrees not to impose such a surcharge on any end user.

4.6. In the event Client is entering into this Product Attachment and using the Services and/or SaaS for the benefit of a third-party Event or organization ("**Third Party Recipient**"), Client agrees that Active can remit amounts directly to the Third Party Recipient identified by Client. In addition, Client will cause each Third Party Recipient to agree to and comply with provisions that are at least as protective of Active as Section 4 of the General Terms and Section 5 of this Product Attachment in Client's agreement with such Third Party Recipient. Should Client fail to obtain such agreement to such provisions and the failure results in costs or damages to Active, Client agrees to defend, indemnify, and hold Active harmless from any such costs and damages, including, without limitation, reasonable attorneys' fees. In addition, Client is responsible and liable for each Third Party Recipient's compliance with the terms and conditions of the Agreement.

4.7. It is Client's responsibility to notify End Users of Client's refund policy. Client must ensure that Client's refund policies are consistent with the Agreement. Client agrees that all fees for a given Event are earned by Client only following either the conclusion or delivery of the applicable Event (as applicable) and all amounts ultimately due to Client will be net of all service fees, reversals, refunds, disputed charges, chargebacks and other deductions whether due to customer complaints, allegations of fraud, discrepancies related to the applicable Event or otherwise. No payments will be made to Client with respect to any Event that is cancelled. If payments have already been made by Active to Client for a cancelled Event or if Active reasonably determines that it is prudent or otherwise necessary to pay a refund to or honor a chargeback request from an End User, Active may issue an invoice or offset an equivalent amount from Client's account or payment owed by Active to Client and return the value to the End User, and if sufficient funds are not available, Client must reimburse Active on demand. Active will notify Client of the reason for such offset provided that it is lawful to do so.

4.8. When Active is acting as the merchant of record and Client elects to include an additional fee in the End Users' cart that is identified as a "sales tax" or similar designation, then, no more frequently than once per calendar year during the term of the Agreement, Active may, upon at least 5 business days' prior written notice, (i) require Client to send to Active Client's books and records related to its sales tax payments, and/or (ii) visit Client's premises during Client's normal business hours to review Client's sales tax payments.

5. INDEMNIFICATION. Client will defend, indemnify, and hold Active harmless from and against any third party claim, demand, cause of action or proceedings (whether threatened, asserted, or filed) ("**Claims**") against Active to the extent that such Claim is (a) based upon (i) injury or death to a person or damage to property resulting from the participation in an Event operated by Client in connection with the Services and/or SaaS; (ii) Client's provision to Active of materials, products, or services as part of Client's obligations hereunder that infringe the intellectual property rights of any third party provided that such materials, products, or services are used by Active in accordance with the Agreement; (iii) use or unauthorized disclosure of Participant Information by Client or other third parties to whom access is given to Participant Information as provided hereunder; (iv) Client's use of the Services and/or SaaS in violation of Section 2.4 of this Product Attachment; (v) any claims for refunds, reversals or chargeback requests from End Users; or (b) brought by a Third Party Recipient or brought in connection with Active's payment to a Third Party Recipient of any fees due hereunder in accordance with the Agreement. Nothing contained herein shall waive any immunities Client may be entitled to by law, including statutory and governmental immunities.

6. TERM AND TERMINATION.

6.1. Unless otherwise set forth in the applicable Schedule, the initial term of this Product Attachment will be for 5 years from the Effective Date with automatic renewals for 3 year terms thereafter (each, a "**Renewal Term**"), unless either party gives written notice to the other party to terminate this Product Attachment no less than 12 months prior to the expiration of the then-current term. Unless otherwise set forth in the applicable Schedule, to the extent that Client enters into a Schedule for additional Services and/or SaaS that are related to or interoperable with Services or SaaS set forth in a previously entered into Schedule, the term of such subsequent Schedule will be concurrent and coterminous with the term of the previously entered into Schedule.

6.2. If Client has entered into a sub-merchant agreement for payment processing services, and such agreement is terminated by the applicable acquiring bank, Active may terminate this Product Attachment and the effected Schedule.

6.3. Notwithstanding the termination or expiration of this Product Attachment or the Agreement under any circumstance other than in the event of Active's material, uncured breach of the Agreement, the parties agree that Active will continue to be the exclusive provider of registration software and other services similar to the Services and SaaS for all of Client's Events for which registration begins during the term of this Product Attachment until the Event occurs.

7. ASSIGNMENT.

7.1. Client may not resell, assign, or transfer any of its rights or obligations hereunder except as expressly provided herein, and any attempt to resell, assign, or transfer such rights or obligations without Active's prior written approval will be null and void.

7.2. Client will cause each Schedule hereunder to be assigned to (a) the purchaser of all or substantially all of Client's assets or equity securities or (b) to any successor by way of merger, consolidation, or other corporate reorganization of Client ((a) and (b) together, a "**Change of Control**").

7.3. Client will provide written notice to Active of any proposed or completed Change of Control as soon as permissible and in any event within 5 days of the public announcement or close of the transaction, whichever occurs first. Within the 30 day period following such notice, Active will have the right to immediately terminate each applicable Schedule if Active determines, in its reasonable good faith discretion that the purchaser or assignee is a competitor of Active or a party with whom Active does not want to do business. Client agrees to require that the purchaser or assignee (as outlined in this Section 7) agree, in writing, to be bound by the terms and conditions of the Agreement and each applicable Schedule.

8. MISCELLANEOUS.

8.1. Sections 5, 6, and 8 of this Product Attachment and any fees owed by Client will survive any termination or expiration of the Agreement.

8.2. The "**Liquidated Damage Amount**" equals the "Annual Projected Contract Value" (to the extent such amount is specified in the applicable Schedule(s)) times the number of years in the then-current term, minus the amount of revenue already paid to Active during the then-current term, net of all refunds, credit card chargebacks, and all other deducted amounts. Client agrees that (a) it will pay Liquidated Damages to Active if (i) Client breaches its exclusivity obligations under Section 2.2 of this Product Attachment; (ii) Active terminates a Schedule and/or the Agreement in accordance with Section 5.2 of the General Terms; (iii) Client fails to cause an assignment as specified in Section 7 of this Product Attachment; and/or (iv) Active terminates a Schedule and/or the Agreement pursuant to Section 7.3 of this Product Attachment; (b) all Liquidated Damage Amounts set forth in the Agreement will automatically reset during each Renewal Term; (c) Active may offset any Liquidated Damages Amount set forth in the Agreement from any account balance Client maintains with Active or any payment Active owes Client; (d) because of the difficulty in making a precise determination of actual damages incurred by Active, the Liquidated Damage Amount will be assessed, not as a penalty, but as a reasonable approximation of costs incurred by Active and Active's loss of revenue; and (e) that in any suit or other action or proceeding involving the assessment or recovery of liquidated damages, the reasonableness of the Liquidated Damage Amount will be presumed and the liquidated damages assessed will be in addition to every other remedy now or hereinafter enforceable at law, in equity, by statute, or under the Agreement.

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Schedule

Company Address	717 North Harwood Drive, Suite 2500 Dallas, TX 75201 US	Contract #	00018061
		Created Date	9/1/2021
		Quote Number	00118793
		Currency	USD
Prepared By	Sharon Kramer	Contact Name	Josh Stacey
Opportunity Owner	Chad Corsentino	Phone	4796960204
Owner Email	chad.corsentino@activenetwork.com	Email	jstacey@bentonvillear.com
Bill To Name	City of Bentonville (AR)	Ship To Contact	Josh Stacey
Bill To Contact	Josh Stacey	Ship To Address	1101 SW Citizens Circle Bentonville, AR 72713 United States
Bill To Address	215 SW "A" Street Bentonville, AR 72712 United States		

Product	Product Type	Description	Quantity	Per Unit Price	Fee %	Total Price	Total Discount Amount
ACTIVENet - Staff Interface - Technology Fee	SaaS	Rates for organizations between $1,500,000 to $8,000,000 in annual revenue through ACTIVE Net.	1		2.40		
ACTIVENet - Staff Interface - Payment Processing Fee - Credit Card	SaaS	Rates for organizations between $1,500,000 to $8,000,000 in annual revenue through ACTIVE Net.	1		3.40		
ACTIVENet - Public Interface - Online Transaction Fee	SaaS	Rates for organizations between $8,000,000 to $15,000,000 in annual revenue through ACTIVE Net.	1		5.80		
ACTIVENet - Staff Interface - Payment Processing Fee - Electronic Cheque/Check Processing	SaaS		1		1.00		
ACTIVENet - (credit card refunds - flat fee)	SaaS		1			0.10	USD 0.00
ACTIVENet - Public Interface Fee Set up - absorbed by client	SaaS		1				
ACTIVE Services - Project Management	Service	Business Process Review	3	USD 0.00			USD 200.00
ACTIVE Services - Other	Service	Business Process Review	50				USD 200.00
ACTIVENet - Technical Services: Lighting Integration	Service	ACTIVE Net Technical Services: Lighting Integration consists of the following services: • Remote configuration, testing, & training	1	USD 0.00			USD 2,800.00

Total Price	USD 0.00
Annual Projected Contract Value	USD 247,000.00

Active reserves the right, and may take additional measures to verify Client's account which may consist of reviewing publicly

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available data and/ confirmation of Client provided information. Such verification measures will be completed in advance of remittance.

All fees described herein are in consideration of the Software and Services that Active provides. Active and Client acknowledge that certain credit card network rules and laws prohibit imposing a surcharge that is based on the type of payment method used (e.g., having a different fee for the use of a credit card vs. debit card), and therefore, each agree not to impose such a surcharge on any End User. The payment options we offer may include MasterCard, Visa, American Express and Discover.

*Sales tax and shipping not included in total price. Sales tax and shipping, where applicable, will be added to your invoice.

Quote Acceptance Information

Signature: _____

Printed Name: _____

Title: _____

Date: _____

PO# (if applicable): _____

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EXHIBIT A

Payment Services Agreement

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

This Payment Services Agreement ("Agreement") is a legal agreement between Client and Active governing Client's use of Active's payment processing services (collectively, the "Services"). Client must accept all of the terms of this Agreement to use the Services. Visa, Mastercard, and Discover are collectively defined as the "Card Brands" and their cards are each a "Card".

1. SERVICES

Active's sponsor banks require certain information for the Services. Client must provide accurate and complete information and keep the information up-to-date. Active relies on this information for underwriting and to meet our obligations under applicable federal and state laws and other regulatory requirements. Client must only use the Services for the business purpose described in the General Terms and/or applicable Product Attachment. On an ongoing basis, Client will provide us with the current address of each of your offices, all "doing business as" (DBA) names used by you, and a complete description of goods sold and services provided by you. If the scope or nature of your business or the type of products or services you offer changes, Client must notify Active prior to the change. Client is liable to us for all losses and expenses incurred by us arising out of your failure to report changes to us.

2. REQUIRED INFORMATION, VERIFICATION

Active's sponsor banks and the Card Brands require us to verify your identity, credit, business operations, and compliance with the obligations under this Agreement. Client must provide sufficient information and documentation as requested by Active, including information to verify your identity, financial statements, and customer information. Client authorizes Active to make, from time to time, any business and personal credit inquiries,

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identity-verification inquiries, and other inquiries considered necessary to review the acceptance and continuation of this Agreement. Client also authorizes any person or credit reporting agency to compile information to answer those inquires and to furnish that information to Active. Active reserves the right to decline your application for any reason. Active is required to report certain information to our sponsor banks or Card Brands, including the names of any principles and country of domicile.

3. COMPLIANCE WITH LAWS AND RULES

Client must comply with all rules and operating regulations issued from time to time by the Card Brands; any policies, procedures, and instructions provided by us; and the Payment Card Industry Data Security Standards ("PCI DSS") and the Payment Application Data Security Standard (“PA-DSS”) (collectively, "Rules"). The Rules are incorporated into this Agreement by reference as if they were fully set forth in this Agreement. An abridged version of the Visa and MasterCard Rules may be viewed at usa.visa.com and www.mastercardmerchant.com. Client further agrees to comply with all applicable federal, state, and local laws, rules, and regulations ("Laws"), as amended from time to time affecting acceptance of Cards, processing of Card transactions, and the transactions contemplated by this Agreement. Client agrees to the terms of the Electronic Funds Transfer Agreement incorporated into this Agreement by reference as if they were fully set forth in this Agreement. Client will assist Active in complying in a complete and timely manner with all Laws and Rules, now or hereafter applicable to any Card transaction or this Agreement. Client will execute and deliver to Active all such instruments deemed necessary for compliance. If any terms of this Agreement conflict with the Card Brand Rules, the Card Brand Rules will govern.

4. TRANSACTION PROCESSING

In order to process Card transactions, Client must familiarize itself with and adhere to the applicable Card Brand Rules. The following sections address some but not all of the Card Brand Rules that must be adhered to in order to process card transactions. It is Client’s responsibility to understand and follow all Card Brand Rules.

5. CARD ACCEPTANCE

Client will honor, without discrimination, any valid Card properly tendered by a Cardholder. “Cardholder” means a person possessing a Card and asserting to be the person in whose name the Card is issued. Client may elect not to accept Visa or MasterCard branded debit cards, but you must provide Active with prior written notice of such election. Client will identify the Cardholder when accepting payment and will request the Card expiration date and ZIP code or postal code from the Cardholder's billing address. It is also highly recommended that Client obtain the security code from each Card. You must not honor any Card if the Card has expired or if the Card number is listed on a current Electronic Warning Bulletin file. You will properly disclose to the Cardholder, at the time of the Card transaction, Client’s name, return policy, and other limitations you may have on accepting returned merchandise. Active’s name may appear in conjunction with Client’s name on Cardholders’ statements. Client will not accept any payments from a Cardholder relating to previous charges for merchandise or services, and if Client receive such payments, you will promptly remit them to Active.

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6. CARD AUTHORIZATION

Client must obtain authorization via methods acceptable to Card Brand Rules prior to completing any Card transaction. Client must follow any instructions received during the authorization process. Upon receipt of authorization, Client may consummate only the transaction authorized. Where authorization is obtained, Client will be deemed to warrant the true identity of the customer as the Cardholder. Transactions will be deemed invalid on Cards that are expired, whether or not an authorization has been obtained.

Authorizations are not a guarantee of acceptance or payment of a Card transaction and do not waive any provision of this Agreement or otherwise validate a fraudulent transaction or a transaction involving the use of an expired Card. Active may refuse to authorize any transaction, and we are not liable to you if authorization for a transaction is not given. Client will not have any claim against, or right to receive payment from, a Cardholder or any other customer in any Card transaction if Active refuses to authorize the transaction for any reason.

7. RECORDS

Client will deliver to the Cardholder at the time of the transaction a complete and legible receipt from the Card transaction or refund. Client must retain the merchant copy of the receipt in accordance with the applicable Card Brand information security and confidentiality requirements for at least 3 years following the date of completion of the Card transaction (or such longer period as the Rules may require).

8. RECURRING TRANSACTIONS

For recurring transactions, Client must obtain a written request from the Cardholder for such goods and services to be charged to the Cardholder's account, the frequency of the recurring charge, and the duration of time during which such charges may be made. Client must obtain such written consent before the first recurring transaction, and Client must notify the Cardholder that he or she is able to discontinue consent for recurring billing charges at any time. Client must retain evidence of such written consent for recurring transactions for twenty-four months (24) from the date you submit the last recurring billing charge. If this Agreement is terminated for any reason, Client will, at your own cost, advise all individuals and establishments to whom you submit recurring billing charges that Client no longer accept the Card for amounts owed by such establishments or by such individual. The termination of a Cardholders' services constitutes immediate cancellation of the Cardholder's consent for recurring billing charges. Active has no obligation to notify Client of such cancellation, nor shall Active have any liability to Client arising from any such cancellation. Client will not complete any recurring transaction after receiving a cancellation notice from the Cardholder, notice from Active to not complete a recurring transaction, or a response that the Card is not to be honored.

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9. FUTURE DELIVERY

Client will not accept a Card transaction for the sale of goods or services for future delivery. If, however, Client has clearly disclosed your intentions to the Cardholder and the Cardholder agrees, Client may submit the following types of charges to Active before you deliver the goods purchased to the Cardholder: (a) charges representing deposits on (i) custom or special orders (provided that in doing so Client is in compliance with applicable law) and (ii) mail orders for items not in inventory at the time the order is placed; and (b) charges representing advance, partial, or full payment for items the Cardholder requests Client to deliver at a later date. If a Cardholder disputes any of these charges, Active will have the right to Full Recourse for such charge. Client represents and warrants to Active that you will not rely on any proceeds or credit resulting from such transactions to purchase or furnish goods or services. Client will maintain sufficient capital to provide for the delivery of goods or services at the agreed upon future date, independent of any credit or proceeds resulting from Card transactions taken in connection with future delivery transactions.

10. E-COMMERCE TRANSACTIONS

If applicable, Client may process e-commerce transactions only if the transactions have been encrypted by a third-party vendor acceptable to Active. Client is liable for all chargebacks and losses related to e-commerce transactions, whether or not encrypted. Encryption is not a guarantee of payment and will not waive any provision of this Agreement or otherwise validate a fraudulent transaction.

For goods to be shipped on e-commerce transactions, Client may obtain authorization up to seven calendar days prior to the shipment date. Client need not obtain a second authorization if the Card transaction amount is within 15% of the authorized amount, provided that the additional amount represents shipping costs. Client's website must contain all of the following information: (i) complete description of the goods or services offered, (ii) return and refund policies, (iii) customer service contact, including email address or telephone number, (iv) transaction currency (such as U.S. or Canadian dollars) (v) any export or legal restrictions, if known, and (vi) delivery policy.

11. PROHIBITED PRACTICES

Client may not split transactions into multiple Card transactions except where: (a) partial payment is entered on the transaction record and the balance of the transaction amount is paid in cash or by check at the time of transaction; or, (b) the amount represents an advance deposit in a Card transaction completed in accordance with this Agreement and the Rules. Client will not use the Services to accept amounts representing the refinancing of an existing uncollectible obligation, debt, or dishonored check of a Cardholder. Client may not process transactions for, receive payments on behalf of, or (unless required by Law) redirect payments to a third party. Client agrees that Active may, within our sole discretion, suspend the Services for a reasonable period of time required to investigate suspicious or unusual activity. Active shall have no liability for any losses Client may attribute to any suspension of funds disbursement. Client will not allow the Service to be used for high risk transactions or transactions for illegal activities. If Client engages in the behavior for illegal activities, you hereby acknowledge liability to Active and all damages suffered by Active, without limitation despite other language in this Agreement to the contrary. Without limiting the foregoing,

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Client agree to reimburse Active for any and all costs, expenses, and fines levied on Active by the Card Brands, our sponsor banks, payment processors, or service providers as a result of Client's use of the Services in violation of this Agreement. Active may reverse Card transactions we deem to violate this Agreement, the Laws, Rules, or Policies, and Client agrees to reimburse Active for any such reversal. Client agrees that Active is entitled to invoke the security interest we have, as set forth in this Agreement and all other rights we have, pursuant to a violation of this Agreement, in order to collect the fines levied against Client, or other losses incurred by Active, as set forth in this Agreement.

12. FRAUDULENT TRANSACTIONS

Client will not present for processing or credit, directly or indirectly, any transaction not originated as a result of a Card transaction directly between Client and a Cardholder or any transaction Client knows or should know to be fraudulent or not authorized by the Cardholder. Client will refer perpetrators of fraudulent transactions, in our discretion, to the appropriate law enforcement agency.

13. MERCHANT SERVICES AGREEMENT

Active may require that you enter into a Merchant Services Agreement if certain Card processing volume thresholds are met by Client's use of the Services. Such threshold is met when Card processing reaches over $1,000,000.00 USD in any one year period. Active will notify you if this occurs. Client's continued use of the Services after we notify you will constitute your agreement to the Merchant Services Agreement. Your acceptance of the Merchant Services Agreement supersedes all previous payment processing agreements with Active and will remain in effect until terminated by both parties. In the event your Card processing volume falls below the $1,000,000.00 processing threshold, the Merchant Services Agreement will continue to remain in effect.

14. CUSTOMER CONTACT

Client authorizes Active to contact Client's customers or their bank if Active determines that such contact is necessary to find out information about any payment transaction between Client and the customer. Also, Client will provide to Active upon our request, contact information for your customers as deemed necessary and reasonable by Active.

15. REFUND CREDITS

Client will issue a credit memorandum, instead of making a cash advance, a disbursement, or a refund on any Card transaction. Active's sponsor bank will debit from the amounts owing you under your Active account for the total face amount of each credit memorandum submitted. Client will not submit a credit relating to any Card transaction not originally submitted to Active, nor will Client submit a credit that exceeds the amount of the original Card transaction. Client will, within the time period specified by applicable law, provide Active with a credit memorandum or credit statement for every return of goods or forgiveness of debt for services that were the subject of a Card transaction.

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16. USE OF TRADEMARKS

Client's use of Card Brand marks will fully comply with the Rules. Client's use of Active's marks must comply with our instructions. Client's right to use Active marks and the Card Brand marks will cease upon termination of this Agreement. The Card Brands are the sole and exclusive owners of their marks. Active is the sole and exclusive owner of all Active marks. Client agrees to not contest the ownership of the marks for any reason. Active may at any time, immediately and without advance notice, prohibit the use any of the trademarks for any reason.

17. INFORMATION SECURITY

Client must keep all systems and media containing account, Cardholder, or transaction information (physical or electronic, including but not limited to account numbers, and card imprints,) in a secure manner, to prevent access by or disclosure to anyone other than your authorized personnel. Client must destroy in a manner that will render the data unreadable all such media that you no longer deem necessary or appropriate to store (except for receipts maintained in accordance with this Agreement, Laws, Rules, and Policies). Further, Client must take all steps reasonably necessary to ensure Cardholder information is not disclosed or otherwise misused. Client may not retain or store magnetic stripe or CVV2, CVC2, or CID data after authorization. Client must notify Active in the event Client uses any agent that will have access to Cardholder data. Card Brand regulations mandate that all agents that access, store, transmit, or process Cardholder data must be registered and comply with the established data security standards of PCI DSS and PA-DSS.

If Client stores Cardholder account numbers, expiration dates, and other personal Cardholder data in a database, Client must follow Card Brand guidelines on securing such data. Client must, at all times, remain in compliance with the PCI DSS and PA-DSS, as applicable, and as mandated by the Card Brands and Active's sponsor bank.

In the event of breach of, intrusion of, compromise of, or otherwise unauthorized access to Cardholder account information which is stored and in the possession of Client or Client's agents, Client must immediately notify Active and provide us with information relating and pertaining to the type, nature, and extent of Cardholder account information which has been compromised. Further, Client must cooperate with Active regarding reasonable requests for information and details regarding the compromise of Cardholder account information. Client will make all reasonable, good faith efforts to remedy and address the cause of said breach, intrusion, compromise, or otherwise unauthorized access to Cardholder account information. Client shall maintain industry "best practices" regarding continuity procedures and systems to ensure security of Cardholder account information in the event of a disruption, disaster, or failure of Client's respective data storage system and/or facility.

18. THIRD PARTY SERVICE PROVIDERS

If Client uses special services or software provided by a third party to assist in processing transactions, including authorizations and settlements, or accounting functions, Client is responsible for ensuring compliance with the requirements of any third party. Active is not responsible for any transaction until the point in time Active receives data about the transaction. Active has relationships with the Card Brands to provide the Services. The

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Card Brands have the right to enforce any provision of the Card Brand Rules and to prohibit Client and Active from engaging in any conduct that the Card Brands deem could injure or could create a risk of injury to the Card Brands, including injury to reputation, or that could adversely affect the integrity of the interchange system, the Card Brands' Confidential Information as defined in the Rules, or both. Client will not take any action that could interfere with or prevent the exercise of this right by the Card Brands.

19. ADDITIONAL REPRESENTATIONS AND WARRANTIES

In addition to all other warranties provided under this agreement, Client represents and warrants that (a) Client has never been placed on the MasterCard MATCH system or the Combined Terminated Merchant File, and if so, Client has disclosed this to Active and (b) all transactions are bona fide and no transaction involves the use of a Card for any purpose other than the purchase of goods or services from Client and does not involve a Cardholder obtaining cash from Client unless allowed by the Rules and agreed in writing with Active.

20. ADDITIONAL INDEMNIFICATION AND LIMITATION OF LIABILITY

In addition to any other indemnity obligations provided under this Agreement, Client also agrees to indemnify and hold harmless Active's sponsor bank for acting in accordance with any instruction from Client or Active regarding Client's use of the Services. Further, Client shall indemnify and hold harmless Active's sponsor banks, the Card Brands, and Active, and all employees, officers, directors, shareholders and agents of Active or Active's sponsor bank from any and all loss, cost, expense, claim, damage, and liability (including attorneys' fees and costs) paid or incurred by any one or more of them, arising from, caused by, or attributable to, any of the following: (1) any Card transaction processed under this Agreement, (2) any breach by Client of this Agreement and those related to any bankruptcy proceeding; (3) willful misconduct, fraud, intentional tort or negligence by Client or that of Client's employees, agents or representatives; (4) theft, embezzlement, or unauthorized use; or (5) action by Active or Active's sponsor bank exercising any right under this Agreement, Laws, Rules, or Policies.
TO THE EXTENT PERMITTED BY APPLICABLE LAW, ACTIVE'S SPONSOR BANK'S TOTAL AGGREGATE LIABILITY FOR ALL MATTERS ARISING FROM OR RELATED TO THIS AGREEMENT IS LIMITED TO $10,000 U.S. DOLLARS.

21. IRS REPORTING

To comply with IRS 1099-K reporting requirements, Active may be required to file a form 1099-K with the U.S. Internal Revenue Service (IRS). Active may collect 28% federal backup withholding upon transaction settlement, on behalf of the IRS, from Client if Client does not supply your legal name, SSN or EIN, or if Client fails to respond to a request from Active to verify the same. All withholdings will be remitted to the IRS as required by law. To avoid potential backup withholdings, Client should notify Active any time there is a change to your SSN, EIN, legal name, or business address, and ensure you respond to any request for verification and record update from Active.

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22. RIGHTS AND REMEDIES CUMULATIVE

The rights conferred upon Active, Active's sponsor banks, and the Card Brands in this Agreement are not intended to be exclusive of each other or of any other rights and remedies Active has under this Agreement, at law, or in equity. Rather, each and every right Active has at law or in equity will be cumulative and concurrent and in addition to every other right.

23. AMENDMENTS

This Agreement and the Policies referenced and incorporated in this Agreement may be amended, modified, or revised at any time without notice. While Active may notify Client as the Agreement or Policies are modified, it is Client's sole responsibility to review and maintain familiarity with the Agreement and Policies, including any changes that may be made to these documents, respectively, from time to time thereto, and Client is bound by any changes. The amendments to this Agreement and/or Policies referenced herein will become effective and binding upon Client immediately. In the event Client does not agree to the aforementioned amendments and do not wish to be bound the terms and conditions thereto, Client shall provide written notice to Active. Notwithstanding the foregoing, changes to fees authorized by this Agreement will be effective upon the giving of notice to Client and any fee increase, change in Rules, or other requirement imposed by Card Brands may be passed on to Client and will be effective upon the giving of notice to Client.

24. AGENCY RELATIONSHIP

Client authorizes Active with respect to the Services to act as Client's agent for the limited purposes of holding, receiving, and disbursing funds on Client's behalf. Client's authorization permits Active to generate an electronic funds transfer to process each payment transaction. This authorization will continue until this Agreement is terminated. Client agrees that Active's receipt of transaction proceeds satisfies your customers' obligations to Client. Active will remit funds actually received by Active on Client's behalf, less amounts owed to Active, subject to any chargebacks or reserve withheld or applied as per this agreement.

25. SECURITY INTEREST, RESERVE, RECOUPMENT, PERSONAL GUARANTEE

Because Active is financially responsible for action taken by you using the Services, we require certain protective measures as outlined below.

This Agreement will constitute a security agreement under the Uniform Commercial Code. You grant to us a security interest in and lien upon: (a) all funds representing amounts owing you under this Agreement at any time in the Member Operating Account, regardless of the source of such funds; (b) all funds at any time in the Reserve Account (as defined below), regardless of the source of such funds; (c) present and future Card transactions; and, (d) any amount which may be due to you under this Agreement, including, without limitation all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). You agree to provide other security to us upon request to secure your obligations under this Agreement. These security interests and liens will secure all of your obligations under this Agreement and any other agreements now existing

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or later entered into between you us including, but not limited to, your obligation to pay any amounts due and owing to us. We may exercise this security interest without notice or demand of any kind by making an immediate withdrawal or freezing of your Secured Assets. Upon our request, you will execute one or more financing statements or other documents to evidence this security interest. You represent and warrant that no other person or entity has a security interest in the Secured Assets. With respect to such security interests and liens, we will have all rights afforded under the Uniform Commercial Code and any other applicable law and in equity. You must obtain from us written consent prior to granting a security interest of any kind in the Secured Assets to a third party. You agree that this is a contract of recoupment. As such, we are not required to file a motion for relief from a bankruptcy action automatic stay to realize on any of the Secured Assets. Nevertheless, you agree not to contest or object to any motion for relief from the automatic stay filed by us. You authorize us and appoint us your attorney in fact to sign your name to any financing statement used for the perfection of any security interest or lien granted hereunder.

For the purpose of providing a deposit and a source of funds to pay us for amounts owed by you, you shall deposit to an account maintained by us titled to our sponsor banks, initially or at any time in the future, as requested in good faith by us, sums sufficient to satisfy your current and/or future obligations as determined by us ("Reserve Account"). Funds, if any, in the Reserve Account shall remain in the Reserve Account until each of the following has occurred: (a) this Agreement has been terminated; and, (b) you have paid us in full all amounts owing or that could ever be owed under this Agreement, including, without limitation, all outstanding or uncollected amounts and potential chargebacks. Our sponsor banks shall have sole control of the Reserve Account. Our sponsor banks or we may, at any time, require that the amount on deposit in the Reserve Account be increased and shall have sole discretion as to the amount from time to time. In no event shall you be entitled to a return of any sums remaining in the Reserve Account for 270 days following the effective date of termination of this Agreement. We have the right to debit your funds in the Member Operating Account to establish, increase, or maintain funds in the Reserve Account. We may deposit into the Reserve Account funds we would otherwise be obligated to pay you, for the purpose of establishing, increasing, or maintaining the Reserve Account in accordance with this section, if we determine such action is reasonably necessary to protect our interests. You understand and agree that if you are required to establish a Reserve Account, you have an obligation under this Agreement to maintain at all times a balance in the Reserve Account sufficient to protect us against losses resulting from transactions initiated by you. Active may, without notice to Client, apply funds deposited in your Reserve Account against any outstanding amounts you owe us under this Agreement or any other agreement between Client and Active. Also, Active may debit your Reserve Account to exercise our rights under this Agreement to collect any amounts due to us including, without limitation, rights of set-off and recoupment.

Active has the right of recoupment and set-off. This means that Active may offset any outstanding or uncollected amounts owed to us from: (a) any amounts owed to Client and (b) any other amounts Active may owe Client under this Agreement or any other agreement. Client acknowledges that in the event of a bankruptcy proceeding, in order for you to provide adequate protection under Bankruptcy Code § 362 to Active, Client must create or maintain the Reserve Account and Active will have the right to offset against the Reserve Account for any and all obligations which Client may owe to Active, without regard to whether the obligations relate to Card transactions initiated or created before or after the filing of the bankruptcy petition.

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26. DESIGNATION OF DEPOSITORY

The financial institution set forth in Client's application or order form is designated by Client as a depository institution ("Depository") for its card indebtedness hereunder. Such financial institution must be a member of an Automated Clearing House Association. Client authorizes payment for indebtedness purchased hereunder to be made by paying Depository therefore with instructions to credit Client's account(s) with Depository (the "Account(s)"). Active and/or its sponsor banks may charge the Account(s) for any amount due under this Agreement. Active must approve in writing any proposed changes to the Account(s) or to the Depository. Client represents and warrants that: (a) the Client Account(s) will always be in the same legal and DBA (if applicable) name as Client's name on Client's application or order form; (b) Client will own and maintain control of the Account(s) and will keep such Account(s) open at all times during the term and as long as any reserve account is in effect; and, (c) the Account(s) will not be associated with any merchant processing activity that is illegal or prohibited by the Rules or Law, including without limitation merchant processing activity associated with other accounts and/or processors. Client hereby authorizes Depository to release any and all account information to Active as Active may request without any further authorization, approval, or notice from or to Client.

27. DISCOVER PROGRAM MARKS

Merchant is hereby granted a limited non-exclusive, non-transferable license to use Discover brands, emblems, trademarks, and/or logos that identify Discover cards ("Discover Program Marks"). Merchant is prohibited from using the Discover Program Marks other than as expressly authorized in writing by Global Direct. Merchant shall not use the Discover Program Marks other than to display decals, signage, advertising and other forms depicting the Discover Program Marks that are provided to Merchant by Global Direct pursuant to this Card Services Agreement or otherwise approved in advance in writing by Global Direct. Merchant may use the Discover Program Marks only to promote the services covered by the Discover Program Marks by using them on decals, indoor and outdoor signs, advertising materials and marketing materials; provided that all such uses by Merchant must be approved in advance by Global Direct in writing. Merchant shall not use the Discover Program Marks in such a way that customers could believe that the products or services offered by Merchant are sponsored or guaranteed by the owners of the Discover Program Marks. Merchant recognizes that it has no ownership rights in the Discover Program Marks and shall not assign to any third party any of the rights to use the Discover Program Marks.

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28. Termination

28 (a) Termination without cause. Active or its sponsor bank may terminate this Agreement without cause upon 30 days advance written notice to Client.

28 (b) Termination for cause. Active or its sponsor bank may terminate this Agreement in its sole discretion, effective immediately, upon written notice to Client if Active or its sponsor bank reasonably determines that any of the following conditions exist:

(i) Client has violated any provision of this Agreement.
(ii) There is a material adverse change in Client's financial condition, material change in Client's processing activity, processing activity inconsistent with the Merchant Application, or Active or it's sponsor bank determines in its sole discretion that Client's processing activity could result in a loss to Active or Active's sponsor bank.

CLIENT	ACTIVE NETWORK, LLC
Signature: _____	Signature: [redacted]
Name: _____	Name: Andrea Facini
Title: _____	Title: President
Date: _____	Date: 9/1/2021 | 2:06 PM PDT

EXHIBIT A

Payment Services Agreement

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

This Payment Services Agreement ("Agreement") is a legal agreement between Client and Active governing Client's use of Active's payment processing services (collectively, the "Services"). Client must accept all of the terms of this Agreement to use the Services. Visa, Mastercard, and Discover are collectively defined as the "Card Brands" and their cards are each a "Card".

1. SERVICES

Active's sponsor banks require certain information for the Services. Client must provide accurate and complete information and keep the information up-to-date. Active relies on this information for underwriting and to meet our obligations under applicable federal and state laws and other regulatory requirements. Client must only use the Services for the business purpose described in the General Terms and/or applicable Product Attachment. On an ongoing basis, Client will provide us with the current address of each of your offices, all "doing business as" (DBA) names used by you, and a complete description of goods sold and services provided by you. If the scope or nature of your business or the type of products or services you offer changes, Client must notify Active prior to the change. Client is liable to us for all losses and expenses incurred by us arising out of your failure to report changes to us.

2. REQUIRED INFORMATION, VERIFICATION

Active's sponsor banks and the Card Brands require us to verify your identity, credit, business operations, and compliance with the obligations under this Agreement. Client must provide sufficient information and documentation as requested by Active, including information to verify your identity, financial statements, and customer information. Client authorizes Active to make, from time to time, any business and personal credit inquiries,

identity-verification inquiries, and other inquiries considered necessary to review the acceptance and continuation of this Agreement. Client also authorizes any person or credit reporting agency to compile information to answer those inquires and to furnish that information to Active. Active reserves the right to decline your application for any reason. Active is required to report certain information to our sponsor banks or Card Brands, including the names of any principles and country of domicile.

3. COMPLIANCE WITH LAWS AND RULES

Client must comply with all rules and operating regulations issued from time to time by the Card Brands; any policies, procedures, and instructions provided by us; and the Payment Card Industry Data Security Standards ("PCI DSS") and the Payment Application Data Security Standard (“PA-DSS”) (collectively, "Rules"). The Rules are incorporated into this Agreement by reference as if they were fully set forth in this Agreement. An abridged version of the Visa and MasterCard Rules may be viewed at usa.visa.com and www.mastercardmerchant.com. Client further agrees to comply with all applicable federal, state, and local laws, rules, and regulations ("Laws"), as amended from time to time affecting acceptance of Cards, processing of Card transactions, and the transactions contemplated by this Agreement. Client agrees to the terms of the Electronic Funds Transfer Agreement incorporated into this Agreement by reference as if they were fully set forth in this Agreement. Client will assist Active in complying in a complete and timely manner with all Laws and Rules, now or hereafter applicable to any Card transaction or this Agreement. Client will execute and deliver to Active all such instruments deemed necessary for compliance. If any terms of this Agreement conflict with the Card Brand Rules, the Card Brand Rules will govern.

4. TRANSACTION PROCESSING

In order to process Card transactions, Client must familiarize itself with and adhere to the applicable Card Brand Rules. The following sections address some but not all of the Card Brand Rules that must be adhered to in order to process card transactions. It is Client’s responsibility to understand and follow all Card Brand Rules.

5. CARD ACCEPTANCE

Client will honor, without discrimination, any valid Card properly tendered by a Cardholder. “Cardholder” means a person possessing a Card and asserting to be the person in whose name the Card is issued. Client may elect not to accept Visa or MasterCard branded debit cards, but you must provide Active with prior written notice of such election. Client will identify the Cardholder when accepting payment and will request the Card expiration date and ZIP code or postal code from the Cardholder's billing address. It is also highly recommended that Client obtain the security code from each Card. You must not honor any Card if the Card has expired or if the Card number is listed on a current Electronic Warning Bulletin file. You will properly disclose to the Cardholder, at the time of the Card transaction, Client’s name, return policy, and other limitations you may have on accepting returned merchandise. Active’s name may appear in conjunction with Client’s name on Cardholders’ statements. Client will not accept any payments from a Cardholder relating to previous charges for merchandise or services, and if Client receive such payments, you will promptly remit them to Active.

6. CARD AUTHORIZATION

Client must obtain authorization via methods acceptable to Card Brand Rules prior to completing any Card transaction. Client must follow any instructions received during the authorization process. Upon receipt of authorization, Client may consummate only the transaction authorized. Where authorization is obtained, Client will be deemed to warrant the true identity of the customer as the Cardholder. Transactions will be deemed invalid on Cards that are expired, whether or not an authorization has been obtained.

Authorizations are not a guarantee of acceptance or payment of a Card transaction and do not waive any provision of this Agreement or otherwise validate a fraudulent transaction or a transaction involving the use of an expired Card. Active may refuse to authorize any transaction, and we are not liable to you if authorization for a transaction is not given. Client will not have any claim against, or right to receive payment from, a Cardholder or any other customer in any Card transaction if Active refuses to authorize the transaction for any reason.

7. RECORDS

Client will deliver to the Cardholder at the time of the transaction a complete and legible receipt from the Card transaction or refund. Client must retain the merchant copy of the receipt in accordance with the applicable Card Brand information security and confidentiality requirements for at least 3 years following the date of completion of the Card transaction (or such longer period as the Rules may require).

8. RECURRING TRANSACTIONS

For recurring transactions, Client must obtain a written request from the Cardholder for such goods and services to be charged to the Cardholder's account, the frequency of the recurring charge, and the duration of time during which such charges may be made. Client must obtain such written consent before the first recurring transaction, and Client must notify the Cardholder that he or she is able to discontinue consent for recurring billing charges at any time. Client must retain evidence of such written consent for recurring transactions for twenty-four months (24) from the date you submit the last recurring billing charge. If this Agreement is terminated for any reason, Client will, at your own cost, advise all individuals and establishments to whom you submit recurring billing charges that Client no longer accept the Card for amounts owed by such establishments or by such individual. The termination of a Cardholders' services constitutes immediate cancellation of the Cardholder's consent for recurring billing charges. Active has no obligation to notify Client of such cancellation, nor shall Active have any liability to Client arising from any such cancellation. Client will not complete any recurring transaction after receiving a cancellation notice from the Cardholder, notice from Active to not complete a recurring transaction, or a response that the Card is not to be honored.

9. FUTURE DELIVERY

Client will not accept a Card transaction for the sale of goods or services for future delivery. If, however, Client has clearly disclosed your intentions to the Cardholder and the Cardholder agrees, Client may submit the following types of charges to Active before you deliver the goods purchased to the Cardholder: (a) charges representing deposits on (i) custom or special orders (provided that in doing so Client is in compliance with applicable law) and (ii) mail orders for items not in inventory at the time the order is placed; and (b) charges representing advance, partial, or full payment for items the Cardholder requests Client to deliver at a later date. If a Cardholder disputes any of these charges, Active will have the right to Full Recourse for such charge. Client represents and warrants to Active that you will not rely on any proceeds or credit resulting from such transactions to purchase or furnish goods or services. Client will maintain sufficient capital to provide for the delivery of goods or services at the agreed upon future date, independent of any credit or proceeds resulting from Card transactions taken in connection with future delivery transactions.

10. E-COMMERCE TRANSACTIONS

If applicable, Client may process e-commerce transactions only if the transactions have been encrypted by a third-party vendor acceptable to Active. Client is liable for all chargebacks and losses related to e-commerce transactions, whether or not encrypted. Encryption is not a guarantee of payment and will not waive any provision of this Agreement or otherwise validate a fraudulent transaction.

For goods to be shipped on e-commerce transactions, Client may obtain authorization up to seven calendar days prior to the shipment date. Client need not obtain a second authorization if the Card transaction amount is within 15% of the authorized amount, provided that the additional amount represents shipping costs. Client's website must contain all of the following information: (i) complete description of the goods or services offered, (ii) return and refund policies, (iii) customer service contact, including email address or telephone number, (iv) transaction currency (such as U.S. or Canadian dollars) (v) any export or legal restrictions, if known, and (vi) delivery policy.

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Client may not split transactions into multiple Card transactions except where: (a) partial payment is entered on the transaction record and the balance of the transaction amount is paid in cash or by check at the time of transaction; or, (b) the amount represents an advance deposit in a Card transaction completed in accordance with this Agreement and the Rules. Client will not use the Services to accept amounts representing the refinancing of an existing uncollectible obligation, debt, or dishonored check of a Cardholder. Client may not process transactions for, receive payments on behalf of, or (unless required by Law) redirect payments to a third party. Client agrees that Active may, within our sole discretion, suspend the Services for a reasonable period of time required to investigate suspicious or unusual activity. Active shall have no liability for any losses Client may attribute to any suspension of funds disbursement. Client will not allow the Service to be used for high risk transactions or transactions for illegal activities. If Client engages in the behavior for illegal activities, you hereby acknowledge liability to Active and all damages suffered by Active, without limitation despite other language in this Agreement to the contrary. Without limiting the foregoing,

Client agree to reimburse Active for any and all costs, expenses, and fines levied on Active by the Card Brands, our sponsor banks, payment processors, or service providers as a result of Client's use of the Services in violation of this Agreement. Active may reverse Card transactions we deem to violate this Agreement, the Laws, Rules, or Policies, and Client agrees to reimburse Active for any such reversal. Client agrees that Active is entitled to invoke the security interest we have, as set forth in this Agreement and all other rights we have, pursuant to a violation of this Agreement, in order to collect the fines levied against Client, or other losses incurred by Active, as set forth in this Agreement.

12. FRAUDULENT TRANSACTIONS

Client will not present for processing or credit, directly or indirectly, any transaction not originated as a result of a Card transaction directly between Client and a Cardholder or any transaction Client knows or should know to be fraudulent or not authorized by the Cardholder. Client will refer perpetrators of fraudulent transactions, in our discretion, to the appropriate law enforcement agency.

13. MERCHANT SERVICES AGREEMENT

Active may require that you enter into a Merchant Services Agreement if certain Card processing volume thresholds are met by Client's use of the Services. Such threshold is met when Card processing reaches over $1,000,000.00 USD in any one year period. Active will notify you if this occurs. Client's continued use of the Services after we notify you will constitute your agreement to the Merchant Services Agreement. Your acceptance of the Merchant Services Agreement supersedes all previous payment processing agreements with Active and will remain in effect until terminated by both parties. In the event your Card processing volume falls below the $1,000,000.00 processing threshold, the Merchant Services Agreement will continue to remain in effect.

14. CUSTOMER CONTACT

Client authorizes Active to contact Client's customers or their bank if Active determines that such contact is necessary to find out information about any payment transaction between Client and the customer. Also, Client will provide to Active upon our request, contact information for your customers as deemed necessary and reasonable by Active.

15. REFUND CREDITS

Client will issue a credit memorandum, instead of making a cash advance, a disbursement, or a refund on any Card transaction. Active's sponsor bank will debit from the amounts owing you under your Active account for the total face amount of each credit memorandum submitted. Client will not submit a credit relating to any Card transaction not originally submitted to Active, nor will Client submit a credit that exceeds the amount of the original Card transaction. Client will, within the time period specified by applicable law, provide Active with a credit memorandum or credit statement for every return of goods or forgiveness of debt for services that were the subject of a Card transaction.

16. USE OF TRADEMARKS

Client's use of Card Brand marks will fully comply with the Rules. Client's use of Active's marks must comply with our instructions. Client's right to use Active marks and the Card Brand marks will cease upon termination of this Agreement. The Card Brands are the sole and exclusive owners of their marks. Active is the sole and exclusive owner of all Active marks. Client agrees to not contest the ownership of the marks for any reason. Active may at any time, immediately and without advance notice, prohibit the use any of the trademarks for any reason.

17. INFORMATION SECURITY

Client must keep all systems and media containing account, Cardholder, or transaction information (physical or electronic, including but not limited to account numbers, and card imprints,) in a secure manner, to prevent access by or disclosure to anyone other than your authorized personnel. Client must destroy in a manner that will render the data unreadable all such media that you no longer deem necessary or appropriate to store (except for receipts maintained in accordance with this Agreement, Laws, Rules, and Policies). Further, Client must take all steps reasonably necessary to ensure Cardholder information is not disclosed or otherwise misused. Client may not retain or store magnetic stripe or CVV2, CVC2, or CID data after authorization. Client must notify Active in the event Client uses any agent that will have access to Cardholder data. Card Brand regulations mandate that all agents that access, store, transmit, or process Cardholder data must be registered and comply with the established data security standards of PCI DSS and PA-DSS.

If Client stores Cardholder account numbers, expiration dates, and other personal Cardholder data in a database, Client must follow Card Brand guidelines on securing such data. Client must, at all times, remain in compliance with the PCI DSS and PA-DSS, as applicable, and as mandated by the Card Brands and Active's sponsor bank.

In the event of breach of, intrusion of, compromise of, or otherwise unauthorized access to Cardholder account information which is stored and in the possession of Client or Client's agents, Client must immediately notify Active and provide us with information relating and pertaining to the type, nature, and extent of Cardholder account information which has been compromised. Further, Client must cooperate with Active regarding reasonable requests for information and details regarding the compromise of Cardholder account information. Client will make all reasonable, good faith efforts to remedy and address the cause of said breach, intrusion, compromise, or otherwise unauthorized access to Cardholder account information. Client shall maintain industry "best practices" regarding continuity procedures and systems to ensure security of Cardholder account information in the event of a disruption, disaster, or failure of Client's respective data storage system and/or facility.

18. THIRD PARTY SERVICE PROVIDERS

If Client uses special services or software provided by a third party to assist in processing transactions, including authorizations and settlements, or accounting functions, Client is responsible for ensuring compliance with the requirements of any third party. Active is not responsible for any transaction until the point in time Active receives data about the transaction. Active has relationships with the Card Brands to provide the Services. The

Card Brands have the right to enforce any provision of the Card Brand Rules and to prohibit Client and Active from engaging in any conduct that the Card Brands deem could injure or could create a risk of injury to the Card Brands, including injury to reputation, or that could adversely affect the integrity of the interchange system, the Card Brands' Confidential Information as defined in the Rules, or both. Client will not take any action that could interfere with or prevent the exercise of this right by the Card Brands.

19. ADDITIONAL REPRESENTATIONS AND WARRANTIES

In addition to all other warranties provided under this agreement, Client represents and warrants that (a) Client has never been placed on the MasterCard MATCH system or the Combined Terminated Merchant File, and if so, Client has disclosed this to Active and (b) all transactions are bona fide and no transaction involves the use of a Card for any purpose other than the purchase of goods or services from Client and does not involve a Cardholder obtaining cash from Client unless allowed by the Rules and agreed in writing with Active.

20. ADDITIONAL INDEMNIFICATION AND LIMITATION OF LIABILITY

In addition to any other indemnity obligations provided under this Agreement, Client also agrees to indemnify and hold harmless Active's sponsor bank for acting in accordance with any instruction from Client or Active regarding Client's use of the Services. Further, Client shall indemnify and hold harmless Active's sponsor banks, the Card Brands, and Active, and all employees, officers, directors, shareholders and agents of Active or Active's sponsor bank from any and all loss, cost, expense, claim, damage, and liability (including attorneys' fees and costs) paid or incurred by any one or more of them, arising from, caused by, or attributable to, any of the following: (1) any Card transaction processed under this Agreement, (2) any breach by Client of this Agreement and those related to any bankruptcy proceeding; (3) willful misconduct, fraud, intentional tort or negligence by Client or that of Client's employees, agents or representatives; (4) theft, embezzlement, or unauthorized use; or (5) action by Active or Active's sponsor bank exercising any right under this Agreement, Laws, Rules, or Policies.
TO THE EXTENT PERMITTED BY APPLICABLE LAW, ACTIVE'S SPONSOR BANK'S TOTAL AGGREGATE LIABILITY FOR ALL MATTERS ARISING FROM OR RELATED TO THIS AGREEMENT IS LIMITED TO $10,000 U.S. DOLLARS.

21. IRS REPORTING

To comply with IRS 1099-K reporting requirements, Active may be required to file a form 1099-K with the U.S. Internal Revenue Service (IRS). Active may collect 28% federal backup withholding upon transaction settlement, on behalf of the IRS, from Client if Client does not supply your legal name, SSN or EIN, or if Client fails to respond to a request from Active to verify the same. All withholdings will be remitted to the IRS as required by law. To avoid potential backup withholdings, Client should notify Active any time there is a change to your SSN, EIN, legal name, or business address, and ensure you respond to any request for verification and record update from Active.

22. RIGHTS AND REMEDIES CUMULATIVE

The rights conferred upon Active, Active's sponsor banks, and the Card Brands in this Agreement are not intended to be exclusive of each other or of any other rights and remedies Active has under this Agreement, at law, or in equity. Rather, each and every right Active has at law or in equity will be cumulative and concurrent and in addition to every other right.

23. AMENDMENTS

This Agreement and the Policies referenced and incorporated in this Agreement may be amended, modified, or revised at any time without notice. While Active may notify Client as the Agreement or Policies are modified, it is Client's sole responsibility to review and maintain familiarity with the Agreement and Policies, including any changes that may be made to these documents, respectively, from time to time thereto, and Client is bound by any changes. The amendments to this Agreement and/or Policies referenced herein will become effective and binding upon Client immediately. In the event Client does not agree to the aforementioned amendments and do not wish to be bound the terms and conditions thereto, Client shall provide written notice to Active. Notwithstanding the foregoing, changes to fees authorized by this Agreement will be effective upon the giving of notice to Client and any fee increase, change in Rules, or other requirement imposed by Card Brands may be passed on to Client and will be effective upon the giving of notice to Client.

24. AGENCY RELATIONSHIP

Client authorizes Active with respect to the Services to act as Client's agent for the limited purposes of holding, receiving, and disbursing funds on Client's behalf. Client's authorization permits Active to generate an electronic funds transfer to process each payment transaction. This authorization will continue until this Agreement is terminated. Client agrees that Active's receipt of transaction proceeds satisfies your customers' obligations to Client. Active will remit funds actually received by Active on Client's behalf, less amounts owed to Active, subject to any chargebacks or reserve withheld or applied as per this agreement.

25. SECURITY INTEREST, RESERVE, RECOUPMENT, PERSONAL GUARANTEE

Because Active is financially responsible for action taken by you using the Services, we require certain protective measures as outlined below.

This Agreement will constitute a security agreement under the Uniform Commercial Code. You grant to us a security interest in and lien upon: (a) all funds representing amounts owing you under this Agreement at any time in the Member Operating Account, regardless of the source of such funds; (b) all funds at any time in the Reserve Account (as defined below), regardless of the source of such funds; (c) present and future Card transactions; and, (d) any amount which may be due to you under this Agreement, including, without limitation all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). You agree to provide other security to us upon request to secure your obligations under this Agreement. These security interests and liens will secure all of your obligations under this Agreement and any other agreements now existing

or later entered into between you us including, but not limited to, your obligation to pay any amounts due and owing to us. We may exercise this security interest without notice or demand of any kind by making an immediate withdrawal or freezing of your Secured Assets. Upon our request, you will execute one or more financing statements or other documents to evidence this security interest. You represent and warrant that no other person or entity has a security interest in the Secured Assets. With respect to such security interests and liens, we will have all rights afforded under the Uniform Commercial Code and any other applicable law and in equity. You must obtain from us written consent prior to granting a security interest of any kind in the Secured Assets to a third party. You agree that this is a contract of recoupment. As such, we are not required to file a motion for relief from a bankruptcy action automatic stay to realize on any of the Secured Assets. Nevertheless, you agree not to contest or object to any motion for relief from the automatic stay filed by us. You authorize us and appoint us your attorney in fact to sign your name to any financing statement used for the perfection of any security interest or lien granted hereunder.

For the purpose of providing a deposit and a source of funds to pay us for amounts owed by you, you shall deposit to an account maintained by us titled to our sponsor banks, initially or at any time in the future, as requested in good faith by us, sums sufficient to satisfy your current and/or future obligations as determined by us ("Reserve Account"). Funds, if any, in the Reserve Account shall remain in the Reserve Account until each of the following has occurred: (a) this Agreement has been terminated; and, (b) you have paid us in full all amounts owing or that could ever be owed under this Agreement, including, without limitation, all outstanding or uncollected amounts and potential chargebacks. Our sponsor banks shall have sole control of the Reserve Account. Our sponsor banks or we may, at any time, require that the amount on deposit in the Reserve Account be increased and shall have sole discretion as to the amount from time to time. In no event shall you be entitled to a return of any sums remaining in the Reserve Account for 270 days following the effective date of termination of this Agreement. We have the right to debit your funds in the Member Operating Account to establish, increase, or maintain funds in the Reserve Account. We may deposit into the Reserve Account funds we would otherwise be obligated to pay you, for the purpose of establishing, increasing, or maintaining the Reserve Account in accordance with this section, if we determine such action is reasonably necessary to protect our interests. You understand and agree that if you are required to establish a Reserve Account, you have an obligation under this Agreement to maintain at all times a balance in the Reserve Account sufficient to protect us against losses resulting from transactions initiated by you. Active may, without notice to Client, apply funds deposited in your Reserve Account against any outstanding amounts you owe us under this Agreement or any other agreement between Client and Active. Also, Active may debit your Reserve Account to exercise our rights under this Agreement to collect any amounts due to us including, without limitation, rights of set-off and recoupment.

Active has the right of recoupment and set-off. This means that Active may offset any outstanding or uncollected amounts owed to us from: (a) any amounts owed to Client and (b) any other amounts Active may owe Client under this Agreement or any other agreement. Client acknowledges that in the event of a bankruptcy proceeding, in order for you to provide adequate protection under Bankruptcy Code § 362 to Active, Client must create or maintain the Reserve Account and Active will have the right to offset against the Reserve Account for any and all obligations which Client may owe to Active, without regard to whether the obligations relate to Card transactions initiated or created before or after the filing of the bankruptcy petition.

26. DESIGNATION OF DEPOSITORY

The financial institution set forth in Client's application or order form is designated by Client as a depository institution ("Depository") for its card indebtedness hereunder. Such financial institution must be a member of an Automated Clearing House Association. Client authorizes payment for indebtedness purchased hereunder to be made by paying Depository therefore with instructions to credit Client's account(s) with Depository (the "Account(s)"). Active and/or its sponsor banks may charge the Account(s) for any amount due under this Agreement. Active must approve in writing any proposed changes to the Account(s) or to the Depository. Client represents and warrants that: (a) the Client Account(s) will always be in the same legal and DBA (if applicable) name as Client's name on Client's application or order form; (b) Client will own and maintain control of the Account(s) and will keep such Account(s) open at all times during the term and as long as any reserve account is in effect; and, (c) the Account(s) will not be associated with any merchant processing activity that is illegal or prohibited by the Rules or Law, including without limitation merchant processing activity associated with other accounts and/or processors. Client hereby authorizes Depository to release any and all account information to Active as Active may request without any further authorization, approval, or notice from or to Client.

27. DISCOVER PROGRAM MARKS

Merchant is hereby granted a limited non-exclusive, non-transferable license to use Discover brands, emblems, trademarks, and/or logos that identify Discover cards ("Discover Program Marks"). Merchant is prohibited from using the Discover Program Marks other than as expressly authorized in writing by Global Direct. Merchant shall not use the Discover Program Marks other than to display decals, signage, advertising and other forms depicting the Discover Program Marks that are provided to Merchant by Global Direct pursuant to this Card Services Agreement or otherwise approved in advance in writing by Global Direct. Merchant may use the Discover Program Marks only to promote the services covered by the Discover Program Marks by using them on decals, indoor and outdoor signs, advertising materials and marketing materials; provided that all such uses by Merchant must be approved in advance by Global Direct in writing. Merchant shall not use the Discover Program Marks in such a way that customers could believe that the products or services offered by Merchant are sponsored or guaranteed by the owners of the Discover Program Marks. Merchant recognizes that it has no ownership rights in the Discover Program Marks and shall not assign to any third party any of the rights to use the Discover Program Marks.

28. Termination

28 (a) Termination without cause. Active or its sponsor bank may terminate this Agreement without cause upon 30 days advance written notice to Client.

28 (b) Termination for cause. Active or its sponsor bank may terminate this Agreement in its sole discretion, effective immediately, upon written notice to Client if Active or its sponsor bank reasonably determines that any of the following conditions exist:

(i) Client has violated any provision of this Agreement.
(ii) There is a material adverse change in Client's financial condition, material change in Client's processing activity, processing activity inconsistent with the Merchant Application, or Active or it's sponsor bank determines in its sole discretion that Client's processing activity could result in a loss to Active or Active's sponsor bank.

CLIENT	ACTIVE NETWORK, LLC
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CLERK TO ENTER INTO AN AGREEMENT WITH ACTIVE NETWORK LLC FOR A POINT OF SALE SYSTEM, REGISTRATION, AND MEMBERSHIP SOFTWARE MANAGEMENT FOR THE CITY OF BENTONVILLE PARKS AND RECREATION DEPARTMENT.

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

Section 1: That the Mayor and Clerk be and are hereby authorized to enter into an Agreement with Active Network LLC for a Point of Sale System, Registration, and Membership Software Management for the City of Bentonville Parks and Recreation Department, 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	**10/12/2021**
Department	**Parks and Recreation**
Submitted by	**David Wright, Parks and Recreation Director**
Phone	**479-464-7275**

Item Type: (*Check All That Apply)*

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

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

Informational Presentation regarding Quilt of Parks Project.

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: David Wright, Parks and Recreation Director

Date: September 30, 2021

Re: Informational Presentation regarding the Quilt of Parks Planning Process

---

During the week of October 1, Parks and Recreation Staff plans to visit neighbors of Dave Peel Park and Plaza area to get a better understanding of what the neighbors of the site prefer in the future park space. Our team will return to City Council on the evening of October 12 to present to you these preferences and hopefully agree on a direction for the future of this park space.

If you have any questions regarding this item, please let me know. Please call me at 271.6813, or email: dwright@bentonvillear.com.

Agenda Item Form

Date of City Council Meeting	**10/12/2021**
Department	**Parks and Recreation**
Submitted by	**David Wright, Parks and Recreation Director**
Phone	**479-464-7275**

Item Type: (*Check All That Apply)*

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

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

Resolution authorizing Mayor Orman to enter into an agreement with Black Hills Energy Arkansas, Inc., for a Right of Way Easement for a gas line crossing park property near the Crystal Bridges Trail.

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: David Wright, Parks and Recreation Director

Date: September 30, 2021

Re: Resolution for ROW Easement with Black Hills Energy

Parks and Recreation Staff is recommending Council approval of an agreement allowing a gas easement across Parks property near the Crystal Bridges Trail. During a recent site visit with representatives of Black Hills Energy, CEI Engineering and Crystal Bridges, the gas line is necessary to serve the future expansion of the museum.

During our on-site meeting, we reviewed potential locations of the proposed line. After reviewing options, this proposed route that will cut across park property will reduce the number of healthy, mature trees that will need to be removed. Futures uses of the space only include trails and greenspace. Both are permitted in future land uses of this agreement.

The agreement has been vetted by multiple City Departments and we are all in agreement of moving forward. If you have any questions regarding this item, please let me know. Please call me at 271.6813, or email: dwright@bentonvillear.com.

RIGHT-OF-WAY GRANT
Black Hills Energy Arkansas, Inc.

AFTER FILING, PLEASE RETURN DOCUMENT TO:

Name: Black Hills Energy Arkansas, Inc.

Address: 655 East Millsap Road Suite 104
Fayetteville, AR 72703

This Instrument Prepared by

Bryan Baumgartner, of

Fayetteville, Arkansas

KNOW ALL MEN BY THESE PRESENTS:

That **City of Bentonville, Arkansas, a Municipal Corporation** ("Grantor"), whose address is 1000 SW 14th, Bentonville, AR 72712, for itself, its heirs, successors and assigns, for and in consideration of the sum of Ten Dollars ($10.00), and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, does hereby grant, convey and confirm unto **Black Hills Energy Arkansas, Inc. d/b/a Black Hills Energy,** an Arkansas corporation whose address is 655 E. Millsap Rd., Suite 104, Fayetteville, AR 72703, its successors assigns, and licensees ("Grantee"), a right-of-way and easement to survey, construct, install, inspect, maintain, renew, repair, remove, replace and operate pipeline(s) and appurtenances, including all above-ground structures associated therewith, for the transportation of gas, in, on, over, under, upon and through the following described lands, situated in portions of Section Twenty (20), Township Twenty (20) North, Range Thirty (30) West of the Fifth (5th) Principal Meridian, County of Benton, State of Arkansas, more particularly described as follows:

A part of the Southwest Quarter (SW¼) of the Southwest Quarter (SW¼) of Section Twenty (20), Township Twenty (20) North, Range Thirty (30) West of the Fifth (5th) Principal Meridian, County of Benton, State of Arkansas further described in Book 2009 at Page 55342, Book 2009 at Page 55346, Book 2009 at Page 55350

Parcel # 01-16137-000, 01-15203-000 & 01-16136-000

The right-of-way and easement shall consist of:
A legal description and drawing of the easement shall be attached hereto and made part of this agreement as Exhibit "A".
Additional terms and restrictions shall be addressed in a Special Considerations Agreement.

(the "Subject Lands")

In addition, Grantor is hereby granting to Grantee a temporary construction easement thirty (30) feet in width located along the surrounding boundary line of the above-described permanent easement for the installation of the pipeline within the permanent easement. The temporary construction easement shall vary in width and allow adequate space for bore entry and exits, if any.

(the "TCE")

This Right-of-Way Grant is subject to any and all other easements, rights-of-way, variances, memorandums and/or agreements currently of record.

TO HAVE AND TO HOLD said right-of-way and easement unto Grantee so long as such pipelines and appurtenances, or any part thereof, shall be maintained, together with the right of ingress to and egress from the Subject Lands and TCE for the purposes herein stated, at the will of Grantee. Grantor retains the right to use and enjoy the Subject Lands, subject only to the right of Grantee to use the same for the purposes herein expressed, and subject to the limitations contained herein.

Grantor hereby binds itself, its, successors, and assigns to warrant and forever defend all and singular the right-of-way and easement herein conveyed unto Grantee, its successors and assigns, against every person whomsoever lawfully claims the same or any part thereof.

Grantor hereby acknowledges that the consideration received herewith is full consideration for the right-of-way and easement granted herein, and also for damages to both the Subject Lands and growing crops occasioned by the initial installation of Grantee's facilities. Grantor reserves the right to cultivate, use and occupy the Subject Lands for any purpose consistent with the rights and privileges herein granted, and which will not interfere with or, in the sole judgment of Grantee, endanger any of the facilities thereon or

Grantee's use thereof. Such reservation by Grantor shall in no event include the right: (i) to construct any buildings or structures of any kind; (ii) to impound, retain, collect or store any water; or (iii) to plant any trees or shrubs upon the right-of-way and easement granted herein without the express written consent of Grantee.

Grantee agrees to lay all pipelines at a sufficient depth to avoid interfering with cultivation of the soil, and to pay Grantor for damages to growing crops, fences or other improvements which may arise from the operations of Grantee. Any such damage, if not mutually agreed upon, shall be ascertained and determined by three disinterested persons, one appointed by Grantor, one by Grantee, and the third chosen by the two persons so appointed. The written award of a majority of such three persons shall be final and conclusive upon Grantor and Grantee.

Grantors agree to make no use of, nor permit others to make any use of said easement strip that would reduce in clearance or in any other way interfere with the proper and safe operation and/or maintenance of said pipeline(s) by Grantee.

Grantee shall not be required to remove any abandoned pipeline(s) from the Subject Lands.

It is agreed by Grantor that any payment of consideration due under the terms hereof may be made jointly to Grantor and any mortgagees of record at the time such payment becomes due. This Right-of-Way Grant and the duties and obligations created herein shall run with the land and shall be binding upon Grantor, Grantee and their respective heirs, devisees, successors and assigns.

[Signature Page to Follow]

IN WITNESS WHEREOF, Grantor has hereunto set its hand this ____ day of _____, 2021.

GRANTOR:

City of Bentonville, Arkansas, a Municipal Corporation

BY: _____

NAME: _____

Title: _____

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) §
COUNTY OF BENTON)

This instrument was acknowledged before me this _____ day of _____, 2021, by_____, as _____, of **City of Bentonville, Arkansas, a municipal corporation**, and was duly authorized in his or her respective capacity to execute this instrument for and in the name and behalf of said corporation or entity, and further stated and acknowledged that he or she had so signed, executed, and delivered said foregoing instrument for the consideration, uses, and purposes therein mentioned and set forth.

SEAL

Witness my hand and official seal.

Name:_____

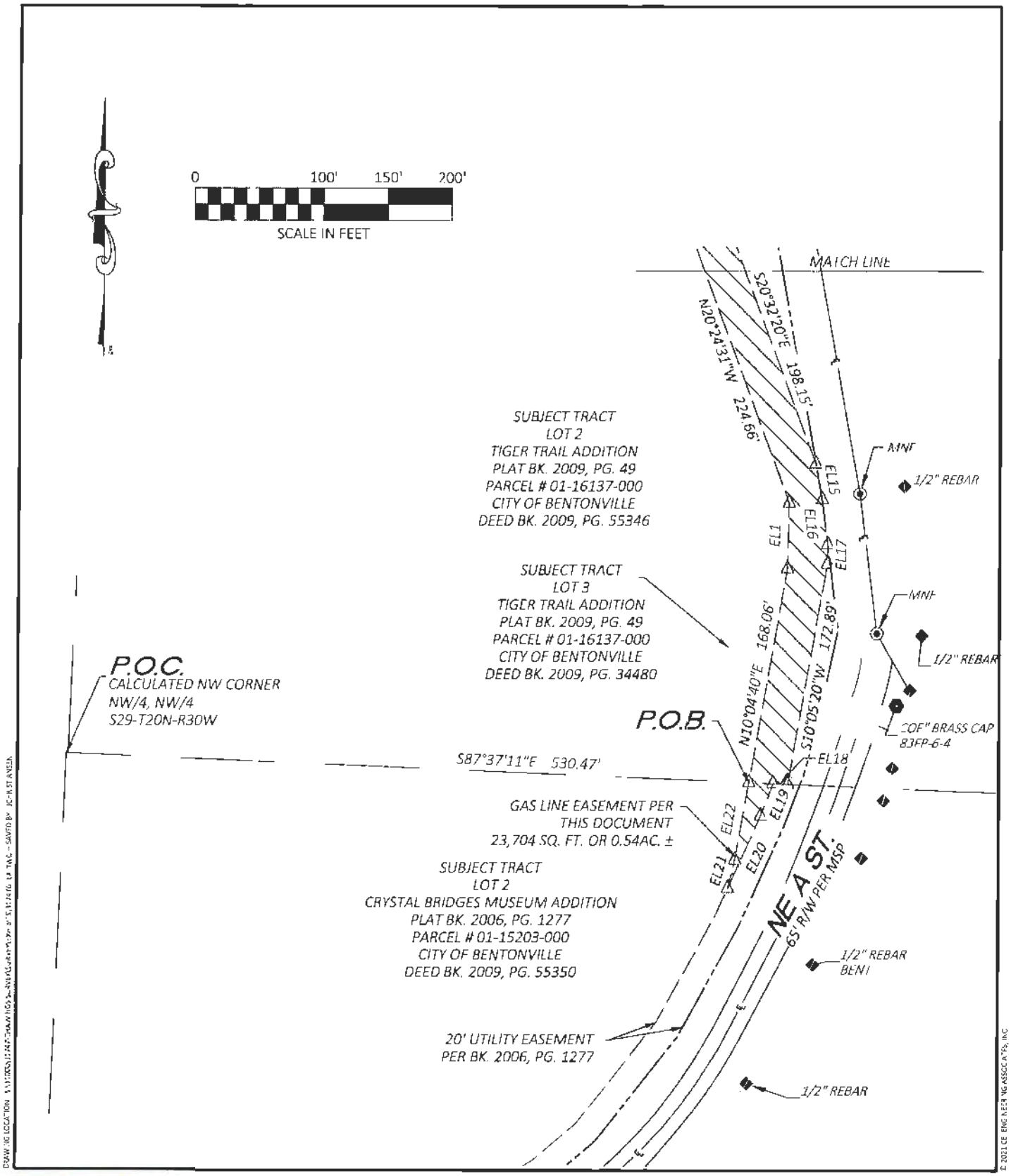
Notary Public, State of:_____

My Commission expires:_____

Survey Description

A part of Lot 2, Crystal Bridges Museum Addition according to Plat Book 2006, Page 1277 and Lots 1, 2, & 3, Tiger Trail Addition according to Plat Book 2009, Page 49 in the public records of Benton County, Arkansas, and being described by metes and bounds as follows:

COMMENCING at the calculated Northwest corner of the Northwest Quarter of the Northwest Quarter of Section 29, Township 20 North, Range 30 West;
THENCE along the north boundary of said Section 29, South 87°37'11" East, 530.47 feet to the POINT OF BEGINNING;
THENCE leaving said north boundary, North 10°04'40" East, 168.06 feet;
THENCE North 01°16'39" East, 50.72 feet;
THENCE North 20°24'31" West, 224.66 feet;
THENCE North 08°57'03" West, 58.00 feet;
THENCE North 09°16'22" West, 80.59 feet;
THENCE North 01°02'59" West, 85.68 feet;
THENCE North 51°49'04" East, 59.10 feet;
THENCE North 88°40'00" East, 14.99 feet;
THENCE South 86°14'27" East, 52.84 feet to the center line of NE A Street;
THENCE along said center line, South 01°38'19" West, 30.02 feet;
THENCE leaving said center line, North 86°14'27" West, 52.62 feet;
THENCE South 88°40'00" West, 3.66 feet;
THENCE South 51°49'04" West, 34.19 feet;
THENCE South 01°02'59" East, 68.60 feet;
THENCE South 09°16'22" East, 78.52 feet;
THENCE South 08°57'03" East, 57.61 feet;
THENCE South 20°32'20" East, 198.15 feet to the west right-of-way of NE A Street;
THENCE along said west right-of-way, South 10°10'32" East, 27.97 feet;
THENCE continuing along said west right-of-way, South 07°06'24" East, 34.86 feet;
THENCE leaving said west right-of-way, South 00°00'00" West, 15.23 feet;
THENCE South 10°05'20" West, 172.89 feet to the aforementioned north boundary of Section 29;
THENCE along said north boundary, North 87°36'18" West, 11.42 feet to the west boundary of a 20' utility easement according to Book 2006, Page 1277;
THENCE along said west boundary, South 20°53'07" West, 26.73 feet;
THENCE continuing along said west boundary, South 24°22'42" West, 61.51 feet;
THENCE leaving said west boundary, North 13°56'09" East, 22.61 feet;
THENCE North 10°04'40" East, 60.77 feet to the POINT OF BEGINNING containing 23,704 square feet or 0.54 acres, more or less.



© 2021 CE ENGINEERING ASSOCIATES, INC

CE ENGINEERING ASSOCIATES, INC
3108 SAWMILL AGENCY PKWY
BENTONVILLE, AR 72712
PH: (479) 273-8841
FAX: (479) 273-8844
CORPORATE #: 1600

JUDICIAL PARKWAY, SUITE 100
DALLAS, TX 75234
PH: (817) 488-5737
FAX: (817) 488-5737
BRANCH #: 2154

Gas Line Exhibit
City of Bentonville
NE A St.
Bentonville, Benton County, Arkansas

Gas Line Exhibit

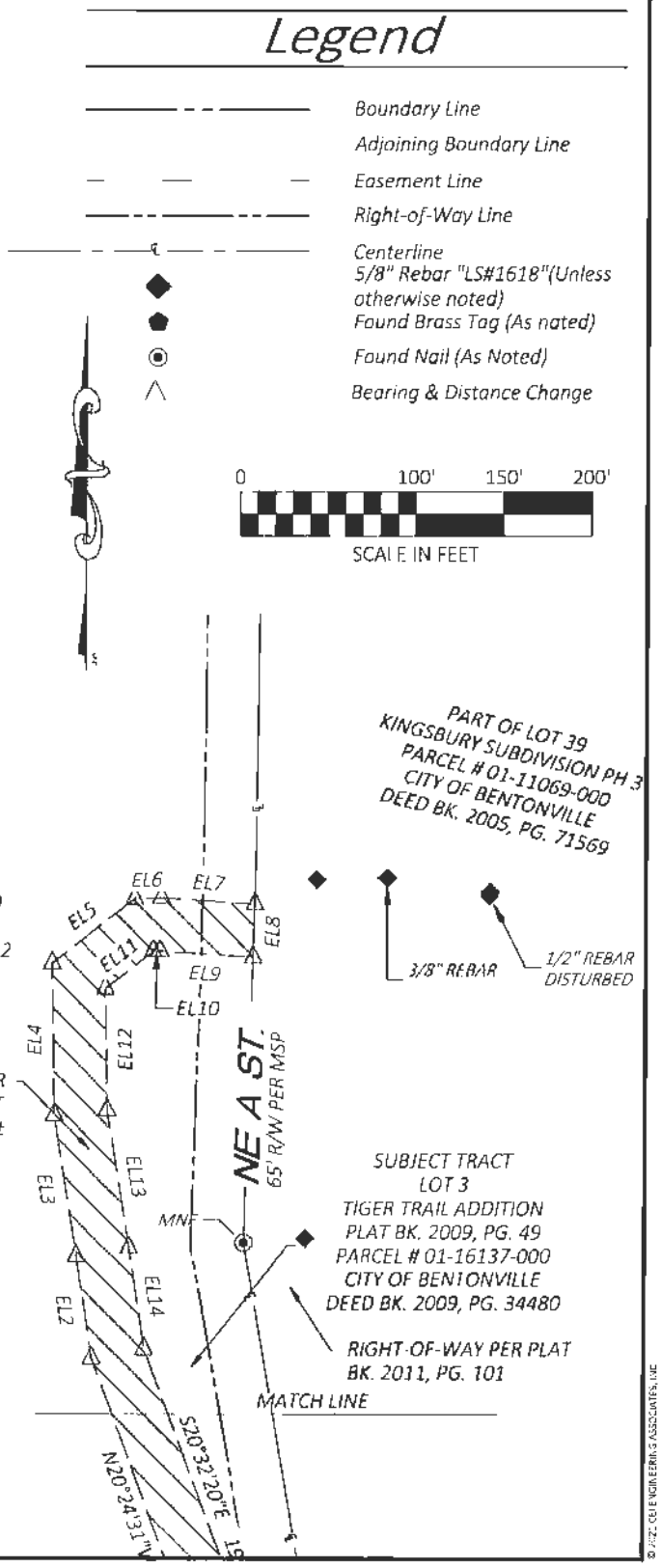
SHEET TITLE

PROFESSIONAL OF RECORD	DGR
DESIGNER	SWG
[illegible]	[illegible]
CEI PROJECT NUMBER	21747
DATE	9/10/2021
REVISION	REV 0

SHEET NUMBER

1 OF 2

Easement Line Table		
LINE	BEARING	DISTANCE
EL1	N01°16'39"E	50.72'
EL2	N08°57'03"W	58.00'
EL3	N09°16'22"W	80.59'
EL4	N01°02'59"W	85.68'
EL5	N51°49'04"E	59.10'
EL6	N88°40'00"E	14.99'
EL7	S86°14'27"E	52.84'
EL8	S01°38'19"W	30.02'
EL9	N86°14'27"W	52.62'
EL10	S88°40'00"W	3.66'
EL11	S51°49'04"W	34.19'
EL12	S01°02'59"E	68.60'
EL13	S09°16'22"E	78.52'
EL14	S08°57'03"E	57.61'
EL15	S10°10'32"E	27.97'
EL16	S07°06'24"E	34.86'
EL17	S00°00'00"E	15.23'
EL18	N87°36'18"W	11.42'
EL19	S20°53'07"W	26.73'
EL20	S24°22'42"W	61.51'
EL21	N13°56'09"E	22.61'
EL22	N10°04'40"E	60.77'



DRAWING LOCATION: S:\1-JOBS\11-ACTIVE\DRAWINGS\SURVEY\EXHIBITS\GAS LINE EXHIBIT.DWG - SAVED BY JOHNSTHAGEN

© 2021 CEI ENGINEERING ASSOCIATES, INC

CEI ENGINEERING ASSOCIATES, INC
3106 SW REGENCY PKWY
BENTONVILLE, AR 72712
PHONE: (479) 273-3844
FAX: (479) 273-3844
CORPORATE TBPE #: FIRM #10025300

3090 LBJ FREEWAY, SUITE 120
DALLAS, TX 75234
PHONE: 972-488-3737
FAX: 972-488-3733
BRANCH TBPE #: FIRM #10194234

Gas Line Exhibit
City of Bentonville
NE A St.
Bentonville, Benton County, Arkansas

Gas Line Exhibit

SHEET TITLE

PROFESSIONAL OF RECORD	DCP
DESIGNED	SWG
FIELD WORK	XCD
CEI PROJECT NUMBER	11-142
DATE	9/10/2021
REVISION	REV 0

SHEET NUMBER

2 OF 2

BLACK HILLS ENERGY ARKANSAS, Inc.

Right of Way Acquisitions

SPECIAL CONSIDERATIONS

Internal Order Number: _____
Job Title: Crystal Bridges Relocation
Property Owner: City of Bentonville, AR
Property Address: NE A Street
Parcel No.: 01-15203-000
Phone No.: _____

The above-listed Grantors have signed BHEA's Pipeline Right-of-Way Grant granting BHEA an easement over property located at the address above and more specifically described in the Right-of-Way Grant dated _____. In addition to said Right-of-Way Grant, this Special Considerations Agreement shall become part of the agreement between aforementioned parties. All references herein to the Subject Lands shall be to the Subject Lands defined in the Right-of-Way Grant.

Restoration of the Right of Way and any other areas disturbed by construction – BHEA will restore the property to condition equally as good as before construction as per Section 3 and 4 of the Franchise Ordinance No. 80-43.

Term and Expiration – BHEA's easement shall be perpetual and run with the land. The Temporary Construction Easement shall terminate when construction is complete and the final inspection/ acceptance of the line by BHEA.

Permitting and Traffic Control – Contractors and/or Licensees for BHEA shall complete a standard Right of Way/Work Zone Permit and submit an approved traffic control plan as defined in Section 3 of the Franchise Ordinance No. 80-43.

Trees – Crystal Bridges will be solely responsible for replacement of trees, if any.

Structures – No buildings or structures of any kind shall be allowed within the limits of the right of way with exception of streets, walks, trails, benches, trail signage no deeper than 18" and trash receptacles without the express written permission of the Grantee.

It is agreed that neither party hereto is relying upon any oral or written information or representations made by the other prior to the signing of the easement unless expressly provided herein, and that the easement constitutes the entire agreement between the parties and same shall not be hereafter amended or modified unless reduced to writing and signed by the parties hereto.

R-of W Agent:_____ Date: _____

Property Owner: _____ Date: _____

Survey Description

A part of Lot 2, Crystal Bridges Museum Addition according to Plat Book 2006, Page 1277 and Lots 1, 2, & 3, Tiger Trail Addition according to Plat Book 2009, Page 49 in the public records of Benton County, Arkansas, and being described by metes and bounds as follows:

COMMENCING at the calculated Northwest corner of the Northwest Quarter of the Northwest Quarter of Section 29, Township 20 North, Range 30 West;
THENCE along the north boundary of said Section 29, South 87°37'11" East, 520.76 feet to the POINT OF BEGINNING;
THENCE leaving said north boundary, North 05°47'35" East, 35.39 feet;
THENCE North 08°42'46" East, 62.66 feet;
THENCE North 02°26'44" East, 96.47 feet;
THENCE North 13°33'08" West, 56.12 feet;
THENCE North 16°04'50" West, 42.34 feet;
THENCE North 14°33'53" West, 63.27 feet;
THENCE North 10°45'02" West, 77.69 feet;
THENCE North 08°57'03" West, 58.00 feet;
THENCE North 09°16'22" West, 80.59 feet;
THENCE North 01°02'59" West, 85.68 feet;
THENCE North 51°49'04" East, 59.10 feet;
THENCE North 88°40'00" East, 14.99 feet to the West Right-of-Way line of NE A St.;
THENCE leaving said Right-of-Way, North 86°'19" West, 30.02 feet;
THENCE along said center line, South 01°38'19" West, 30.02 feet;
THENCE leaving said center line, North 86°14'27" West, 23.00 feet;
THENCE South 88°40'00" West, 3.66 feet;
THENCE South 51°49'04" West, 34.19 feet;
THENCE South 01°02'59" East, 68.60 feet;
THENCE South 09°16'22" East, 78.52 feet;
THENCE South 08°57'03" East, 57.61 feet;
THENCE South 10°45'02" East, 76.22 feet;
THENCE South 14°33'53" East, 61.88 feet;
THENCE South 16°04'50" East, 42.60 feet;
THENCE South 13°33'08" East, 61.00 feet;
THENCE South 02°26'44" West, 102.33 feet;
THENCE South 08°42'46" West, 63.54 feet;
THENCE South 08°22’37” West, 32.96 feet to the West line of a 20’ Utility Easement recorded per Book 2006, Page 1277;
THENCE continuing along said easement line, South 20°53’07” West, 26.73 feet;
THENCE continuing along said easement line, South 24°22’42” West; 71.52 feet;
THENCE leaving said easement line, North 07°06’31” East;
THENCE North 05°47'35" East, 37.92 feet to the aforementioned North boundary of Section 29 and the POINT OF BEGINNING containing 23,241 square feet or 0.53 acres, more or less.

SITE BENCHMARK

BENCHMARK #1: A BOLT BETWEEN THE U AND THE E OF MUELLER ON A FIRE HYDRANT BEING 74.5' SOUTHWEST OF THE FLY'S EYE DOME. ELEVATION=1174.72'

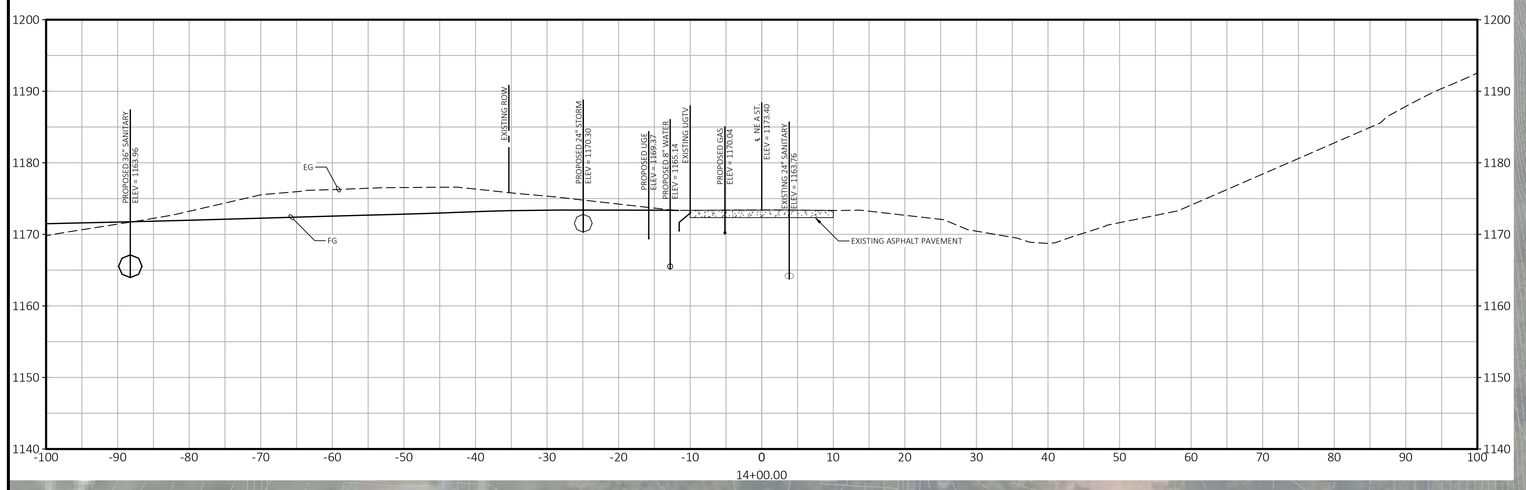
BENCHMARK #2: 5/8-INCH REBAR AT THE WEST SIDE OF THE NORTH ENTRANCE OFF A STREET BEING 42.8' SOUTH FROM A SEWER MANHOLE IN MIDDLE OF A STREET. ELEVATION=1178.36'

NOTE:
SEE ARCHITECTURAL PLANS FOR EXACT LOCATIONS AND DIMENSIONS OF PORCHES, RAMPS, VESTIBULE, SLOPED PAVING, TRUCK DOCKS, BUILDING UTILITY ENTRANCE LOCATIONS AND PRECISE BUILDING DIMENSIONS.

0 60' 90' 120'
SCALE IN FEET

811 Know what's **below.** **Call** before you dig.

TYPICAL ROAD SECTION



GAS LINE RELOCATION TO FOLLOW EXISTING CONSTRUCTION SERVICE ROAD TO NE A STREET

30' PROPOSED GAS EASEMENT

30' GAS EASEMENT TO BE CLEARED OF TREES AND MAINTAINED BY CRYSTAL BRIDGES

TYPICAL ROAD SECTION

GAS LINE RELOCATION ALONG EASTERN PROPERTY LINE

APPROXIMATE LOCATION OF EXISTING GAS LINE

GAS LINE RELOCATION TO AVOID IMPACTING LARGE TREE

APPROXIMATE LOCATION OF EXISTING GAS LINE

CRYSTAL BRIDGES PHASE II

CRYSTAL BRIDGES MUSEUM OF AMERICAN ART

600 MUSEUM WAY
BENTONVILLE, AR 72712

CLIENT
Crystal Bridges Museum of American Art

DESIGN ARCHITECT
Safdie Architects, LLC.
100 Properzi Way
Somerville, MA 02143-3740 USA
T 617.629.2100 F 617.629.2406

ARCHITECT OF RECORD
Hight Jackson Associates
5201 W Village Pkwy #300
Rogers, AR 72758
T 479.464.4965 F 479.464.8324

STRUCTURE/ FACADE/ WATERPROOFING/ SUSTAINABILITY ENGINEERING
Buro Happold Engineering
11 Beacon St #400
Boston, MA 02108
T 617 419 2284

MEP/ FIRE ENGINEERING/ SECURITY
Buro Happold Engineering
11 Beacon St #400
Boston, MA 02108
T 617 419 2284

LIGHTING DESIGN

CIVIL
CEI ENGINEERING ASSOCIATES, INC.
3108 SW REGENCY PKWY
PHONE: (479) 273-9472
FAX: (479) 273-0844

LANDSCAPE ARCHITECT
COEN & PARTNERS
200 North Washington Ave, Suite 300
Minneapolis MN 55401
T 612 341 8070

UNLESS A PROFESSIONAL SEAL WITH SIGNATURE AND DATE IS AFFIXED, THIS DOCUMENT IS PRELIMINARY AND IS NOT INTENDED FOR CONSTRUCTION, RECORDING PURPOSES OR IMPLEMENTATION.

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ISSUE

NO.	DESCRIPTION	DATE

CEI Solutions for Land and Life

PRELIMINARY
NOT FOR
CONSTRUCTION

CEI PROJECT NUMBER	DESIGNER
31747	EDA
DATE	PROJECT MANAGER
8/11/2021	NLB
REVISION	PROFESSIONAL OF RECORD
REV-2	NLB

SCALE
SEE GRAPHICAL SCALE ON THIS SHEET

SHEET TITLE
GAS RELOCATION EXHIBIT

SHEET NUMBER

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DRAWING LOCATION - P:\31000\31747\DRAWINGS\DESIGN\DRAWINGS\31747 OFFSITE IMPROVEMENTS.DWG - SAVED BY - EDA\ELSON

411

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CLERK TO ENTER INTO AN AGREEMENT WITH BLACK HILLS ENERGY FOR A RIGHT OF WAY EASEMENT.

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 Black Hills Energy for a right of way easement for a gas line crossing City of Bentonville Park Property, 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