Revised Agenda:
Item 16 – Public hearing date revised.

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.

City Council Meeting **Tuesday, March 8, 2022 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 March 8, 2022:**

https://us02web.zoom.us/webinar/register/WN_z7tnFfRqREGALdLYv0-Etw

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: February 22, 2022

AGENDA

1. Planning:

1a. **Ordinance accepting a property line adjustment of Lots 6,7, & 12 of Youngs Addition and Lot 23 of 3rd East Addition, creating Lots 13-16 Block 3 of Youngs Addition to the City of Bentonville, Arkansas (Project Number: PLA21-0059), 805 SE 5th Street.**

(Pages 6-10)

The Planning Commission voted 7-0, recommending approval.

A property line adjustment of existing lots 6, 7 & 12 of Youngs Addition and Lot 23 of 3rd East Addition, creating Lot 13 (+/-0.26 acres), Lot 14 (+/- 0.24 acres), Lot 15 (+/- 0.31 acres), and Lot 16 (+/- 0.15 acres) of Youngs Addition. The plat dedicates a small portion of right-of-way along SE 5th Street per the Master Street Plan requirements. The plat also dedicates various utility easements to serve the newly created lots.

1b. **Ordinance accepting a Final Plat of Osage Hills Subdivision Phase 2 to the City of Bentonville Arkansas (Project Number: FP22-0001), SW Anglin Road and SW Bison Street.**

(Pages 11-18)

The Planning Commission voted 7-0, recommending approval.

A final plat creating and accepting Phase 2 of Osage Hills Subdivision. The final plat replats Lots 143 through 150 of Osage Hills Phase 1 to create 31 new single-family residential lots. The plat dedicates all necessary easements and rights-of-way to serve the subdivision.

2. Utility Board:

2a. Ordinance approving a waiver of bid and budget adjustment to purchase 15 kV switches from Hubbell Power Systems, Inc. for the expansion of Substation "I" for $57,153.00 plus tax (estimated to be $5,429.54). This is a sole source item and matches existing switches used in all of Bentonville's substations. Approved at Utility Board 5-0. **(Pages 19-24)**

3. Resolution approving a bid award for capacitor material to the lowest bidder as shown on the attached bid tabulation in the amount of $147,545.60. **(Pages 25-51)**

4. Ordinance waiving requirements for competitive bidding and entering into an agreement with Techline for the purchase of single phase and pole mounted double bushing transformers for $270,620.00 plus applicable taxes. **(Pages 52-57)**

5. Ordinance waiving requirements for competitive bidding and entering into an agreement with Techline for the purchase of single phase and pole mounted double bushing transformers for $2,053,762.50 plus applicable taxes. **(Pages 58-65)**

6. Ordinance waiving requirements for competitive bidding and entering into an agreement with Stuart Irby for purchase of various wire sizes for $420,705.00 plus applicable taxes. **(Pages 66-71)**

7. Mayor Orman recommends appointment of Ricky Cortes to the City of Bentonville's Advertising & Promotion Commission. Mr. Cortes' will be serving his first term that will expire December 31, 2025. **(Pages 72-76)**

8. Resolution amending Resolution No. 11-9-21E, for the addition of a City Council member to the Housing Affordability Work Group. This will ensure the establishing Resolution is consistent with the membership of the Group as approved by the City Council. **(Pages 77-79)**

9. Ordinance amending section 2-377 of the City of Bentonville Municipal Code to allow the Mayor to enter into contracts for purchases made from the State Procurement website. This will establish consistency between the Code and the City's purchasing policy and formalize the process currently in place. This change only applies to purchases where funding has already been approved by the City Council. **(Pages 80-81)**

10. Resolution to approve a budget adjustment allowing the Mayor and City Clerk to enter into Work Order #1 with Garver Engineering in the amount of $10,000.00 for the Bid Package Development (Repackage) and Bidding Services Garver Project No. 21A13192. West-side development of the Bentonville Municipal airport for Full Taxi Lane and Utility Infrastructure improvements for future hangar developments. Funding to come from funds received from the Through-the-Fence agreement previously approved by City Council. Those funds can only be spent on airport related items. **(Pages 82-92)**

11. Ordinance approving the addition of an "Additional Pay" (Add-Pay) to the 2022 Pay Plan for the City of Bentonville. The new add pay will compensate employees who have taken over the new roles of (1) Commercial Drivers License (CDL) Site Administrator, (1) Commercial Drivers License (CDL) Location Manager, and (1) Commercial Drivers License (CDL) Assistant Location Manager. The new Add-Pay amount will be $50.00 per pay period. **(Pages 93-97)**

12. Resolution amending the contract with Pyro Shows to increase the amount of the original per year cost to $40,000.00 for the City of Bentonville July 4th fireworks show. This increase was budgeted in the 2022 budget. **(Pages 98-102)**

13. Resolution accepting a grant from the Walton Foundation to fund six personnel for the Bentonville Fire Department. The foundation will fund 75% of wages for year one and two, 25% for year three. The City will fully fund the personnel after year three. **(Pages 103-111)**

14. Ordinance requesting a Waiver of Bid to purchase eight Physio Control Heart Monitors, supplies, and an eight-year service and maintenance agreement for a total not to exceed $346,819.64 including tax. All of our existing monitors will be traded in for a reduction on the cost of the new ones. **(Pages 112-120)**

15. Public hearing and ordinance vacating Street Right of Way and establishing a Utility Easement requested by the City of Bentonville for lot 6 of Eversole Addition (VAC22-0005). **(Pages 121-125)**

16. Resolution setting a public hearing for March 29, 2022 for a Utility Easement Vacation requested for 609 SE D Street of Orchards Addition (VAC22-0002). **(Pages 126-128)**

17. Resolution to Award Bid IFB-22-12 to Titan Lawn and Landscape for mowing services as needed throughout the year at a weekly rate of $2,069.55, for an estimated annual total of $61,963.00 per the unit prices attached. Due to budgetary reasons, the City has selected the ten (10) following parks for 2022: Park

Springs Park, Back Side of Park Springs Park, Wildwood Park, Old Tiger Track, Merchants Park, Bike Park, Bark Park, North Trail, Durham Park, and Enfield Park. This contract is for a one-year term, renewable annually until 2025. Additional park locations, included in the bid but not being awarded at this time due to budgetary reasons, may be added in renewal years via Change Order. **(Pages 129-171)**

18. Resolution authorizing the Mayor and City Clerk to enter into an agreement with the Peel Compton Foundation for the maintenance of certain spaces located in Lake Bentonville Park and Osage Park. **(Pages 172-177)**

19. Resolution authorizing Mayor and City Clerk to enter into a professional services agreement with Nabholz Construction Corporation, in the amount of $35,000.00 plus reimbursable expenses, to provide preconstruction services for the development of the Phillips Park project. This Firm was selected in accordance with §14-58-1001, for Projects exceeding $2 million dollars. **(Pages 178-288)**

20. Resolution authorizing the Mayor and City Clerk to enter into an amended agreement with Design Workshop to include design services for the Bentonville Green of the Quilt of Parks Project. **(Pages 289-305)**

21. A public hearing regarding issuance of combined electric, water and sewer system revenue bonds for the purpose of financing storm recovery costs and refunding outstanding revenue bonds. **(Page 306)**

22. An ordinance authorizing the issuance of combined electric, water and sewer system revenue bonds for the purpose of financing storm recovery costs and refunding outstanding revenue bonds; providing for the payment of the principal and interest on the bonds; prescribing matters relating thereto; and declaring an emergency. **(Pages 307-336)**

City Council Agenda Items
For the City Council meeting of March 8, 2022

1. **Ordinance accepting a property line adjustment of Lots 6,7, & 12 of Youngs Addition and Lot 23 of 3rd East Addition, creating Lots 13-16 Block 3 of Youngs Addition to the City of Bentonville, Arkansas (Project Number: PLA21-0059), 805 SE 5th Street.**

   The Planning Commission voted 7-0, recommending approval.

   A property line adjustment of existing lots 6, 7 & 12 of Youngs Addition and Lot 23 of 3rd East Addition, creating Lot 13 (+/-0.26 acres), Lot 14 (+/- 0.24 acres), Lot 15 (+/- 0.31 acres), and Lot 16 (+/- 0.15 acres) of Youngs Addition. The plat dedicates a small portion of right-of-way along SE 5th Street per the Master Street Plan requirements. The plat also dedicates various utility easements to serve the newly created lots.

2. **Ordinance accepting a Final Plat of Osage Hills Subdivision Phase 2 to the City of Bentonville Arkansas (Project Number: FP22-0001), SW Anglin Road and SW Bison Street.**

   The Planning Commission voted 7-0, recommending approval.

   A final plat creating and accepting Phase 2 of Osage Hills Subdivision. The final plat replats Lots 143 through 150 of Osage Hills Phase 1 to create 31 new single-family residential lots. The plat dedicates all necessary easements and rights-of-way to serve the subdivision.

ORDINANCE NO. _____

AN ORDINANCE ACCEPTING A PROPERTY LINE ADJUSTMENT OF LOTS 6, 7, & 12 OF YOUNGS ADDITION AND LOT 23 OF 3RD EAST ADDITION, CREATING LOTS 13-16 OF YOUNGS ADDITION TO THE CITY OF BENTONVILLE, ARKANSAS; AND FOR OTHER PURPOSES. (PROJECT NUMBER: PLA21-0059).

WHEREAS, pursuant to the provisions of the Land Development Code of the Bentonville Municipal Code, the property line adjustment of Lots 6, 7, & 12 of Youngs Addition and Lot 23 of 3rd East Addition, creating Lots 13-16 Block 3 of Youngs Addition of the City of Bentonville, Benton County, Arkansas was submitted to the Bentonville Planning Commission on March 1, 2022;

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

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 6, 7, & 12 of Youngs Addition and Lot 23 of 3rd East Addition, creating Lots 13-16 Block 3 of Youngs Addition to the City of Bentonville, Arkansas, should be and the same is hereby accepted and approved for all purposes;

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

Section 3 - Severability Provision: If any part of this Ordinance is held invalid, the remainder of this Ordinance shall continue in effect as if such invalid portion never existed; and

Section 4 - Repeal of Conflicting Provisions: All Ordinances, Resolutions, or Orders of the City Council, or parts of the same, in conflict with this Resolution are repealed to the extent of such conflict.

PASSED this _____ day of _____, 2022.

APPROVED:

_____
STEPHANIE ORMAN, Mayor

Attest:

_____
KIRBY ROMINES, City Clerk

Lots 13-16 of Young's Addition

407 SE G St., 801, 805, 823, and 825 SE 5th St.
PC Date: 3/1/2022
Reviewer: Jon Stanley, Senior Planner, ASLA, APA

Project Number	PLA21-0059
Applicant / Current Owner	Rodney & Mary Sample, Zeb & Lavee Collingsworth, Wu & Loh Seen, & Serenity P, LLC
Site Area	+/- 0.24 acres
Current Zoning	DC, Downtown Core
Future Land Use Map Designation	General Commercial (C)

https://arcg.is/08HvK8

Location Map

Property Description
These properties are located at 407 SE G St., 801, 805, 823, and 825 SE 5th St.. The properties are currently zoned R-ZL, Zero Lot Line Residential, DN-4, Downtown Mixed Use Residential and R-1, Low Density Single-Family Residential respectively.

Project Details
A property line adjustment of existing lots 6, 7 & 12 of Young's Addition and Lot 23 of 3rd East Addition, creating Lot 13 (+/- 0.26 acres), Lot 14 (+/-0.24 acres), Lot 15 (+/0.31 acres), and Lot 16 (+/-0.15 acres) of Young's Addition. The plat dedicates a small portion of right-of-way along SE 5th Street per the Master Street Plan requirements. The plat also dedicates various utility easements to serve the newly created lots.

Waivers
- There are no waivers associated with this property line adjustment.

Analysis and Recommendation
The proposed property line adjustment does meet the minimum requirements of the Land Development Code.

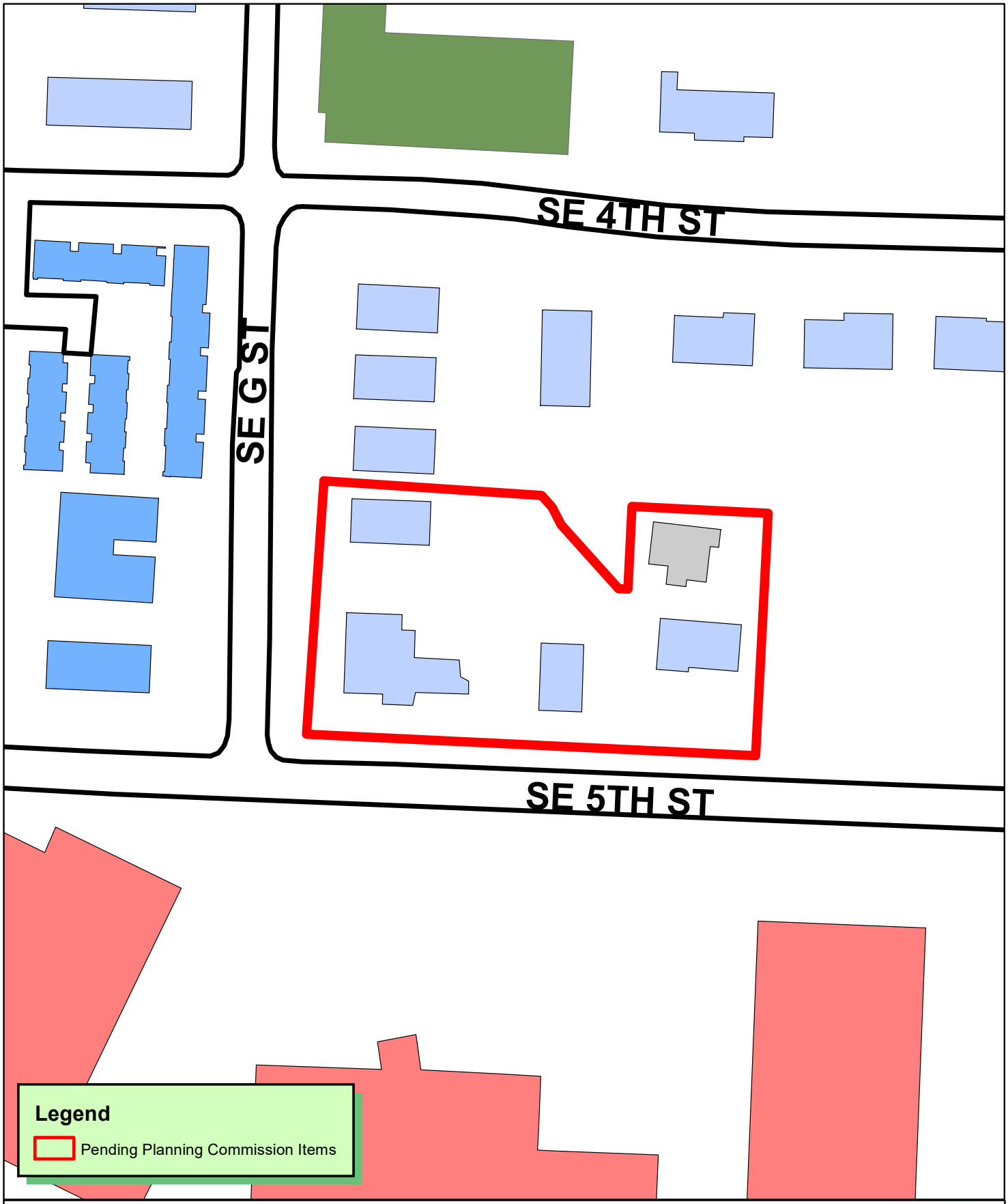
Staff recommends approval of the property line adjustment.

Standard Conditions of Approval
1. Provide a digital copy of the plat.
2. Address all technical review comments prior to filing or requesting a building permit.
3. The plat shall not be filed until a final inspection has been completed and accepted.

NOTES

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

Exhibit "A"



PLA21-0059
PROPERTY LINE ADJUSTMENT
YOUNGS ADDITION
CREATING LOTS 13-16

Exhibit "A"

PROPERTY LINE ADJUSTMENT

Lots 6, 7, & 12 Youngs Addition and Lot 23 3rd East Addition, Creating Lots 13-16 Block 3 Of Youngs Addition, Bentonville Arkansas

Survey Description

PREVIOUS PARCEL #01-04688-000
LOT 7, BLOCK 3, IN YOUNG'S ADDITION TO THE CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD "G" AT PAGE 165.

ADJUSTED PARCEL #01-04688-000
A PART OF BLOCK 3, IN YOUNG'S ADDITION, TO THE CITY OF BENTONVILLE, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING FROM THE SOUTHWEST CORNER OF LOT 6, OF BLOCK 3 OF SAID ADDITION; THENCE S86°42'35"E 106.25' TO A SET 5/8" REBAR BEING THE TRUE POINT OF BEGINNING; THENCE N01°21'09"E 106.02' TO A SET 5/8" REBAR; THENCE N47°19'16"E 54.89' TO A SET 5/8" REBAR; THENCE S43°01'29"E 59.72' TO A SET 5/8" REBAR; THENCE S88°43'49"E 6.25' TO A SET 5/8" REBAR; THENCE S01°16'11"W 104.45' TO A SET 5/8" REBAR; THENCE N86°42'35"W 87.68' TO THE POINT OF BEGINNING, CONTAINING 0.241 ACRES MORE OR LESS. SUBJECT TO EASEMENTS AND RIGHT-OF-WAYS OF RECORD.

PREVIOUS PARCEL #01-04687-000
LOT 6, BLOCK 3, IN YOUNG'S ADDITION, TO THE CITY OF BENTONVILLE, ARKANSAS, AS SHOWN ON PLAT RECORD "G" AT PAGE 165.

ADJUSTED PARCEL #01-04687-000
A PART OF BLOCK 3, IN YOUNG'S ADDITION, TO THE CITY OF BENTONVILLE, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT A FOUND 5/8" REBAR MARKING THE SOUTHWEST CORNER OF LOT 6, BLOCK 3, OF YOUNG'S ADDITION; THENCE ALONG THE EAST RIGHT-OF-WAY LINE SOUTHEAST G STREET N01°22'46"E 105.84' TO A SET 5/8" REBAR; THENCE LEAVING SAID RIGHT-OF-WAY LINE S86°48'11"E 106.20' TO A SET 5/8" REBAR; THENCE N01°21'09"W 106.02' TO A SET 5/8" REBAR LOCATED ON THE NORTH RIGHT-OF-WAY LINE OF SOUTHEAST 5TH STREET; THENCE ALONG SAID RIGHT-OF-WAY LINE N86°42'35"W 106.25' TO THE POINT OF BEGINNING, CONTAINING 0.258 ACRES MORE OR LESS. SUBJECT TO EASEMENTS AND RIGHT-OF-WAYS OF RECORD.

PREVIOUS PARCEL #01-04685-003
LOT 12, BLOCK 3, IN YOUNG'S ADDITION, TO THE CITY OF BENTONVILLE, ARKANSAS, AS SHOWN ON PLAT RECORD "G" AT PAGE 165.

ADJUSTED PARCEL #01-04685-003
A PART OF BLOCK 3, IN YOUNG'S ADDITION, TO THE CITY OF BENTONVILLE, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AT A FOUND 5/8" REBAR MARKING THE SOUTHWEST CORNER OF LOT 6, BLOCK 3, OF YOUNG'S ADDITION; THENCE ALONG THE EAST RIGHT-OF-WAY LINE SOUTHEAST G STREET N01°22'46"E 105.84' TO A SET 5/8" REBAR BEING THE TRUE POINT OF BEGINNING; THENCE CONTINUING N01°22'46"E 50.70' TO A FOUND 5/8" REBAR; THENCE LEAVING SAID RIGHT-OF-WAY LINE S86°45'00"E 134.48' TO A FOUND 5/8" REBAR; THENCE S42°39'15"E 9.80' TO A FOUND 5/8" REBAR; THENCE S43°01'29"E 6.25' TO A SET 5/8" REBAR; THENCE S47°19'16"W 54.89' TO A SET 5/8" REBAR; THENCE N86°48'11"W 106.20' TO THE POINT OF BEGINNING, CONTAINING 0.150 ACRES MORE OR LESS. SUBJECT TO EASEMENTS AND RIGHT-OF-WAYS OF RECORD.

PREVIOUS PARCEL #01-02491-000
LOT 23, OF THE 3RD EAST SIDE ADDITION, TO THE CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD "G" AT PAGE 75.

ADJUSTED PARCEL #01-02491-000
BEING ALL OF LOT 23, OF THE 3RD ADDITION, TO THE CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD "G" AT PAGE 75, AND A PORTION OF THE VACATED ALLEY WAY PER INSTRUMENT #L202173106, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT A FOUND 1/2" REBAR MARKING THE SOUTHWEST CORNER OF SAID LOT 23, THENCE N86°42'35"W 6.25' TO SET 5/8" REBAR; THENCE N01°16'11"E 104.45' TO A FOUND 5/8" REBAR; THENCE S88°43'49"E 6.24' TO A SET 5/8" REBAR; THENCE N01°16'11"E 44.81' TO A SET 5/8" REBAR; THENCE S87°01'33"E 87.10' TO A FOUND 1" PIPE; THENCE S02°27'37"W 149.21' TO A FOUND 1/2" REBAR LOCATED ON THE NORTH RIGHT-OF-WAY LINE OF SOUTHEAST 5TH STREET; THENCE ALONG SAID RIGHT-OF-WAY N87°10'14"W 84.00' TO THE POINT OF BEGINNING, CONTAINING 0.308 ACRES MORE OR LESS. SUBJECT TO EASEMENTS AND RIGHT-OF-WAYS OF RECORD.

Miscellaneous Notes

COMPLETED FIELD WORK:
SEPTEMBER 09, 2020

BASIS OF BEARING:
ARKANSAS STATE PLANE, NORTH ZONE, NAD 83
LATITUDE: 36°22'03.0411"
LONGITUDE: -94°11'59.0696"
CONVERGENCE ANGLE: -01°16'48.09967
THE DISTANCES SHOWN ON THIS PLAT ARE OF COMBINED FACTOR (GRID TO GROUND) 1.000028001784078

REFERENCE DOCUMENTS:
1. WARRANTY DEED FILED IN DEED BOOK 2019 AT PAGE 33931.
2. SURVEY PLAT FILED IN PLAT BOOK 2016 AT PAGE 593.

SOME FEATURES SHOWN ON THIS PLAT MAY BE SHOWN OUT OF SCALE FOR CLARITY.

DIMENSIONS ON THIS PLAT ARE EXPRESSED IN FEET AND DECIMAL PARTS THEREOF UNLESS OTHERWISE NOTED. MONUMENTS WERE FOUND AT POINTS WHERE INDICATED.

BY GRAPHIC PLOTTING ONLY, THIS PROPERTY IS IN ZONE "X" OF THE FLOOD INSURANCE RATE MAP, COMMUNITY PANEL NO. 05007C0255K, WHICH BEARS AN EFFECTIVE DATE OF 06/05/2020 AND IS NOT IN A SPECIAL FLOOD HAZARD AREA.

EXCEPT AS SPECIFICALLY STATED OR SHOWN ON THIS PLAT, THIS SURVEY DOES NOT PURPORT TO REFLECT OF ANY OF THE FOLLOWING WHICH MAY BE APPLICABLE TO THE SUBJECT PROPERTY: EASEMENTS, OTHER THAN POSSIBLE EASEMENTS WHICH WERE VISIBLE AT THE TIME OF SURVEY; RESTRICTIVE COVENANTS; SUBDIVISION RESTRICTIONS OR OTHER LAND USE REGULATIONS; AND ANY OTHER FACTS WHICH AN ACCURATE TITLE SEARCH MAY DISCLOSE.

ALL STRUCTURES MUST MAINTAIN A MINIMUM OF 20' CLEARANCES FROM ALL ELECTRIC LINE.

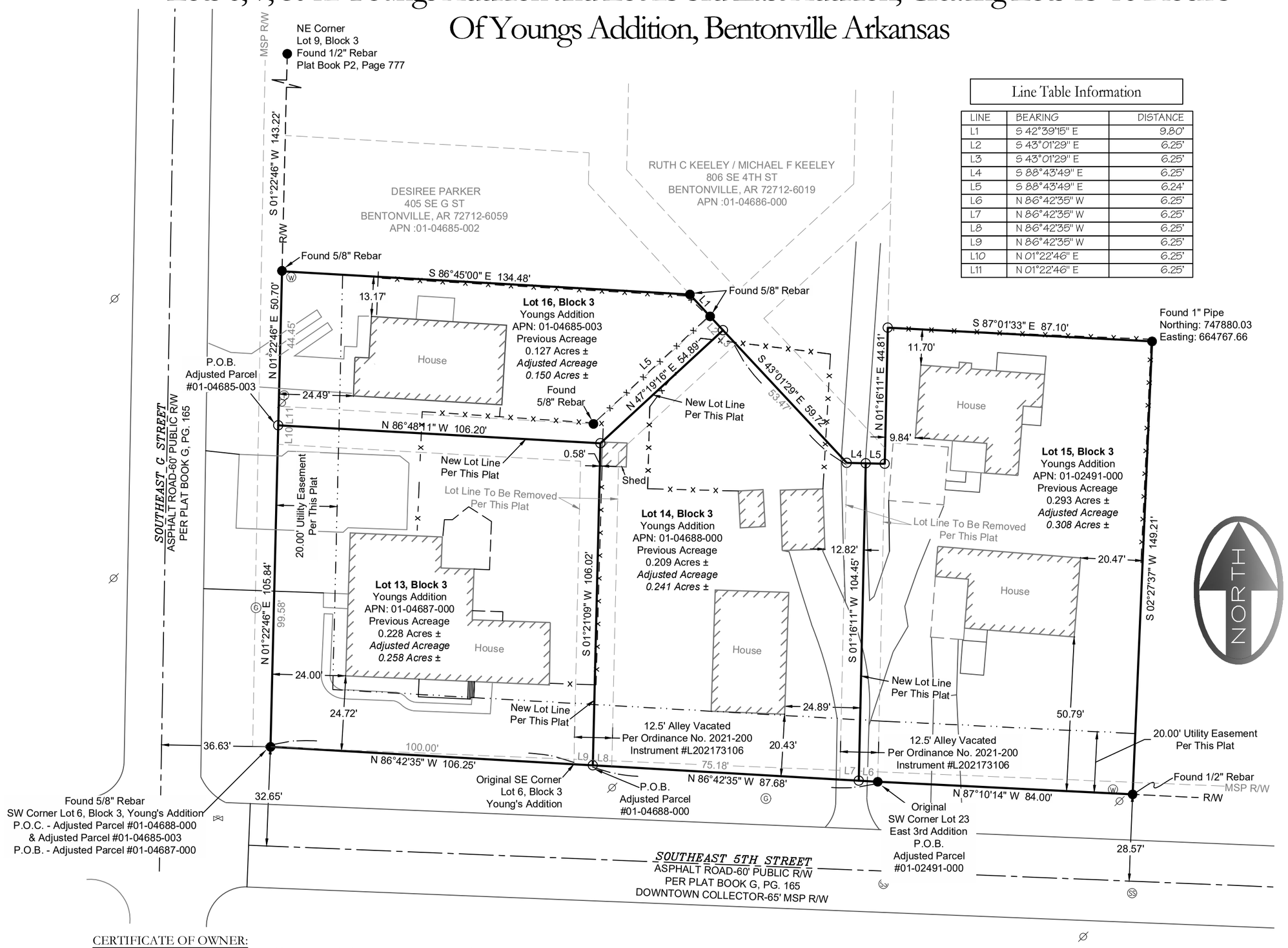
ACCEPTANCE OF THIS PLAT DOES NOT INDICATE THAT ANY OF THE LOTS ARE BUILDABLE ACCORDING TO THE PLANNING REGULATIONS OF BENTON COUNTY, AR, NOR AN ENDORSEMENT BY THE PLANNING BOARD OF SAID BUILDABILITY OF SAID LOTS.

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.

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

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

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



Line Table Information

LINE	BEARING	DISTANCE
L1	S 42°39'15" E	9.80'
L2	S 43°01'29" E	6.25'
L3	S 43°01'29" E	6.25'
L4	S 88°43'49" E	6.25'
L5	S 88°43'49" E	6.24'
L6	N 86°42'35" W	6.25'
L7	N 86°42'35" W	6.25'
L8	N 86°42'35" W	6.25'
L9	N 86°42'35" W	6.25'
L10	N 01°22'46" E	6.25'
L11	N 01°22'46" E	6.25'

CERTIFICATE OF OWNER:

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 & ADDRESS

SOURCE OF TITLE: D.R. _____ PAGE _____

CERTIFICATE OF SURVEYING ACCURACY:

I, HEATH A. MYERS, 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

_____
HEATH A. MYERS
REGISTERED PROFESSIONAL LAND SURVEYOR
NO. AR1826
STATE OF ARKANSAS

CERTIFICATE OF FINAL APPROVAL:

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

DATE OF EXECUTION: _____

SIGNED:_____
BENTONVILLE PLANNING
COMMISSION CHAIRMAN

SIGNED:_____
MAYOR CITY OF BENTONVILLE

SIGNED:_____
CITY CLERK, CITY OF BENTONVILLE

Owner/Developer

OWNER: SERENITY P, LLC
ADDRESS: 805 SE 5TH STREET, BENTONVILLE, AR
APN: 01-04688-000

Zoning & Setback Information

THE PROPERTY IS ZONED IN:
DN-4 DOWNTOWN HIGH DENSITY RESIDENTIAL

BUILDING SETBACK REQUIREMENTS:

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

Utility Notes

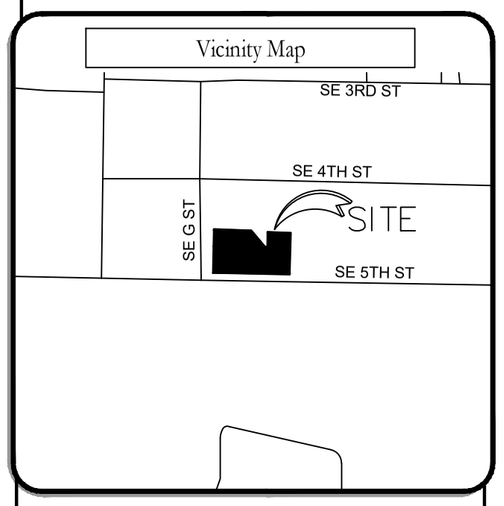
THE LOCATION OF UTILITIES SHOWN HEREON ARE FROM OBSERVED EVIDENCE OF ABOVE GROUND APPURTENANCES ONLY. THE SURVEYOR WAS NOT PROVIDED WITH UNDERGROUND PLANS OR SURFACE GROUND MARKINGS TO DETERMINE THE LOCATION OF ANY SUBTERRANEAN USES. BEFORE DIGGING IN THIS AREA, CALL "ONE CALL" 811 FOR FIELD LOCATIONS (REQUEST FOR GROUND MARKINGS) OF UNDERGROUND UTILITY LINES

CERTIFICATE OF AUTHORIZATION
BLEW & ASSOCIATES, PA.
No. 1534
ARKANSAS

I HEREBY CERTIFY THIS TO BE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF ON THIS THE 4TH DAY OF NOVEMBER, 2021.

PROFESSIONAL LICENSED SURVEYOR
STATE OF ARKANSAS
No. 1826
SIGNATURE
HEATH A MYERS

IF THE SIGNATURE ON THIS SEAL IS NOT AN ORIGINAL AND NOT BLUE IN COLOR THEN IT SHOULD BE ASSUMED THAT THIS PLAT MAY HAVE BEEN ALTERED. THE ABOVE CERTIFICATION SHALL NOT APPLY TO ANY COPY THAT DOES NOT BEAR AN ORIGINAL SEAL AND SIGNATURE.



NORTH

0' 30' 60' 90'
1 INCH = 30 FEET

Legend of Symbols & Abbreviations

- COMPUTED POINT
- SET P/K NAIL
- SET CAPPED 5/8" REBAR BY PS 1826
- FOUND MONUMENT AS NOTED
- SS SANITARY SEWER
- POWER POLE
- EM ELECTRIC METER
- W WATER METER
- WV WATER VALVE
- G GAS METER
- R/W RIGHT-OF-WAY
- C/L CENTERLINE
- BOUNDARY LINE
- LOT LINE
- CENTERLINE OF ROAD
- RIGHT-OF-WAY
- x — x FENCE
- NOT TO SCALE
- UTILITY EASEMENT

FIRM:
BLEW & ASSOCIATES, PA
CIVIL ENGINEERS & LAND SURVEYORS
3825 N. SHILOH DRIVE
FAYETTEVILLE, ARKANSAS 72703
OFFICE: 479.443.4506
FAX: 479.582.1883
www.BLEWINC.com
Certificate of Authorization № 1534

DRAWN BY & DATE:	REVIEWED BY:	SURVEYED BY:
TPN 10/28/2021	TN & HM	DA
COUNTY & STATE: BENTON COUNTY, AR	JOB NUMBER: 21-1335:02	
LOCATION: 805 SE 5TH STREET, BENTONVILLE, ARKANSAS		

FOR THE USE AND BENEFIT OF:

RODNEY SAMPLE

PLA21-0059

ORDINANCE NO._____

AN ORDINANCE ACCEPTING A FINAL PLAT OF OSAGE HILLS SUBDIVISION PHASE 2 TO THE CITY OF BENTONVILLE, ARKANSAS; AND FOR OTHER PURPOSES. (PROJECT NUMBER: FP22-0001).

WHEREAS, pursuant to the provisions of the Land Development Code of the Bentonville Municipal Code, the final plat creating Osage Hills Subdivision Phase 2, to the City of Bentonville, Benton County, Arkansas, was submitted to the Bentonville Planning Commission on March 1, 2022;

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

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 creating Osage Hills Subdivision Phase 2, 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;

Section 3 - Severability Provision: If any part of this Ordinance is held invalid, the remainder of this Ordinance shall continue in effect as if such invalid portion never existed; and

Section 4: Repeal of Conflicting Provisions: All Ordinances, Resolutions, or Orders of the City Council, or parts of the same, in conflict with this Resolution are repealed to the extent of such conflict.

PASSED this _____ day of _____, 2022.

APPROVED:

_____
STEPHANIE ORMAN, Mayor

Attest:

_____
KIRBY ROMINES, City Clerk

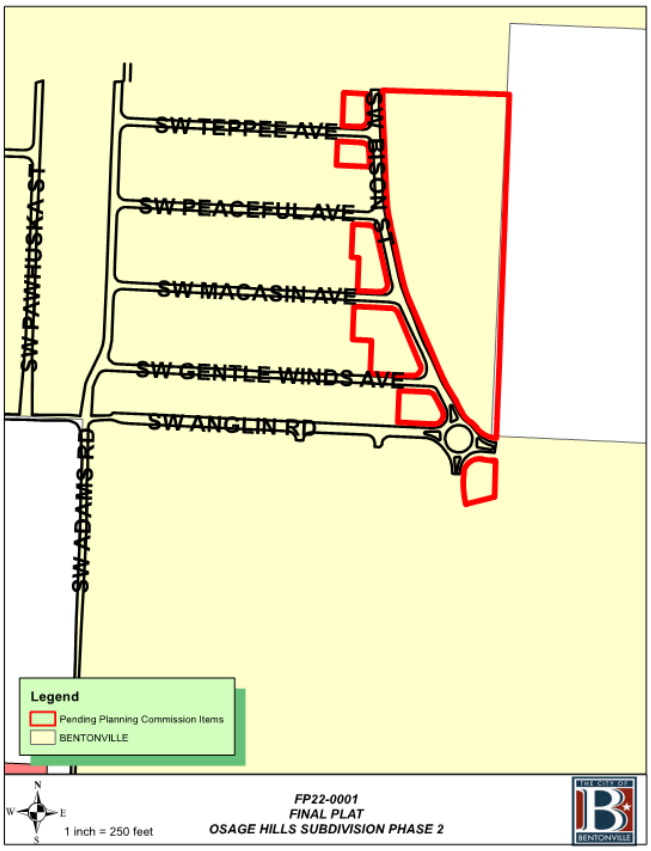
Osage Hills Phase 2

SW Anglin Road and SW Bison Street
PC Date: 3/1/2022
Reviewer: Tyler Overstreet, Planning Services Manager, AICP

Project Number	FP22-0001
Applicant / Current Owner	WM 63 RE, LLC and Osage RE Holdings, LLC
Site Area	+/- 9.66 acres
Current Zoning	R-1, Low Density Single Family Residential
Future Land Use Map Designation	Agriculture (A)

https://arcg.is/08HvK8

Location Map



Property Description
This property is located adjacent to the intersection of SW Bison Street and SW Anglin Road in the Osage Hills Subdivision. The property is currently zoned R-1, Low Density Single-Family Residential.

Project Details
A final plat creating and accepting Phase 2 of Osage Hills Subdivision. The final plat replats Lots 143 through 150 of Osage Hills Phase 1 to create 31 new single-family residential lots. The plat dedicates all necessary easements and rights-of-way to serve the subdivision.

Waivers
No waivers are associated with this Final Plat.

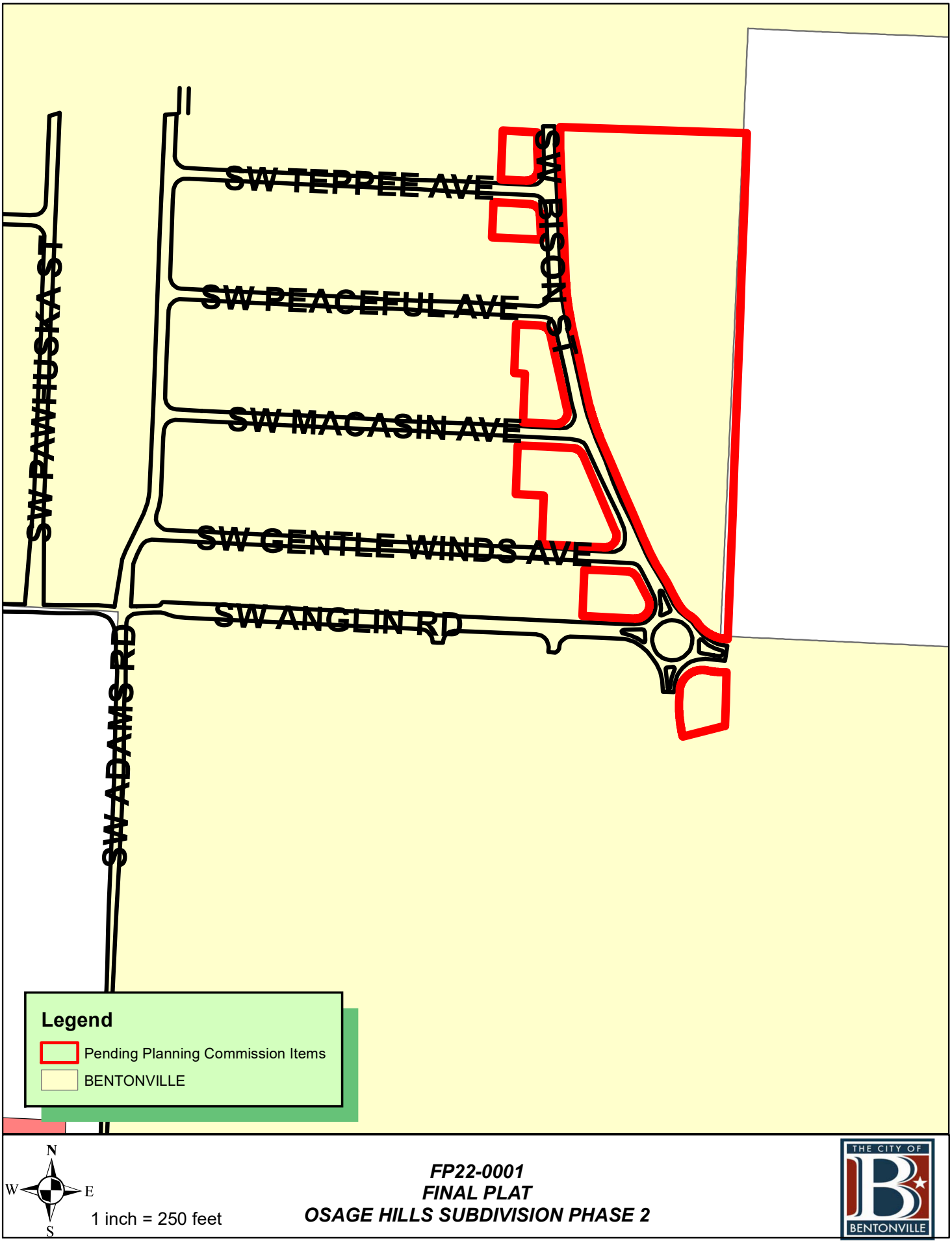
Analysis and Recommendation
The proposed final plat meets all requirements of the Zoning and Land Development Codes. Staff recommends approval of the final plat.

Standard Conditions of Approval
1. Provide a digital copy of the plat.
2. Address all technical review comments prior to filing or requesting a building permit.
3. The plat shall not be filed until a final inspection has been completed and accepted.

NOTES

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

Exhibit "A"



FP22-0001
FINAL PLAT
OSAGE HILLS SUBDIVISION PHASE 2

Exhibit "A"

FINAL PLAT OF PHASE 2:

OSAGE HILLS SUBDIVISION

REPLAT OF LOTS 143 THROUGH 150 OF PHASE 1, CREATING PHASE 2

BENTONVILLE, BENTON COUNTY, ARKANSAS

Recording Block

Owner's Certification and Dedication

We, the undersigned owners of the real estate shown and described herein, do hereby acknowledge that we have the legal right and authority to make the property interest grants contained on and within this document. We, the undersigned owners of the real estate shown and described herein, do hereby establish, grant, and dedicate to the City of Bentonville, Arkansas the easements as shown on this plat for public use and benefit. The City of Bentonville is granted the rights of ingress and egress to and from said easements. The City of Bentonville is granted unrestricted access to the platted private streets for purposes of access for emergency service personnel. The City of Bentonville is granted the right and authority to maintain, service, and improve said easements and the improvements contained therein. Any right or authority granted above specifically regarding maintenance, service, or improvement shall be exercised in a manner chosen at the discretion of the City of Bentonville. Said easements shall be for the benefit of the City of Bentonville and all of its franchised utility providers. The City of Bentonville and its franchised utility providers shall have the right and authority to cut, trim, or remove trees, shrubs, and other vegetation within said easements. The City of Bentonville and all of its franchised utility providers shall also have the right and authority to prohibit the erection of building, structures, or fences within said easements.

Owner **Date**

Owner **Date**

Source of Title: D.R. _____
Page _____

State of Arkansas
County of Benton
Subscribed and sworn before me this _____day of_____,2022.

Notary Public _____

My commission expires _____

NOTES:

- **There are no known Wetlands on this Site.**
- **Owner/Developer shall coordinate with all local utilities to ensure that each lot has water, sewer and electric service.**
- **Sidewalks shall be the responsibility of the builder/owner at time of building permit issuance.**
- **All easements within boundary dedicated per instrument #L202158715 unless otherwise marked with filing information.**
- **Lot 31 is to be dedicated as a drainage easement and needs to be maintained by the POA.**
- **There may not be fences or any other structures built in any drainage easements.**
- **Setbacks shall be per the current zoning district as stated in the most recent City of Bentonville Zoning Code. For more information visit www.bentonvilleplanning.com or call the Planning Department at 479-271-3122.**
- **All roads within the Phase 1 original boundary was dedicated at the time of platting Phase 1 Osage Hills.**

PROJECT ENGINEER/SURVEYOR

Phil Swope, P.E. / P.S.
Swope Engineering
7 Halsted Circle, Suite 210
Rogers, Arkansas 72756
479.685.8399 office

CERTIFICATE OF APPROVAL

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

DATE OF EXECUTION: _____

SIGNED_____
BENTONVILLE PLANNING COMMISSION CHAIRMAN

SIGNED_____
MAYOR, CITY OF BENTONVILLE

SIGNED_____
CITY CLERK, CITY OF BENTONVILLE

LOTS 1 THROUGH 30
SURVEY DESCRIPTION

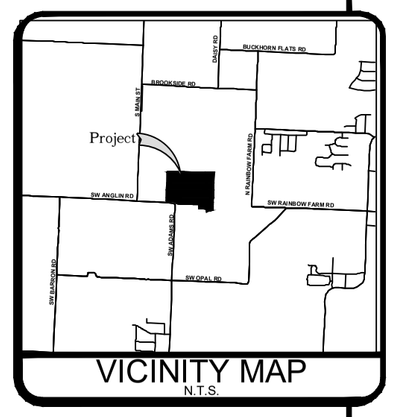
REPLAT OF LOTS 143 THROUGH 150 OF OSAGE HILLS PHASE 1 FILED AT INSTRUMENT #L202158715, BEING RECORDED IN THE OFFICE OF THE EXOFFICIO RECORDER OF BENTON COUNTY, IN THE CITY OF BENTONVILLE, CREATING LOTS 1 THROUGH 31 OF OSAGE HILLS PHASE 2, BENTON COUNTY, ARKANSAS, BEING SUBJECT TO COVENANTS, EASEMENTS, AND RIGHTS-OF-WAY OF RECORD OR FACT.

REVISION LIST

#	TITLE	DATE	NOTES:
1	RE-1	10/04/2021	1st SUBMITTAL
2	RE-2	02/10/2022	City Comments
3	RE-3		

Zone R-1 Building Setbacks

Front	20'
Garage	30'
Interior Side	7'
Exterior Side	20'
Rear	25'



Basis of Bearing
Arkansas State Plane Coordinate System, (NAD-83) North Zone.

Sheet List Table	
Sheet Number	Sheet Title
FP1.0	Cover Sheet
FP2.0	Overall layout of Phase 1 & Phase 2
FP3.0	Final Plat
FP4.0	Final Plat & Curve Table

Miscellaneous Information:

TBM: CITY OF BENTONVILLE GPS MONUMENT #103,
N: 732818.56 E: 640411.49
ELEV. = 1243.69'

FLOOD INFORMATION
The Eastern portion of the proposed plat is located within flood zone "A" or "AE" as determined by the National Flood Insurance Program Flood Insurance Rate Map for Benton County, Arkansas (Firm Panel #05007C0235K Dated 06/05/2012).

LOMR Case No: 21-06-3202A

CERTIFICATE OF SURVEYING ACCURACY

I, TERRY L. GING, HEREBY CERTIFY THAT THIS PLAT CORRECTLY REPRESENTS A BOUNDARY SURVEY MADE UNDER MY SUPERVISION 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.1301
STATE OF ARKANSAS

PROJECT #FP22-0001

FINAL PLAT OF PHASE 2
OSAGE HILLS SUBDIVISION

WM 63 RE 1 LLC & OSAGE RE HOLDINGS LLC
885 3RD AVE RM 2403
NEW YORK, NY 10022
ATTN: MITCH MASSEY (479) 601-1516
SW ADAMS ROAD, & SW ANGLIN ROAD
BENTONVILLE, ARKANSAS

CERTIFICATE OF AUTHORIZATION — SWOPE CONSULTING — No. 2831 — ARKANSAS

PROFESSIONAL LICENSED SURVEYOR — STATE OF ARKANSAS — No. 1889 — SIGNATURE — Phillip R. Swope

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

DRAWN BY:	CASSY	JOB NUMBER	16-218
SUBMITTAL DATE:	2/10/2022	SCALE	AS NOTED
DRAWING NAME:	16-218 - FP Osage Hills, Phase 2.dwg		
SHEET NUMBER:	FP 1.0		

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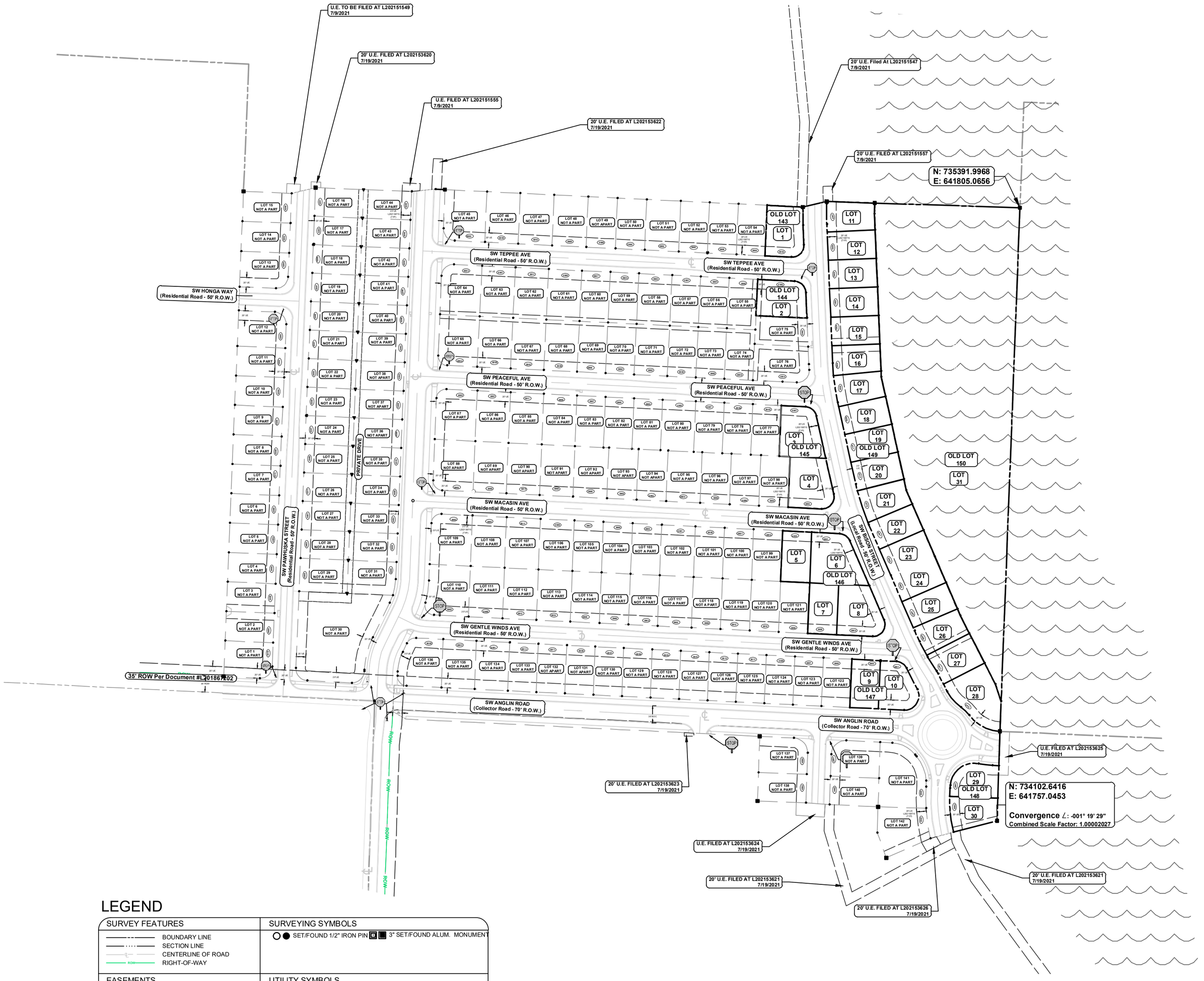
Exhibit "A"



LEGEND

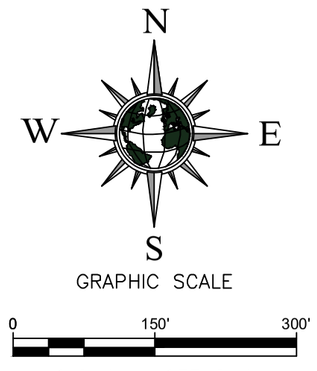
SURVEY FEATURES	SURVEYING SYMBOLS
BOUNDARY LINE	SET/FOUND 1/2" IRON PIN ■ 3" SET/FOUND ALUM. MONUMENT
SECTION LINE	
CENTERLINE OF ROAD	
RIGHT-OF-WAY	
EASEMENTS	**UTILITY SYMBOLS**
ACCESS EASEMENT	SANITARY SEWER, WATER METER
DRAINAGE EASEMENT	WATER VALVE, FIRE HYDRANT
UTILITY EASEMENT	ELECTRICAL BOX, STORM WATER
	LIGHT
	SURVEY FEATURE HATCHES
	ASPHALT, CONCRETE
	GRAVEL, FLOOD ZONE

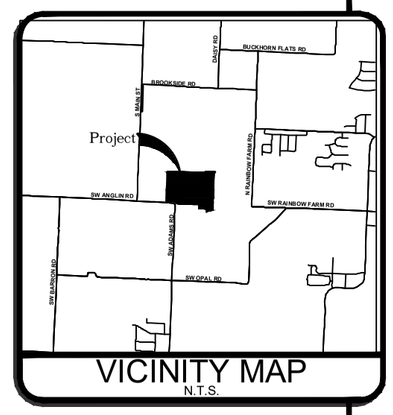
THIS LEGEND MAY CONTAIN LINES & SYMBOLS NOT SHOWN ON THIS PLAT.

ALL EASEMENTS AND ROADS SHOWN WITHIN THE ORIGINAL PHASE 1 PROPERTY LIMITS WERE DEDICATED PER THE FINAL PLAT OF OSAGE HILLS SUBDIVISION FILED IN INSTRUMENT NUMBER L202158715.

PROJECT #FP22-0001

Recording Block





Basis of Bearing
Arkansas State Plane Coordinate System, (NAD-83) North Zone.

FINAL PLAT OF PHASE 2 OSAGE HILLS SUBDIVISION

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885 3RD AVE RM 2403
NEW YORK, NY 10022
ATTN: MITCH MASSEY (479) 601-1516
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DRAWN BY:	CASSY	JOB NUMBER	16-218
SUBMITTAL DATE:	2/10/2022	SCALE	AS NOTED
DRAWING NAME:	16-218 - FP Osage Hills, Phase 2.dwg		
SHEET NUMBER:	FP2.0		

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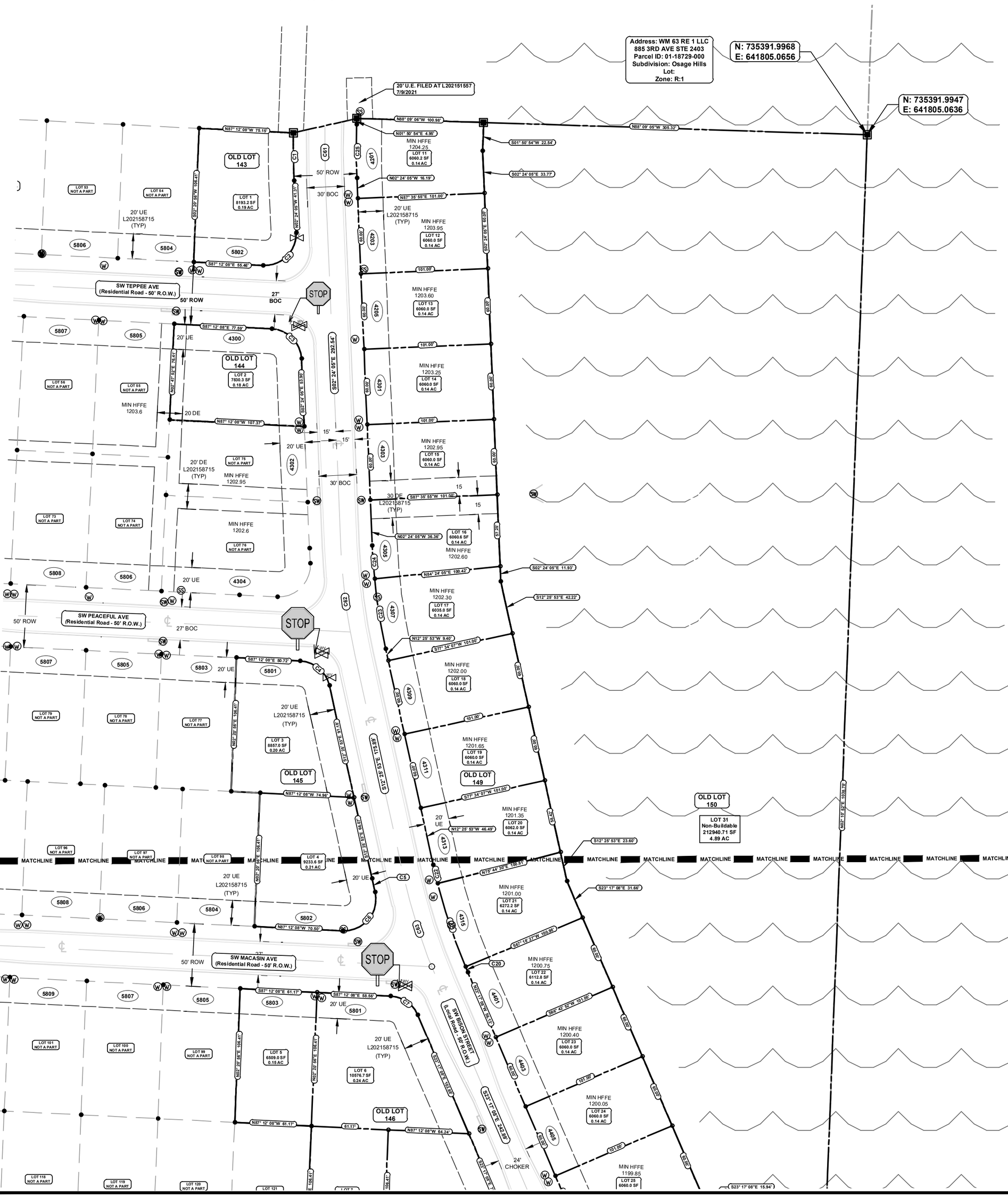

PROJECT #FP22-0001

LEGEND

SURVEY FEATURES	SURVEYING SYMBOLS
BOUNDARY LINE	SET/FOUND 1/2" IRON PIN, 3" SET/FOUND ALUM. MONUMENT
SECTION LINE	
CENTERLINE OF ROAD	
RIGHT-OF-WAY	
EASEMENTS	**UTILITY SYMBOLS**
ACCESS EASEMENT	SANITARY SEWER, WATER METER
DRAINAGE EASEMENT	WATER VALVE, FIRE HYDRANT
UTILITY EASEMENT	ELECTRICAL BOX, STORM WATER
	LIGHT
SURVEY FEATURE HATCHES	
ASPHALT, CONCRETE	
GRAVEL, FLOOD ZONE	

THIS LEGEND MAY CONTAIN LINES & SYMBOLS NOT SHOWN ON THIS PLAT.

Recording Block

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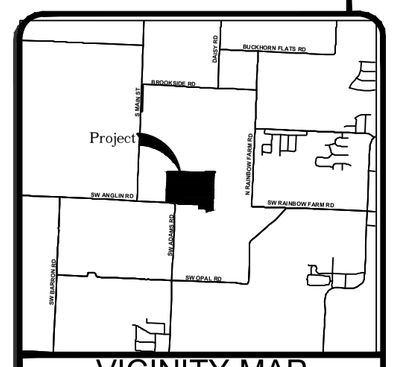
W E
S

GRAPHIC SCALE

0 60' 120'

1 inch = 60 feet



VICINITY MAP
N.T.S.

Basis of Bearing
Arkansas State Plane Coordinate System, (NAD-83) North Zone.

FINAL PLAT OF PHASE 2 OSAGE HILLS SUBDIVISION

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SUBMITTAL DATE:	2/10/2022	SCALE	AS NOTED
DRAWING NAME:	16-218 - FP Osage Hills, Phase 2.dwg		
SHEET NUMBER:	FP3.0		

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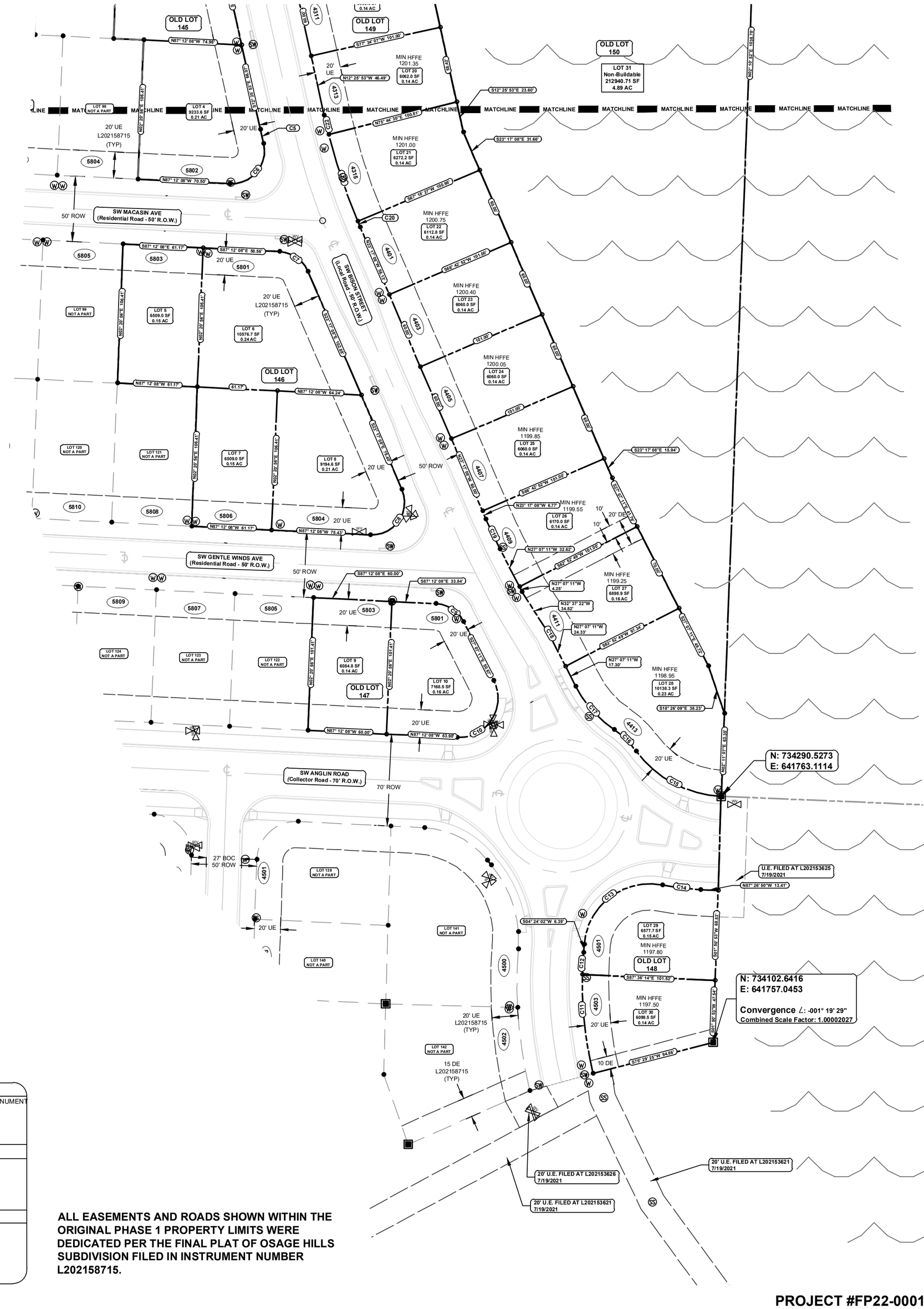
Exhibit "A"

Curve Table				
Curve #	Length	Radius	Chord Bearing	Chord Length
C1	38.08	625.00	N00° 39' 21"W	38.07
C2	41.54	25.00	N45° 11' 53"E	36.92
C3	37.00	25.00	S44° 48' 07"E	33.72
C4	32.63	25.00	S49° 49' 01"E	30.36
C5	11.01	525.00	S13° 01' 55"E	11.01
C6	46.44	25.00	S39° 34' 57"W	40.04
C7	27.89	25.00	S55° 14' 38"E	26.47
C8	50.65	25.00	S34° 45' 22"W	42.42
C9	26.22	25.00	S57° 09' 40"E	25.03
C10	62.79	30.00	S32° 50' 20"W	51.94
C11	76.16	300.05	S06° 05' 37"E	75.96
C12	16.87	300.05	S02° 47' 19"W	16.86
C13	84.68	50.00	S52° 54' 59"W	74.91
C14	29.41	186.50	N83° 05' 10"W	29.38
C15	75.95	85.63	N61° 57' 55"W	73.49
C16	23.67	70.00	N46° 02' 34"W	23.55
C17	44.69	89.50	N41° 25' 27"W	44.23
C18	6.77	70.50	N29° 52' 16"W	6.77
C19	25.09	375.00	N25° 12' 09"W	25.09
C20	4.92	475.00	N22° 59' 20"W	4.92

Curve Table				
Curve #	Length	Radius	Chord Bearing	Chord Length
C21	69.92	475.00	N18° 28' 31"W	69.86
C22	15.15	475.00	N13° 20' 41"W	15.15
C23	56.64	475.00	N09° 00' 54"W	56.61
C24	26.51	475.00	N04° 00' 00"W	26.50
C25	42.65	575.00	N00° 16' 35"W	42.64



LEGEND

SURVEY FEATURES	SURVEYING SYMBOLS
BOUNDARY LINE SECTION LINE CENTERLINE OF ROAD RIGHT-OF-WAY	SET/FOUND 1/2" IRON PIN ■ 3" SET/FOUND ALUM. MONUMENT
EASEMENTS	**UTILITY SYMBOLS**
ACCESS EASEMENT DRAINAGE EASEMENT UTILITY EASEMENT	SANITARY SEWER WATER VALVE ELECTRICAL BOX WATER METER FIRE HYDRANT STORM WATER LIGHT
	SURVEY FEATURE HATCHES
	ASPHALT CONCRETE GRAVEL FLOOD ZONE

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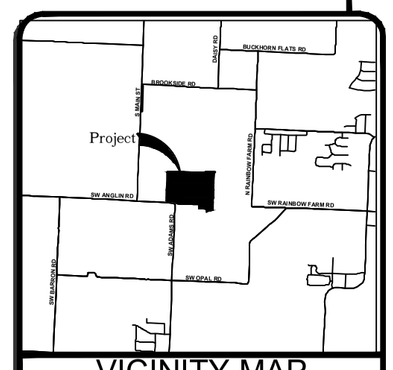
PROJECT #FP22-0001

Recording Block

N
W E
S
GRAPHIC SCALE
0 60' 120'
1 inch = 60 feet



Basis of Bearing
Arkansas State Plane Coordinate System, (NAD-83) North Zone.

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SUBMITTAL DATE:	2/10/2022	SCALE	AS NOTED
DRAWING NAME:	16-218 - FP Osage Hills, Phase 2.dwg		
SHEET NUMBER:	FP4.0		

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Agenda Item Form

Date of City Council Meeting	**3/8/2022**
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 approving a waiver of bid and budget adjustment to purchase 15 kV switches from Hubbell Power Systems, Inc. for the expansion of Substation "I" for $57,153 plus tax (estimated to be $5,429.54). This is a sole source item and matches existing switches used in all of Bentonville's substations. Approved at Utility Board 5-0.

Estimated Cost	**$62,582.54**
Is this Item Budgeted?	☐ Yes ☑ No

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

Budget adjustment from reserves.

Waiver of Bid Request

Date of Utility Board Meeting	**3/1/2022**
Department	**Electric Utility Department**
Submitted by	**Travis Matlock, PE**
Phone	**(479) 271-5941**

Vendor	**Hubble Power Systems, Inc.**
Total Cost	**$ 62,582.54**

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):***

Electric Dept. staff recommends waiving the requirements for competitive bidding and purchasing the 15 kV switches from Hubbell Power Systems, Inc. for $51,153 plus tax (estimated to be $5,429.54) to be used in the expansion of Substation "I". These switches match the switches in all other Bentonville Substations. Approved at Utility Board 5-0.

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

Bidding is not feasible due to purchasing the switches directly from the manufacturer in order to match the others in Bentonville's system.

Budget Adjustment Request

Date of City Council Meeting	**3/8/2022**
Department	**Electric**
Submitted by	**Travis Matlock, PE**
Phone	**479-271-5941**

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

Budget adjustment to use $62,582.54 from reserves to purchase substation switches for the expansion of Substation "I". These are a long lead time item and need to be ordered at this time. The total price include sales tax. Approved at Utility Board 5-0.

General Ledger Account Information*				
Org (Department)	**Object**	**Account Description**	**Revenue + (-)**	**Expense + (-)**
503010	**47310**	**Improvements Other - Electric**		**$ 62,582.54**
		Totals	**$ -**	**$ 62,582.54**
		Net Impact on Fund Balance	**$**	**(62,582.54)**

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

M E M O R A N D U M

DATE: March 8, 2022

TO: **City Council, Mayor Orman**

FROM: Travis Matlock, Electric Utility Director

RE: **15 kV Switches for "I" Sub**

Electric Dept. staff recommends to waive the requirements of competitive bidding and approve a budget adjustment to purchase 15 kV substation switches from Hubbell Power Systems, Inc. for $57,153 plus tax (estimated to be $5,429.54) to be used in the expansion of Substation "I".

With the growth in the SW portion of town, Substation "I" needs to be expanded (2nd transformer added). With the WMT Campus construction, BEUD will re-use an existing transformer in the expansion, but the switches still need to be purchased. These switches are the same make and model BEUD has used in all recent substation construction and is a sole source item. They will be purchased using money from the Electric Dept. reserves.

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE MAYOR AND THE CITY CLERK TO ENTER INTO AN AGREEMENT WITH HUBBELL POWER SYSTEMS, INC. FOR 15 KV SWITCHES FOR THE SUBSTATION "I" EXPANSION IN THE AMOUNT OF SIXTY TWO THOUSAND FIVE HUNDRED EIGHTY TWO DOLLARS AND FIFTY FOUR CENTS ($62,582.54), WAIVING THE REQUIREMENT OF COMPETITIVE BIDDING; ADJUSTING THE 2022 BUDGET TO PROVIDE FUNDING FOR SAID PURCHASE, AND FOR OTHER PURPOSES.

WHEREAS, the City of Bentonville Electric Utilities Department requires 15 kV switches for the expansion of Substation "I"; and

WHEREAS, this is a sole source item required to integrate with existing switches in all Bentonville Electric substations and soliciting additional bids would not produce competitive proposals; and

WHEREAS, this in order to fund this purchase, a budged adjustment in the amount of sixty two thousand five hundred eighty two dollars and fifty four cents ($62,582.54) is required

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 for the purchase of 15 kV switches from Hubbell Power Systems, Inc. for the expansion of Substation "I" in the amount of sixty two thousand five hundred eighty two dollars and fifty four cents ($62,582.54)

Section 2: Because this is a sole source item required for compatibility with existing switches throughout the City of Bentonville Electric Utility System, an exceptional circumstance exists, and it would be neither practical nor feasible to advertise for competitive bidding so that requirement is herein waived.

Section 3: That in order to fund this purchase, a budget adjustment is approved in the amount of sixty two thousand five hundred eighty two dollars and fifty four cents ($62,582.54) from reserve funds, as set forth below:

General Ledger Account Information*				
Org (Department)	Object	Account Description	Revenue + (-)	Expense + (-)
503010	47310	Improvements Other - Electric		$ 62,582.54
		Totals	$ -	$ 62,582.54
		Net Impact on Fund Balance	$	(62,582.54)

Section 4: Severability Provision: If any part of this Ordinance is held invalid, the remainder of this Ordinance shall continue in effect as if such invalid portion never existed.

Section 5: Repeal of Conflicting Ordinances: All Ordinances of the City Council, or parts of Ordinances of the City Council, in conflict herewith are hereby repealed to the extent of such conflict.

PASSED and APPROVED this _____ day of _____, 2022.

APPROVED:

_____
MAYOR

ATTEST:

_____
CITY CLERK

Agenda Item Form

Date of City Council Meeting	**3/8/2022**
Department	**Inventory Control**
Submitted by	**Travis Matlock**
Phone	**(479) 271-3145**

Item Type: (*Check Applicable Item Type)*

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

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

Resolution approving a bid award for capacitor material to the lowest bidder as shown on the attached bid tabulation in the amount of $147,545.60.

Estimated Cost	**$147,546.00**
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: **MARCH 8, 2022**

TO: **City Council, Mayor Orman**

FROM: Travis Matlock, Electric Utility Director

RE: **Capacitor Material Formal Bid # IFB-22-19**

The City of Bentonville recommends awarding the bid for capacitors and capacitor material to the lowest bidder.

Arkansas Electric Cooperative (AECI) in the amount of $147,545.60.

AECI was the lone bidder for the capacitors.

CITY OF BENTONVILLE

FORMAL BID (IFB)-22-19

ITEM	QNT	UNIT	PART NO.	DESCRIPTION	PRICE - AECI	
1	20	EA	1223	CAPACITOR JUNCTION BOX 6"X6" MOLDED WITH (3) 3 CONDUCTOR #16 CABLES WITH 5 PIN PLUGS HUBBELL #33124807 COB PART#1223	$530.00	$10,600.00
2	60	EA	1226	CAPACITOR VACUUM SWITCH VS15-95 15KV 200A 120V HUBBELL #33184404 COB PART#1226	$1,494.00	$89,640.00
3	50	EA	1224	CAPACITOR OIL SWITCH RACK -FOR MOUNTING VAC SWITCH ALUMAFORM #OSM/51892 COB PART#1224	$41.50	$2,075.00
4	5	EA	1222	CAPACITOR CONTROL INSULATOR, LINE POST SENSOR FOR KVAR CONTROL T&B 1301-17A COB PART#1222	NO QUOTE	$0.00
5	16	EA	1220	CAPACITOR ALUMINUM RACK FOR 6 UNITS ALUMAFORM #CR-6/51512 COB PART#1220	$395.00	$6,320.00
6	63	EA	1219	CAPACITOR 200KVAR, 95KV 2 BUSHING COOPER #CEP140A6 *MUST BE GROUNDED COB PART#1219	$610.00	$38,430.00
7	89	EA	1221	CAPACITOR BANK TERMINAL CAPS COOPER #CCM044A1 COB PART#1221	$5.40	$480.60
8	18	EA	2001	TRANS 1.5 KVA SINGLE BUSHING 120/240 SINGLE HANGER BRACKET, WEIGHT LESS THAN 120 POUNDSCOB PART#2001	NO QUOTE	$0.00
						$147,545.60

CITY OF BENTONVILLE, ARKANSAS

PURCHASING DEPARTMENT– (479) 271-3115 – PURCHASING@BENTONVILLEAR.COM
ADMINISTRATIVE SERVICES BUILDING -1000 SW 14TH ST. BENTONVILLE, ARKANSAS 72712

FOR PUBLICATION

PUBLICATION DATES: JANUARY 23, 2022

NOTICE TO BIDDERS

CAPACITORS

Invitation For Bid (IFB)-22-19

The City of Bentonville is accepting formal sealed bids for the one-time purchase and delivery of various Capacitor Items, as specified.

The City reserves the right to cancel this request at any time in accordance with the City's best interest. The City also reserves the right to reject any Bid received and to waive irregularities in accordance with the City's best interest. Submitters agree that such rejection shall be without liability on the part of the City of Bentonville for any damage or claim brought by any Bidder because of such rejections, nor shall the Submitter seek any recourse of any kind against the City because of such rejections. The filing of any Bids in response to this Invitation shall constitute an agreement of the Bidder to these conditions.

All Bids must be accompanied by a Bid Guarantee in the form of a Bid Bond, certified check, or cashier's check in the amount of $500.00 (five-hundred dollars), payable without condition to the City of Bentonville, as a guarantee that the Bidder will enter into a contract if selected for award. The Bid Guarantee shall provide that the Bidder or surety must pay the damage, loss, cost, and expense subject to the amount of the Bid Bond directly arising out of the Bidder's default in failing to honor the submitted bid and execute the Contract (when applicable). Personal checks and company checks are NOT acceptable as a Bid Guarantee. Any bid submitted shall be void unless accompanied by a cashier's check drawn upon a bank or trust company doing business in the State of Arkansas or by a corporate Bid Bond. The Bid Bond shall be in accordance with the requirements contained in the Bidding Documents for this Bid.

The City of Bentonville Purchasing Department encourages all qualified small, minority and women owned businesses to participate and submit Bids for City projects/purchases.

Interested parties can obtain the required Bid Packet by emailing purchasing@bentonvillear.com, by calling 479-271-3115, or from the Purchasing Department located at the address below. The Bid Packet may also be downloaded from the Purchasing Page of the City's website (http://www.bentonvillear.com/211/Purchasing) by clicking 'Review Open Bids'; however, Bidders are encouraged to notify Purchasing that they have downloaded the Bid Packet to ensure they are on the distribution list for Addenda and/or Q&A. Interested Parties should note that there may be a 24-48 hour delay from the date of publication for the documents to be available on the City's website.

There will be a Public Bid Opening for IFB-22-19 held at 10:30am on Tuesday, February 15, 2022; the Bid Opening will be held at the City of Bentonville Administrative Services Building in Room A239 on the 2nd floor, located at 1000 SW 14th Street Bentonville, AR 72712. All Bid Submissions must be received by Purchasing prior to the Public Bid Opening time. Late Submissions, unsigned Submissions and Submissions which do not contain the required Bid Bond 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 before the Bid Opening date and time. Bidders who wish to deliver a Bid Submission prior to the Bid Opening date/time may do so by delivering the Bid Submission to the Purchasing Department located at the address above. Bidders may also choose to deliver their Bid Submission at the Public Bid Opening, but must do so prior to the Public Bid Opening time.

Questions must be submitted via written communication only to purchasing@bentonvillear.com. The deadline to submit questions related to this Invitation is February 9, 2022, at 4:00pm.
DEPARTMENT RESPONSIBLE FOR ADVERTISING COSTS: ACCOUNTING

CITY OF BENTONVILLE, ARKANSAS
PURCHASING DEPARTMENT
ADMINISTRATIVE SERVICES BUILDING
1000 SW 14TH STREET BENTONVILLE, AR 72712
(479)-271-3115 – purchasing@bentonvillear.com

INVITATION FOR BID (IFB) SOLICITATION

SOLICITATION INFORMATION			
Bid Number:	IFB-22-19	**Date of Issuance:**	JANUARY 23, 2022
Description:	Capacitors		
Requesting Department:	City of Bentonville Inventory Department		
Pre-Bid Meeting Information:	NO PRE-BID MEETING SCHEDULED FOR THIS SOLICITATION		
Bid Bond Requirement:	$500.00 BID BOND REQUIRED (SEE BOND SECTION OF THIS IFB DOCUMENT)		

BID OPENING DATE & TIME	
Bid Opening Date and Time:	**FEBRUARY 15, 2022 at 10:30 A.M. CST**
Bid Opening Location:	**City of Bentonville Administrative Services Building** Bid Opening Room – 2nd Floor – Room A239 1000 SW 14th Street Bentonville, AR 72712

DELIVERY OF BID SUBMISSION	
Location (and mailing address) for Bid Submission Delivery:	**City of Bentonville Administrative Services Building** **Purchasing – 2nd Floor** 1000 SW 14th Street. Bentonville, AR 72712
Bid Submission Requirements:	All Bids must be received by the Purchasing Office prior to the date and time listed herein for the Bid opening, in a sealed envelope with the following information clearly marked on the outer envelope: - Solicitation ID (IFB Number) - Bidder's Name/Company Name & Phone Number Bids which must be opened to be identified may be rejected. Bids which are not sealed or are opened upon delivery will not be accepted. Late Bids, unsigned Bids, or Bids which do not contain a Bid bond (when required) will be rejected, without exception. In accordance with Arkansas Procurement Laws and Rules, it is the responsibility of the Bidder to submit their Bid submission correctly and to the designated location prior to the Bid opening time.

Deadline for Submission of Requests for Information, Questions or Clarifications:	FEBRUARY 9, 2022 - 4:00 P.M. CST
Questions should be submitted only to the Purchasing Office via written communication only to purchasing@bentonvillear.com.	

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EXECUTION OF BID PAGE (REQUIRED)

Upon signing this Bid, the Bidder certifies that he/she has read and agrees to the requirements set forth in this Bid proposal including specifications, conditions and pertinent information regarding the articles being Bid on, and agrees to furnish these articles at the prices stated. All information on this page must be completed.

Unsigned Bids will be rejected - no exceptions.

Name of Firm: Arkansas Electric Coop. Inc. **Phone Number:** 501-570-2323

Business Address (Full Street/City/State/Zip): 1 Cooperative Way, Little Rock, AR 72219

Is this address able to accept mail deliveries (for the purpose of returning Bid bonds etc.): ✓ **Yes** __ **No**

Name of Contact Person: Matt Whitley **Email:** Matt.Whitley@aeci.com

Signature of Authorized Person: [redacted] **Date:** 2/7/2022

Printed or Typed Name: Jonathan Oliver **Title:** VP-USSO

Arkansas Contractors License Number:_____ **(Not required unless specified in this document)**

Sales or Use Tax ID Number: 71-0219756

Bid Bond Included: ✓ **Yes** ___ **No (only required if specified in this IFB Document)**

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SECTION 1: OVERVIEW

1. INTENT

The intent of this Invitation for Bid (IFB) is for the one-time purchase and delivery of various Capacitor Items, as specified.

All items shall be delivered to the City in accordance with this IFB Documents and all attached Appendixes.

Special Note: This is not an annual blanket bid; this is for a one-time order of the materials and quantities specified

2. REQUIRED RESPONSE DOCUMENTS

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

- Invitation for Bid (IFB) document, all response fields complete.
- Appendix A , completed
- Appendix B , completed
- $500.00 Bid Bond, as required in this IFB document

3. APPENDIXES

- **APPENDIX A: BID FORM (including Item specifications)** (REQUIRED RESPONSE DOCUMENT)
- **APPENDIX B: VENDOR DISCLOSURE** (REQUIRED RESPONSE DOCUMENT)

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SECTION 2: REQUIREMENTS, TERMS & CONDITIONS

1. GUARANTEE OF BID

Bidders may not withdraw their Bids for a period of 60 days after the Public Bid Opening. The City of Bentonville has 60 days from the Bid Opening date in which to evaluate Bids and recommended award to City Council if it is determined to be in the City's best interest. Bidders may only withdraw their Bids in accordance with the Terms and Conditions herein.

2. BONDS

A. BID BOND (BID GUARANTEE) (WHEN REQUIRED)

Bidders are required to include a Bid Bond as specified when the 'Bid Bond Required' field below has an "x" mark or when otherwise required in this document.

_X__Bid Bond Required __**Bid Bond Not Required for this Solicitation**

All Bids must be accompanied by a Bid Bond/Bid Guarantee in the form of a Bid bond, certified check, or cashier's check in the amount of **$500.00 (five hundred dollars)**, payable without condition to the City of Bentonville. The Bond shall not have an expiration date of less than the number of days specified in the Guarantee of Bid Section of this IFB document. Personal checks and company checks are NOT acceptable as a Bid guarantee.

Bids received that do not include a Bid Bond when required and as specified in this Invitation for Bid will be rejected without exception.

B. BONDS – GENERAL

All bonds shall be executed by such sureties as are named in the list of Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Management Service, Surety Bond Brand, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.

If the surety on any bond furnished by the awarded Bidder is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of set forth herein, the awarded Bidder shall promptly notify the City and shall, within twenty (20) days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements set forth herein.

All bonds and insurance required by this Invitation for Bid and by the binding contract documents executed after the Notice of Award, to be purchased and maintained by the awarded Bidder, shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the work defined herein is to be performed.

4. SPECIFICATIONS

All items shall be delivered as specified in this Invitation for Bid Document and all attach appendixes. Deviations from Specifications must be noted in the Bid Submission.

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3. WARRANTIES

The awarded Bidder shall assume that the City prefers all work and/or items furnished to the City to be warrantied and shall furnish any and all applicable workmanship/material/product warranties to the City.

Bidders are required to include any applicable warranties for the materials/items proposed, in the space provided below:

4. LAWS AND REGULATIONS

The Bidder's attention is directed to the fact that all applicable Federal and State Laws, and the rules and regulations of all authorities having jurisdiction over the purchase or sale of the item(s) shall apply to the contract throughout, and they will be deemed to be included herein and in any awarded contract the same as though herein written out in full.

5. ENOURAGEMENT FOR PARTICIPATION

Pursuant to Arkansas Code Annotated § 22-9-203, the City encourages all qualified small, minority owned, and women owned business enterprises to submit Bids 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 Bids for City projects/purchases.

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6. QUESTIONS/REQUESTS FOR INFORMATION (RFIs)/REQUESTS FOR CLARIFICATION (RFCs)/ADDENDA

All questions or requests related to this Invitation for Bid shall be directed solely to the Purchasing Department via written communication only, via one of the methods below. A copy of the question and the City's response will be distributed to all known document holders via an 'RFI (Request for Information) Response' or via Addenda (Addendum 1,2 etc.).

All questions should reference the IFB number when submitted

Submit Via Email: purchasing@bentonvillear.com

Submit Via Mail: City of Bentonville Administrative Service ATTN: Purchasing Office (solicitation number) 1000 SW 14th Street Bentonville, AR 72712

For Phone Calls: (479) 271-3115

The Purchasing Department will not respond to or otherwise acknowledge requests received after the deadline for submission of these requests stated herein. Questions requesting the Bid Opening date, Bid Bond requirement, and other details clearly outlined herein will not be included in RFI Responses or Addenda unless there are changes in the information after the Advertisement has published.

NOTE: No information communicated verbally or in any other form than a formal RFI Response or Addendum shall be considered firm or contractual; only information contained herein or otherwise in an RFI Response or Addendum shall be contractual.

Bidders are required to acknowledge any Addenda issued in their Bid Submission, per the requirements in the Addendum; Bidders are not required to acknowledge RFI Responses in their Bid Submissions.

7. EQUIVALENT ITEMS/REFERENCED SPECIFICATIONS

Whenever these specifications mention an item by name and use specific descriptions as reference thereto (such as model, part, brand names etc.), it is intended to convey to the Bidder an understanding of the standard of excellence required. Items that Bidders believe to be of equal type, quality, and size that will conform substantially to the standard of excellence established to provide equivalent merit, strength, durability, and to perform the required function in accordance with these specifications may be offered. Bids containing items proposed as equivalent (or alternate) shall clearly describe the equivalent (or alternate) article being offered and indicate how it differs from the City's original specification and how it conforms to the specification. Descriptive literature or manufacturer's specifications, in addition to any supplemental information necessary for comparison purposes should also be submitted with the Bid. It is the Bidder's responsibility to demonstrate to the City that a equivalent (or alternate)/substitute offer is equivalent to and meets the standard of quality indicated by the City's specifications. The City of Bentonville shall have the final approval of whether a substitute (or alternate) item is equal to the item specified. Submitting false claims that an item is 'as specified' when the item is an alternate or is otherwise not conforming to the specification shall be considered a lack of responsibility and the Bid from that Bidder may be rejected.

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EQUIVALENT ITEMS/REFERENCED SPECIFICATIONS CONTINUED

If no substitute or equivalent item will be accepted by the City due to existing equipment or processes in place, the specified item will have "NO SUB" included. When the City specifies "NO SUB", no substitute or alternate item will be accepted.

8. INDEMNIFICATION

Due to the City statutory tort Immunity, the City does not carry liability insurance for such claims. Accordingly, any contract entered into with the awarded Bidder may not include a clause in which the City agrees that it or its' officials or employees will indemnify the other party.

The awarded Bidder agrees to indemnify the City and hold it harmless against all claims, liability, loss, damage or expense, including but not limited to counsel fees, arising from or by reason of any actual or claimed trademark, patent or copyright infringement or litigation based thereon, with respect to the service or any part thereof covered by this order, and such obligation shall survive acceptance of the services and payment thereof by the City.

9. PAST PERFORMANCE/REFERENCES

The City reserves the right to request references and to contact those references as part of the evaluation of Bids submitted to this Invitation for Bid. The City reserves the right to use the information gained from contacting references or from reviewing a Bidder's prior performance with the City in the evaluation of Bids, including but not limited to evaluating a Bidder's prior performance of the same or similar scope of work or delivery of items for the City or any other entity for whom the Bidder has performed work. The City reserves the right to request additional information from the apparent low Bidder if it is deemed to be in the City's best interest, and use that information in the evaluation for award based on what is in the City's best interest.

10. ARKANSAS FREEDOM OF INFORMATION ACT (FOIA)

By submitting a Bid in response to this IFB, Bidder acknowledges and understands that the City is subject to the Arkansas Freedom of Information Act (FOIA) and City contracts and documents prepared while performing City work are subject to this Act. In the event that a FOIA request is presented to the City, the awarded Bidder agrees to do everything possible to provide any requested documents that they may be in possession of in a prompt and timely manner as prescribed in A.C.A. §25-19-101. Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

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11. BIDDER'S DOCUMENTS

The only terms and conditions that will become part of the award/awarded Contract are those documents issued by the City as part of this IFB, or documents furnished by the awarded Bidder (such as a contract) that are in accordance with the terms and conditions contained in this IFB and approved for Mayor's signature by the City's Legal Department.

Bidder's inclusion of their terms and conditions or other types of documents containing terms and conditions regarding payment, invoicing, indemnification or any other type of term are not accepted based on inclusion in the Bid Submission and will not be acknowledged as conditions to the Bid.

Bidders are required to use ONLY the prescribed City forms in their Bid Submission unless Bidder has included additional information for the City's consideration of an 'equivalent'/'alternate' item (i.e. product data sheets etc. are acceptable).

12. INVOICING

The awarded Bidder shall provide invoices for the City's review and approval prior to payment. The City will not pay from any document other than an invoice (i.e. payments will not be processed based on contracts, etc.).

The invoicing option(s) available to Bidders for this IFB are indicated below by an "x" mark in the option(s) available.

_X__Invoice upon delivery (Payment within 14 days)

Payment will not be made for incomplete work or for item(s) delivered out of spec (not as specified). Any return or correction shall be at the awarded Bidder's expense. The City reserves the right to cancel an order due to receiving out of spec item(s) or request a replacement, whatever is in the City's best interest.

Unless otherwise specified, invoices will be paid within fourteen (14) days of receipt of an approved invoice.

All invoices should be submitted to the City of Bentonville Accounts Payable Office, address and email below:

City of Bentonville Administrative Services
ATTN: Accounts Payable
1000 SW 14th ST
Bentonville, AR 72712
accountspayable@bentonvillear.com

13. BIDDER REQUESTED PAYMENT TERMS

Bidders must use the space provided below to communicate their requested payment terms. Requests are not guaranteed for approval.

√ NET 30 Days from Invoice Submission ___NET 60 Days from Invoice Submission __Other (Specify Below)

_____

_____

CITY OF BENTONVILLE, ARKANSAS
PURCHASING DEPARTMENT
ADMINISTRATIVE SERVICES BUILDING
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SECTION 3: INVITATION FOR BID ADDITIONAL TERMS & CONDITIONS/INSTRUCTIONS TO BIDDERS

1. **SCOPE:** These instructions and conditions shall be in force unless otherwise modified by the City in this Bid Document. Bidders shall be advised that the City of Bentonville is not responsible for the content of any Bid package received through any 3rd party Bid service. It is the sole responsibility of the vendor to ensure the completeness of the documents received from any 3rd party source.

2. **DEFINITIONS (AS USED HEREIN):**
   a. The term "Invitation For Bid" means a solicitation for formal, competitive sealed Bids. The acronym "IFB" means Invitation for Bid. "Solicitation" may also be used throughout to refer to the Invitation for Bid.
   b. The term "Bid" means the offer by the Bidder.
   c. The term "Bidder" means the person or organization responding to the Invitation for Bid.
   d. The term "Contractor" means a person or organization who is the successful Bidder and who enters into a contract with the City.
      *At times in this document the terms Bidder and Contractor are interchangeable.
   e. The term "Change Order" means a written order from or approved by the Purchasing Department directing the Contractor to make changes to a Contract.
   f. The term "City" means the City of Bentonville, Arkansas.
   g. The term "City Council" means the governing body of the City of Bentonville, Arkansas.

3. **PREPARATION OF BIDS:** Bidders shall review the specifications, drawings, and all special and general conditions and any other documents included as part of this Invitation for Bid. Bidders are responsible for field verifying to work or other means of familiarizing themselves with the Scope of Work of this Invitation for Bid. Failure to do so will be at the Bidder's risk.

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

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

   The Bidder must state a definite time for delivery of supplies or performance of services; in cases where the Bidder does not state a definite time, the City's specified timeline shall apply.

   Multiple Bids: Bidders are prohibited from submitting multiple Bids for the same product in response to a competitive sealed Bid solicitation. In the event that a Bidder submits multiple Bids for the same product, all Bids from that Bidder will be rejected
   Exception for Different Models: In the event that the Bidder believes they have multiple different models or products (such as equivalent items) that meet the City's specifications, the Bidder may submit multiple Bids in response to a competitive sealed Bid solicitation as long as the following requirements are met:
   (1) The Bids are submitted in separate sealed envelopes;
   (2) The products being proposed in each submission are different makes, models or otherwise types of products.

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4. **SUBMITTING A BID:** Bids must be received by the City of Bentonville Purchasing Department **BEFORE** the time of opening indicated in the solicitation. All references to time shall be Bentonville, Arkansas time (Central Time Zone). Late Bids will be rejected without exception. Any exceptions or additional information required on a solicitation will be noted in the Bid documents or issued via clarification or Addendum. Failure to provide any requested information or to follow these procedures may result in the rejection of your Bid.

5. **BID DOCUMENT MISTAKES:** The Bidder shall not be allowed to modify or correct mistakes in the Bid document after the opening of the Bid, unless the mistake is determined to be non-judgmental by the Purchasing Manager. Failure to complete the entire Bid accurately may result in declaring the Bid as non-responsive and the Bid may be rejected.

   Bids may be withdrawn by the Bidder after submission for revisions or modifications at any time prior to the deadline for receipt of Bids (or Bid opening). Any such request for withdraw must be in writing either by email or other acceptable electronic manner as outlined in the Bidding documents, hand delivered or mailed communication. After Bids are opened, they shall be irrevocable for the period specified in the Bid documents, unless a nonjudgmental mistake (such as a math error), as determined by the Purchasing Manager, is suspected by the Purchasing Manager or the Bidder, or unless Bidder is permitted to withdraw their Bid pursuant to Arkansas State Law. If a nonjudgmental mistake is suspected, such as a math error, the Bidder shall submit a written request to the Purchasing Department requesting either to withdraw their Bid submission or to correct the nonjudgmental mistake. In the event that the City becomes aware of the mistake prior to the Bidder, the Bidder shall respond within two (2) days of receiving notification of the discovery with a written request to the Purchasing Department to verify a correction or requesting to withdraw their Bid. Any such request for withdraw or correction must be in writing either by email (or other acceptable electronic manner as outlined in the Bidding documents), hand delivered or mailed communication. Once a Bid has been verified, it shall be considered submitted, as verified.
   (1) In the event of discrepancy between a unit price and an extended price, the unit price shall govern.
   (2) At no point shall a correction of a mistake result in reduction or increase of a Bidder's unit price(s). If correction of the mistake would result in either an increase or decrease in the unit price, the Bid shall be considered nonresponsive and shall be rejected.

   The City shall permit a Bidder to withdraw its Bid without penalty or forfeiture of Bid security if: (a) a nonjudgmental mistake is evidence on the face of the Bid, or (b) the Bidder establishes by clear and convincing evidence that a nonjudgmental mistake was made.

6. **ACCEPTANCE OF OFFER:** The submitted Bid is considered an offer on the part of the Bidder; such offer is deemed accepted upon issuance by the City of a Purchase Order, Notice of Award, Contract or other contractual or otherwise binding document.

   Bidder's accept all terms and conditions herein upon submission of their signed Bid.

7. **FIRM PRICES:** By submitting the Bid, Bidder signifies that the prices, terms and conditions quoted in their Bid will be firm for acceptance for a period of not less than ninety (90) days from the Bid opening date unless otherwise specified in the solicitation. Prices quoted must remain firm for the period of performance of any resulting purchase order or contract to be performed over a specified period of time as indicated in the solicitation.

   UNIT PRICES: Unit prices and all other pricing shall be rounded to the nearest cent. In the event of discrepancy between the unit price and the extended price, the unit price shall govern. At no point shall a correction of a mistake result in reduction or increase of a Bidder's unit price(s). If correction of the mistake would result in either an increase or decrease in the unit price, the Bid shall be considered nonresponsive and shall be rejected.

CITY OF BENTONVILLE, ARKANSAS
PURCHASING DEPARTMENT
ADMINISTRATIVE SERVICES BUILDING
1000 SW 14TH STREET BENTONVILLE, AR 72712
(479)-271-3115 – purchasing@bentonvillear.com

8. **CONTRACT RENEWAL:** The City reserves the right to renew any contract resulting from this solicitation at the same prices, specifications, terms and conditions, upon mutual agreement between the City and the contractor.

9. **ESTIMATED QUANTITIES**: Whenever a Bid requests prices to be firm for a period of performance, the quantities or usages shown are estimated only with no guarantee made by the City. The quantities are for the Bidder's information only, and the City will be bound only for actual quantities ordered.

10. **DISCOUNTS**: Cash discounts will be considered in determining the award. Unless otherwise indicated in the IFB, discounts offering 10 days or more will be taken by the City's Accounts Payable Division, with payment made on the nearest pay period after receipt, inspection and acceptance of articles, and receipt of correct invoice(s).

11. **SAMPLES**: Samples of items, when required, must be submitted within the time specified at no expense to the City. If not destroyed by testing, samples may be returned at the Bidder's expense unless otherwise indicated in the solicitation.

12. **AWARD**: Award will be made to the lowest most responsive and responsible Bidder, which will be judged on the basis of price, conformance to specifications, quality, delivery time, references, past performance, payment terms, and in the best interest of the City of Bentonville, all factors being considered.

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

    The Purchasing Manager has the authority to cancel award of a solicitation if, in their discretion and the City Department's (over the project) discretion, Bids received do not meet the City's needs or for any other reason where award would not be in the City's best interest.

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

    Conditional Bids are not acceptable and are subject to rejection in whole or in part at the sole discretion of the City.

    In the event of two or more identical low Bids, award will be made to the lowest and most responsible and responsive Bidders as determined by the City through the Bid evaluation process.

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

13. **BRAND NAMES:** If brand names, make, name of any manufacturer, trade name, or vendor catalog number are specified in these Bid documents, it is for the purpose of establishing a grade or quality of material only. When the City does not wish to rule out other brands or makes, the phrase OR EQUAL (OR EQUIVALENT, OR ALTERNATE) is added. However, if a product other than that specified is Bid, it is the Bidder's responsibility to identify such product in their Bid and prove to the City that the product is equal to or better than the product specified. Unless otherwise indicated, evidence in the form of samples may be requested if the proposed brand is other than that specified by the City. Such samples are to be furnished as specified in the solicitation or upon request of the City. Any samples requested by the City must be received by the City no later than four (4) days after formal request is made. The decision to accept a proposed item is solely the City's.

CITY OF BENTONVILLE, ARKANSAS
PURCHASING DEPARTMENT
ADMINISTRATIVE SERVICES BUILDING
1000 SW 14TH STREET BENTONVILLE, AR 72712
(479)-271-3115 – purchasing@bentonvillear.com

14. **VARIATIONS OF SPECIFICATIONS:** For purposes of evaluation, Bidder must indicate any variances from any provision, specification, or condition stated in this solicitation, no matter how slight. If Bidder does not indicate any variations, it will be assumed that the product or service fully complies with the provisions, specifications, or conditions as stated. If the City determines that variances exist in the specification which the Bidder did not indicate (or falsely represented a lack of variances), the City reserves the right to declare the Bid non-responsive and reject the Bid from that Bidder. If satisfactory Bids are not received for the City's specifications, the City reserves the right to consider alternate Bids containing deviations from stated specifications.

15. **QUALITY:** Unless otherwise identified in the solicitation, all materials used in the manufacture or construction of supplies, materials or equipment covered by this solicitation shall be new. The items Bid must be the latest make or model in current production, as offered to commercial trade, and of the highest quality material and workmanship. Used, shopworn, demonstrator, prototype, or discontinued models are not acceptable.

16. **ECO-FRIENDLY (GREEN) PRODUCTS:** The City of Bentonville supports the use of products that are ecologically friendly to the environment. Bidders are urged to include information with their Bid that describes the human health and environmental impact of products proposed. This eco-friendly approach takes into account, but is not limited to, waste production, energy and water use, greenhouse gas emissions, indoor air quality, recycled and reused content and packaging, and the presences of hazardous substances. Consideration may be given to these eco-friendly products when compared to mainstream products in cost and packaging.

17. **MATERIAL SAFETY DATA SHEET (MSDS):** It is mandatory for a manufacturer, supplier, or distributor of hazardous material to supply an MSDS as required by 29CFR 1910.1200 with the first shipment. Any time the content of an MSDS is revised, the vendor is required to provide a new MSDS to the City.

18. **ACCEPTANCE OF MATERIAL:** The material delivered under this Bid shall remain the property of the seller until a physical inspection and actual usage of this material and/or service is made and is accepted by the City. It must comply with the terms of this IFB, and fully comply with specifications, and be of the highest quality. In the event the material and/or services supplied to the City is found to be defective or does not conform to specifications, the City reserves the right to cancel the order upon written notice to the contractor and return product to contractor at the contractor's expense. In the event that the City does not cancel the order but requests Bidder to bring the item(s), material(s) or service(s) to specification (correct the items), the corrections must be made at the awarded Bidder's expense and responsibility and must be completed within a timely manner as indicated by the City. If Bidder attempts to correct the item, material or service but fails to do so, or fails to do so in a timely manner, the City may elect to cancel the order at the awarded Bidder's expense.

19. **CODES AND REGULATIONS:** All products supplied and work performed within the scope of this request shall be supplied by the successful Bidder to all applicable current prevailing City, State and Federal codes and regulations.

20. **DELIVERY:** Bidders must complete the Delivery Section of this IFB. Delivery time may be considered in making an award. The City reserves the right to cancel any order, or any part of that order, without obligation if delivery is not made within the time(s) specified on in this IFB.

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

    All deliveries shall be FOB Destination to the location listed on the purchase order, contract, other approved form or as specified in this IFB unless otherwise specified by the City. Bidders may be requested to provide separate pricing for delivery of all items in this solicitation.

CITY OF BENTONVILLE, ARKANSAS
PURCHASING DEPARTMENT
ADMINISTRATIVE SERVICES BUILDING
1000 SW 14TH STREET BENTONVILLE, AR 72712
(479)-271-3115 – purchasing@bentonvillear.com

21. **THIRD PARTY FREIGHT SERVICE:** The City of Bentonville may, at its discretion, use a third party freight service to arrange for delivery of the goods ordered as a result of this solicitation. In this case, the freight terms will be FOB Destination/Third Party Prepaid.

22. **PRICE CHANGES ON CONTRACTS**: If this solicitation is for an estimated quantity of supplies, consideration in awarding Bid for yearly contracts will be given:
    - First to Bidder offering firm prices for full contract period; and
    - Second to Bidder offering firm prices subject to market price adjustment.

23. **COPYRIGHT OR PATENT RIGHTS**: By submitting the Bid, Bidder signifies that there has been no violation of copyrights or patent rights in manufacturing, producing or selling the goods shipped or ordered as a result of the Bid, and Bidder agrees to hold the City harmless from any and all liability, loss, or expense caused by any such violation.

24. **CONFLICT OF INTEREST**: The contractor, by signing the Bid form in the solicitation or by acceptance of any purchase order resulting from this solicitation, certifies that to the best of their knowledge or belief, no elected or appointed official of the City is financially interested, directly or indirectly, in the purchase of the goods or services specified on this order or in the contract.

25. **TAXES**: The City of Bentonville is not tax exempt from any taxes imposed by the State and/or Federal Government. Applicable taxes should be included on all bids.

    The City of Bentonville sales tax rate is 9.5%; all products shall be delivered to the City of Bentonville or work shall be performed within City limits.

    It is the responsibility of the Bidder to include sales tax in their Bid when applicable regardless of the Bidder's ability to remit sales tax to the State of Arkansas. In no event should applicable taxes cause the City to pay more than the submitted Bid price.

26. **MANUFACTURER'S CERTIFICATION:** The City reserves the right to request from Bidders a separate manufacturer certification of all statements made in the Bid. Failure to provide any requested certification may result in rejection of Bid or termination of contract for which the Bidder must bear full liability.

27. **TERMINATION:** Subject to the following provisions, any contract resulting from this solicitation may be terminated by either party upon thirty (30) days advance written notice to the other party; but if any work or service is in progress but not completed as of the date of termination, then said contract may be extended upon written approval of the City until said work or services are completed and accepted. Types of termination include, but are not limited to:

    1. Termination for Convenience
       In the event that the contract is terminated or cancelled upon request and for the convenience of the City, without the required thirty (30) days advance written notice, then the City shall negotiate reasonable termination costs, if applicable.

    2. Termination for Cause
       Termination by the City for cause, default or negligence on the part of the contractor shall be excluded from the foregoing provision; termination costs, if any, shall not apply. The thirty (30) days advance notice requirement is waived in the event of termination for cause.

CITY OF BENTONVILLE, ARKANSAS
PURCHASING DEPARTMENT
ADMINISTRATIVE SERVICES BUILDING
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3. Termination Due to Unavailability of Funds
When funds are not appropriated or otherwise made available to support continuation of performance, the contract shall be cancelled at the discretion of the City and without penalty to the City.

28. **W-9 REQUIREMENT:** The City of Bentonville requires a Form W-9 (Request for Taxpayer Identification Number and Certification), updated annually, from all contractors that do business with the City of Bentonville. The Form W-9 verifies the Tax Identification Number of the contractor so the City can correctly report to the IRS all funds paid to the contractor.

29. **DEFAULT OF CONTRACT:** In case of default by the contractor, the City may procure the items or services from other sources and hold the contractor responsible for any excess costs caused by such procurement. Failure of a Bidder to furnish the equipment, supplies, material, and/or services as specified is cause for elimination of the Bidder from the active Bidder's list for the products or services concerned.

30. **BID BOND:** If required in this solicitation, Bidders shall include a Bid guarantee in the form of a Bid bond, certified check, cashier's check in the amount specified in the Bidding Documents, payable without condition to the City of Bentonville. Personal or company checks are not acceptable The Bid bond shall be accompanied by a power of attorney showing the authority of the person executing the bond on behalf of the surety company and shall adhere any other requirements regarding Bid Bonds as set forth in this IFB document. Failure to include a Bid bond or Bid guarantee with your Bid submission when required will result in automatic rejection of the Bid. Bid guarantees (submitted by certified or cashier's checks) will be returned to unsuccessful Bidders when the successful Bidder is determined and the contract is executed.

31. **PERFORMANCE & PAYMENT BOND:** At the discretion of the City, a performance bond may be required under the contract resulting from this solicitation. Such bond must be of a type and amount suitable for the nature of the commodity or services purchased and for the full dollar amount of the contract as indicated in this solicitation. The performance bond shall be for the duration of the contract, guaranteeing the faithful performance of the contract and payment of all of Contractor's subcontractors and/or vendors, and otherwise conditioned as required by law. The Performance and Payment Bonds shall be accompanied by a power of attorney showing the authority of the person executing the bond on behalf of the surety company and shall conform to all other requirements for these bonds as specified in this IFB document. Bond forms must be executed with a surety company licensed to do business in the State of Arkansas. The cost of the bond shall be included in the Bidder's offer; at no time will the City be liable for the costs associated with a Performance and/or Payment Bond.

32. **MODIFICATIONS FOR CHANGES**: No agreement or understanding to modify this solicitation and resultant purchase orders or contract shall be binding upon the City unless made in writing by the Purchasing Department of the City of Bentonville.

33. **ORDER OF PRECEDENCE:** In the event of an inconsistency between provisions of the solicitation, the inconsistency will be resolved in the following order: (a) the IFB document; (b) Additional Terms and Conditions and Instructions to Bidders ; (c) special provisions; (d) other provisions of the contract, whether incorporated by reference or otherwise; and, (e) the specifications.

34. **WARRANTY:** Supplies or services furnished as a result of this solicitation shall be covered by the most favorable commercial warranties, expressed or implied, that the Bidder and/or manufacturer gives to any customer. The rights and remedies provided herein are in addition to and do not limit any rights afforded to the City by any other clause of

this Bid. The City reserves the right to request from Bidders a separate manufacturer certification of all statements made in the Bid.

35. **PAYMENT:** Payment for materials or services received under this contract will be made upon completion of delivery for each purchase order and submission of invoice to the Accounts Payable Department, 1000 SW 14th Street, Bentonville, AR 72712. Normal payment terms are payment via check within fourteen days from receipt of invoice.

38. **GOVERNING LAW:** Any agreement resulting from this solicitation shall be interpreted under and governed by the laws of the State of Arkansas.

39. **ESCALATION/DE-ESCALATION CLAUSE:** In the event prevailing market conditions warrant an adjustment in contract pricing, the following escalation/de-escalation clause shall be the only clause acceptable to the City:

    1. Contractor shall give written notice to the Purchasing Department of any proposed changes from contract prices not less than fifteen (15) calendar days prior to the effective date of price changes.
    2. Such notice must be accompanied by a copy of the supplier's notification to the contractor of a justifiable price change.
    3. No price escalation will be authorized in excess of the amount of the increase indicated on the supplier's notice.
    4. The approved price change shall be honored for all orders received by the contractor after the effective date of such price change.
    5. Approved price changes are not applicable to orders already issued and in process at time of price change.
    6. The City reserves the right to audit and/or examine any pertinent books, documents, papers, records, or invoice relating directly to the price increase after reasonable notice and during normal business hours.
    7. The Purchasing Department retains the right to determine whether or not such proposed price changes are in the best interests of the City.
    8. If in the opinion of the Procurement Department any proposed increase is found unacceptable, the Purchasing Department reserves the right to cancel the contract upon fifteen (15) calendar days' written notice.
    9. Contractors must tie any price change clause to an industry-wide or otherwise nationally recognized index or some other form of verifiable document. Contractor will put the Procurement Department on the mailing lists for such publications so the Purchasing Department can monitor said changes. Such membership will be at no cost to the City.
    10. If parties to the contract cannot agree on renewal terms, it is understood that the contract will be cancelled and a new contract will be solicited.

40. **ADDITIONAL INFORMATION:** Additional information may be obtained from the Purchasing Department by emailing purchasing@bentonvillear.com or calling (479) 271-3115.

CITY OF BENTONVILLE, ARKANSAS
PURCHASING DEPARTMENT
ADMINISTRATIVE SERVICES BUILDING
1000 SW 14TH STREET BENTONVILLE, AR 72712
(479)-271-3115 – purchasing@bentonvillear.com

APPENDIX A

BID FORM

REQUIRED RESPONSE DOCUMENT

CITY OF BENTONVILLE, ARKANSAS
PURCHASING DEPARTMENT
ADMINISTRATIVE SERVICES BUILDING
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(479)-271-3115 – purchasing@bentonvillear.com

APPENDIX A: BID FORM

Bidder, having examined this Invitation for Bid document in its entirety and having performed a thorough examination of the product specifications hereby agrees to furnish all labor, products, materials, equipment, staging, transportation, and supervision of such in accordance with the specifications contained herein to deliver the item(s) as specified to the City.

Bid prices shall include all costs, including but not limited to: all labor, products material, equipment, disposal fees, transportation, staging, mobilization, overhead, profit, insurance, shipping and handling and all other costs to the City of Bentonville, Arkansas to cover the finished work and/or delivered products.

BID PRICES SHALL NOT INCLUDE SALES TAX.

AWARD OF THIS INVITATION FOR BID WILL BE BASED ON (applicable award method marked with an "x"):

_x__ **Per Line Item:** The award will be based on the lowest and most responsible Unit Price per Line Item with all factors considered.

LS – Lump Sum **EA** – Each **SF**- Square Foot **BX** – Box **SY**- Square Yard **CY**- Cubic Yards

THE BID FORM IS LOCATED ON THE FOLLOWING PAGE

CITY OF BENTONVILLE, ARKANSAS
PURCHASING DEPARTMENT
ADMINISTRATIVE SERVICES BUILDING
1000 SW 14TH STREET BENTONVILLE, AR 72712
(479)-271-3115 – purchasing@bentonvillear.com

APPENDIX B

VENDOR DISCLOSURE

REQUIRED RESPONSE DOCUMENT

Contractor/Vendor Disclosure

THIS DOCUMENT MUST BE COMPLETED AND INCLUDED IN ANY SUBMISSION

Company Name: AECI

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

Immediate Relation includes:

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

OR

☑ Check this box if you there are no applicable relationships to disclose.

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

MW Initials

THE AMERICAN INSTITUTE OF ARCHITECTS

AIA Document A310

Bid Bond

KNOW ALL MEN BY THESE PRESENTS, that we Arkansas Electric Cooperatives, Inc.

as Principal, hereinafter called the Principal, and Travelers Casualty and Surety Company of America

a corporation duly organized under the laws of the State of Connecticut
as Surety, hereinafter called the Surety, are held and firmly bound unto The City of Bentonville

as Obligee, hereinafter called the Obligee, in the sum of Five Hundred Dollars and Zero Cents ($500.00), for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for Bid Number: IFB-22-19 - Capacitors

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this 15th day of February, 2022.

[redacted] - Field Sales
(Witness)

Arkansas Electric Cooperatives, Inc.
(Principal)

[redacted] 2/9/2022 Sales Manager
(Title)

[redacted]
(Witness)

Travelers Casualty and Surety Company of America
(Surety)

[redacted]

Karen J. Payne, Attorney-In-Fact (Title)

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA
HARTFORD, CONN

TRAVELERS

Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Karen J Payne** of **LITTLE ROCK**, **Arkansas**, their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **17th** day of **January, 2019.**

State of Connecticut

City of Hartford ss.

By: [redacted]
Robert L. Raney, Senior Vice President

On this the **17th** day of **January, 2019**, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies by himself as a duly authorized officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June, 2021**

[redacted]
Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this 15th day of February, 2022

[redacted]
Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney-in-Fact and the details of the bond to which this Power of Attorney is attached.

* ALL Lead Times are Estimates and Subject to Change!

CITY OF BENTONVILLE

ITEM	QNT	UNIT	PART NO.	DESCRIPTION	PRICE	
1	20	EA	1223	CAPACITOR JUNCTION BOX 6"X6" MOLDED WITH (3) 3 CONDUCTOR #16 CABLES WITH 5 PIN PLUGS HUBBELL #33124807 COB PART#1223	530.00	12-14 weeks
2	60	EA	1226	CAPACITOR VACUUM SWITCH VS15-95 15KV 200A 120V HUBBELL #33184404 COB PART#1226	1494.00	14-16 weeks
3	50	EA	1224	CAPACITOR OIL SWITCH RACK -FOR MOUNTING VAC SWITCH ALUMAFORM #OSM/51892 COB PART#1224	41.50	10-12 weeks
4	5	EA	1222	CAPACITOR CONTROL INSULATOR, LINE POST SENSOR FOR KVAR CONTROL T&B 1301-17A COB PART#1222	NQ	
5	16	EA	1220	CAPACITOR ALUMINUM RACK FOR 6 UNITS ALUMAFORM #CR-6/51512 COB PART#1220	395.00	10-12 weeks
6	63	EA	1219	CAPACITOR 200KVAR, 95KV 2 BUSHING COOPER #CEP140A6 *MUST BE GROUNDED COB PART#1219	610.00	12-14 weeks
7	89	EA	1221	CAPACITOR BANK TERMINAL CAPS COOPER #CCM044A1 COB PART#1221	5.40	10-12 weeks
8	18	EA	2001	TRANS 1.5 KVA SINGLE BUSHING 120/240 SINGLE HANGER BRACKET, WEIGHT LESS THAN 120 POUNDSCOB PART#2001	NQ	

50

RESOLUTION NO. _____

A RESOLUTION AWARDING BID IFB-22-19; AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A CONTRACT WITH ARKANSAS ELECTRIC COOPERATIVE FOR THE PURCHASE OF CAPACITORS AND CAPACITOR MATERIAL; AND FOR OTHER PURPOSES.

WHEREAS, Arkansas Electrical Cooperative is the lowest qualified bidder for bid IFB-22-19;

WHEREAS, this contract covers the purchase of capacitors and capacitor material for the City of Bentonville Inventory Control Department; and

WHEREAS, this will be paid with budgeted funds in the amount of one hundred forty seven thousand five hundred forty five dollars and sixty cents ($147,545.60).

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

Section 1: The Mayor and City Clerk are authorized to enter into a contract with Arkansas Electrical Cooperative for the purchase of capacitors and capacitor material;

Section 2: The estimated contract cost is one hundred forty seven thousand five hundred forty five dollars and sixty cents ($147,545.60);

Section 3: Severability Provision: If any part of this Resolution is held invalid, the remainder of this Resolution shall continue in effect as if such invalid portion never existed; and

Section 4: Repeal of Conflicting Resolutions: All Ordinances, Resolutions, or Orders of the City Council, or parts of the same, in conflict with this Resolution are repealed to the extent of such conflict.

PASSED and APPROVED this _____ day of _____, 2022.

APPROVED:

_____
MAYOR

ATTEST:

_____
CITY CLERK

Agenda Item Form

Date of City Council Meeting	**3/8/2022**
Department	**Inventory Control**
Submitted by	**Travis Matlock**
Phone	**(479) 271-3145**

Item Type: (*Check Applicable Item Type)*

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

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

Ordinance waiving requirements for competitive bidding and entering into an agreement with Techline for the purchase of single phase and pole mounted double bushing transformers for $270,620.00 plus applicable taxes.

Estimated Cost	**$270,620.00**
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 Utility Board Meeting	**3/8/2022**
Department	**Electric Utility Department**
Submitted by	**Travis Matlock, PE**
Phone	**(479) 271-5941**

Vendor	**Techline**
Total Cost	**$ 270,620.00**

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):***

Various pole mounted double bushing transformers.

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

Due to current market volatility and lead times, it is not feasible to formally solicit bids for the transformers.

M E M O R A N D U M

DATE: **MARCH 8, 2022**

TO: **City Council, Mayor Orman**

FROM: Travis Matlock, Electric Utility Director

RE: **Pole Mounted Transformer Bid Waiver**

In November of 2021 Bid 21-75 was awarded to Techline for pole mounted transformers. However, due to the raw materials price increases that make up the transformers, Techline was not able to honor the delivery timeframe at the pricing awarded. Staff worked with Techline to negotiate a new quote to keep the transformer quantities needed in the manufacturing stream for estimated delivery in June 2022; current lead times for transformers are 58 to 64 weeks. Due to current market volatility and lead times, it is not feasible to formally solicit bids for the transformers.

QTY	SIZE	COST	TOTAL
40	10kva DB	$998.00	$39,920.00
40	15kva DB	$1,136.00	$45,440.00
40	25kva DB	$1,336.00	$53,440.00
8	37.5kva DB	$1,706.00	$13,648.00
40	50kva DB	$1,970.00	$78,800.00
12	100kva DB	$3,281.00	$39,372.00
			$270,620.00

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE MAYOR AND THE CITY CLERK TO ENTER INTO AN AGREEMENT WITH TECHLINE FOR POLE MOUNTED TRANSFORMERS IN THE AMOUNT OF TWO HUNDRED SEVENTY THOUSAND SIX HUNDRED TWENTY DOLLARS ($270,620.00) PLUS APPLICABLE TAXES, WAIVING THE REQUIREMENT OF COMPETITIVE BIDDING AND FOR OTHER PURPOSES.

WHEREAS, the City of Bentonville Electric Utilities Department requires various pole mounted transformers in order to provide services to citizens and developments;

WHEREAS, the City of Bentonville Electric Utilities Department has negotiated with Techline for the purchase of transformers in order to meet said requirements and provide for delivery by approximately June of 2022 in order to meet immediate demand;

WHEREAS, soliciting bids would not produce competitive bids as supply chain and manufacturing delays have caused issues with vendors and the ability to bid and hold bid prices pending award;

WHEREAS, this purchase will be made using budgeted funds.

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 for the purchase of pole mounted transformers from Techline in the amount of two hundred seventy thousand six hundred twenty dollars ($270,620.00) plus applicable taxes as set forth below:

QTY	SIZE	COST	TOTAL
40	10kva DB	$998.00	$39,920.00
40	15kva DB	$1,136.00	$45,440.00

40	25kva DB	$1,336.00	$53,440.00
8	37.5kva DB	$1,706.00	$13,648.00
40	50kva DB	$1,970.00	$78,800.00
12	100kva DB	$3,281.00	$39,372.00
	$270,620.00		

Section 2: Because of market volatility and lead times related to these products, an exceptional circumstance exists, and it would be neither practical nor feasible to advertise for competitive bidding so that requirement is herein waived.

Section 3: Severability Provision: If any part of this Ordinance is held invalid, the remainder of this Ordinance shall continue in effect as if such invalid portion never existed.

Section 4: Repeal of Conflicting Ordinances: All Ordinances of the City Council, or parts of Ordinances of the City Council, in conflict herewith are hereby repealed to the extent of such conflict.

PASSED and APPROVED this _____ day of _____, 2022.

APPROVED:

_____
MAYOR

ATTEST:

_____
CITY CLERK

Agenda Item Form

Date of City Council Meeting	**3/8/2022**
Department	**Inventory Control**
Submitted by	**Travis Matlock**
Phone	**(479) 271-3145**

Item Type: (*Check Applicable Item Type)*

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

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

Ordinance waiving requirements for competitive bidding and entering into an agreement with Techline for the purchase of single phase and pole mounted double bushing transformers for $2,053,762.50 plus applicable taxes.

Estimated Cost	**$2,053,763.00**
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 Utility Board Meeting	**3/8/2022**
Department	**Electric Utility Department**
Submitted by	**Travis Matlock, PE**
Phone	**(479) 271-5941**

Vendor	**Techline**
Total Cost	**$ 2,053,762.50**

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):***

Various single phase and pole mounted double bushing transformers.

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

Due to current market volatility and lead times, it is not feasible to formally solicit bids for the transformers.

M E M O R A N D U M

DATE: **MARCH 8, 2022**

TO: **City Council, Mayor Orman**

FROM: Travis Matlock, Electric Utility Director

RE: **Pole Mounted Transformer Bid Waiver**

In November of 2021 Bid 21-75 was awarded to Techline for pole mounted double bushing transformers. However, due to the raw materials price increases that make up the transformers, Techline was not able to honor the delivery timeframe at the pricing awarded. Staff worked with Techline to negotiate a new quote to keep the transformer quantities needed in the manufacturing stream for estimated delivery in June 2022; current lead times for transformers are 58 to 64 weeks. Due to current market volatility and lead times, it is not feasible to formally solicit bids for the transformers.

City of Bentonville Electric Utilities Department

Pole Type Distribution Transformers

Bid Form

Line Item Number	BEUD Inventory Part Number	KVA	Voltage	QTY	Price Each	No Load Losses	Load Losses	Lead Time (Weeks)
1	2002	10	120/240	20	$1,174.00	31	133	56 weeks
2	2008	15	120/240	25	$1,336.00	38	194	56 weeks
3	2021	25	120/240	50	$1,572.00	60	297	56 weeks
4	2032	37.5	120/240	10	$2,007.00	77	427	56 weeks
5	2035	50	120/240	25	$2,318.00	103	470	56 weeks
6	2003	100	120/240	15	$3,861.00	155	938	56 weeks
								total:

DEVIATIONS FROM SPECIFICATIONS

Bidder must itemize all deviations taken to the specifications. If no exceptions are listed, the bid will be considered to be in strict accordance with the specifications.

Paragraph Number	Specification Requirement	Proposed Deviation and Justification
	Base prices valid until 3/31/22	

Bid Submitted By:_____

City of Bentonville Electric Utilities Department

Single Phase Pad-Mount Distribution Transformers

Bid Form

Line Item Number	BEUD Inventory Part Number	KVA	Voltage	QTY	Price Each	EXT Price	No Load Losses	Load Losses	Lead Time (Weeks)
1	2010	15	240/120	20	$2,308.00	$46,160.00	39	191	64 weeks
2	2024	25	240/120	60	$2,584.00	$155,040.00	60	260	64 weeks
3	2037	50	240/120	200	$3,197.00	$639,400.00	101	452	64 weeks
4	2043	75	240/120	40	$3,988.00	$159,520.00	137	617	64 weeks
5	2005	100	240/120	40	$5,340.00	$213,600.00	167	718	64 weeks
6	2016	167	240/120	30	$6,390.00	$191,700.00	261	1193	64 weeks
				TOTAL BID PRICE		$1,405,420.00			

DEVIATIONS FROM SPECIFICATIONS

Bidder must itemize all deviations taken to the specifications. If no exceptions are listed, the bid will be considered to be in strict accordance with the specifications.

Paragraph Number	Specification Requirement		Proposed Deviation and Justification
	Base prices valid until 3/31/22		

Bid Submitted By:_____

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE MAYOR AND THE CITY CLERK TO ENTER INTO AN AGREEMENT WITH TECHLINE FOR POLE MOUNTED TRANSFORMERS IN THE AMOUNT OF TWO MILLION FIFTY THREE THOUSAND SEVEN HUNDRED SIXTY TWO DOLLARS AND FIFTY CENTS ($2,053,762.50) PLUS APPLICABLE TAXES, WAIVING THE REQUIREMENT OF COMPETITIVE BIDDING AND FOR OTHER PURPOSES.

WHEREAS, the City of Bentonville Electric Utilities Department requires various pole mounted transformers in order to provide services to citizens and developments;

WHEREAS, the City of Bentonville Electric Utilities Department attempted to formally bid these items but the bidding process was unsuccessful;

WHEREAS, soliciting additional bids would not produce competitive bids as supply chain and manufacturing delays have caused issues with vendors and the ability to bid and hold bid prices pending award;

WHEREAS, this purchase will be made using budgeted funds.

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 for the purchase of pole mounted transformers from Techline in the amount of two million fifty three thousand seven hundred sixty two dollars and fifty cents ($2,053,762.50) plus applicable taxes as set forth below.

City of Bentonville Electric Utilities Department									
Pole Type Distribution Transformers									
Bid Form									
Line Item Number	BEUD Inventory Part Number	KVA	Voltage	QTY	Price Each	No Load Losses	Load Losses	Lead Time (Weeks)	extended cost
1	2002	10	120/240	20	$1,174.00	31	133	56 weeks	$11,740.00
2	2008	15	120/240	25	$1,336.00	38	194	56 weeks	$20,040.00
3	2021	25	120/240	50	$1,572.00	60	297	56 weeks	$39,300.00
4	2032	37.5	120/240	10	$2,007.00	77	427	56 weeks	$75,262.50
5	2035	50	120/240	25	$2,318.00	103	470	56 weeks	$115,900.00
6	2003	100	120/240	15	$3,861.00	155	938	56 weeks	$386,100.00
								total:	$648,342.50

City of Bentonville Electric Utilities Department								
Single Phase Pad-Mount Distribution Transformers								
Bid Form								
BEUD Inventory Part Number	KVA	Voltage	QTY	Price Each	EXT Price	No Load Losses	Load Losses	Lead Time (Weeks)
2010	15	240/120	20	$2,308.00	$46,160.00	39	191	64 weeks
2024	25	240/120	60	$2,584.00	$155,040.00	60	260	64 weeks
2037	50	240/120	200	$3,197.00	$639,400.00	101	452	64 weeks
2043	75	240/120	40	$3,988.00	$159,520.00	137	617	64 weeks
2005	100	240/120	40	$5,340.00	$213,600.00	167	718	64 weeks
2016	167	240/120	30	$6,390.00	$191,700.00	261	1193	64 weeks
			TOTAL BID PRICE		$1,405,420.00			

Section 2: Because of market volatility and lead times related to these products, an exceptional circumstance exists, and it would be neither practical nor feasible to advertise for competitive bidding so that requirement is herein waived.

Section 3: Severability Provision: If any part of this Ordinance is held invalid, the remainder of this Ordinance shall continue in effect as if such invalid portion never existed.

Section 4: Repeal of Conflicting Ordinances: All Ordinances of the City Council, or parts of Ordinances of the City Council, in conflict herewith are hereby repealed to the extent of such conflict.

PASSED and APPROVED this _____ day of _____, 2022.

APPROVED:

_____
MAYOR

ATTEST:

_____
CITY CLERK

Agenda Item Form

Date of City Council Meeting	**3/8/2022**
Department	**Inventory Control**
Submitted by	**Travis Matlock**
Phone	**(479) 271-3145**

Item Type: (*Check Applicable Item Type)*

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

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

Ordinance waiving requirements for competitive bidding and entering into an agreement with Stuart Irby for purchase of various wire sizes for $420,705.00, plus applicable taxes.

Estimated Cost	**$420,705.00**
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 Utility Board Meeting	**3/8/2022**
Department	**Electric Utility Department**
Submitted by	**Travis Matlock, PE**
Phone	**(479) 271-5941**

Vendor	**Stuart Irby**
Total Cost	**$ 420,705.00**

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):***

Various wire sizes.

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

Due to current market volatility and lead times, it is not feasible to formally solicit bids for the wire.

M E M O R A N D U M

DATE: **MARCH 8, 2022**

TO: **City Council, Mayor Orman**

FROM: Travis Matlock, Electric Utility Director

RE: **Various Wire Sizes Bid Waiver**

The City of Bentonville recently placed various wire sizes out to bid. However, when the bid was due 2 different vendors returned a "no bid", and Stuart Irby was not able to deliver a complete bid within the bidding timeframe. Stuart Irby has provided a quote outside of the formal bid process for the wire with a 17-week lead time. Electric Dept. staff recommends waiving the requirements of bidding and entering into an agreement with Irby to provide the various wire sizes for $420,705.00 plus applicable taxes.

City of Bentonville Electric Utilities Department

15KV Underground Primary Cable

Bid Form

BEUD Inventory Part Number	Wire Size	Feet Required	Price Per Foot	Extended Price	Lead Time
2146	1/0 CIC wire	37,500	$2.957	$110,887.50	36 weeks
2147	1/0 Full Neutral AL	75,000	$2.957	$221,775.00	36 weeks
2192	750 1/3 Neutral AL	4500	$19.5650	$88,042.50	36 weeks
Total Price for All Line Items				**$420,705.00**	

DEVIATIONS FROM SPECIFICATIONS

Bidder must itemize all deviations taken to the specifications. If no exceptions are listed, the bid will be considered to be in strict accordance with the specifications.

Paragraph Number	Specification Requirement	Proposed Deviation and Justification

Bid Submitted By: _____

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE MAYOR AND THE CITY CLERK TO ENTER INTO AN AGREEMENT WITH STUART IRBY FOR ELECTRICAL WIRE IN THE AMOUNT OF FOUR HUNDRED TWENTY THOUSAND SEVEN HUNDRED AND FIVE DOLLARS ($420,705.00) PLUS APPLICABLE TAXES, WAIVING THE REQUIREMENT OF COMPETITIVE BIDDING AND FOR OTHER PURPOSES.

WHEREAS, the City of Bentonville Electric Utilities Department requires various sized of electrical wire in order to provide services to citizens and developments;

WHEREAS, the City of Bentonville Electric Utilities Department attempted to bid these items but the bidding process was unsuccessful;

WHEREAS, soliciting additional bids would not produce competitive bids as supply chain and manufacturing delays have caused issues with vendors and the ability to bid and hold bid prices pending award;

WHEREAS, this purchase will be made using budgeted funds.

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 for the purchase of various wire sizes as set forth below from Stuart Irby in the amount of four hundred twenty thousand seven hundred and five dollars ($420,705.00) plus applicable taxes:

BEUD Inventory Part Number	Wire Size	Feet Required	Price Per Foot	Extended Price	Lead Time
2146	1/0 CIC wire	37,500	$2.957	$110,887.50	36 weeks
2147	1/0 Full Neutral AL	75,000	$2.957	$221,775.00	36 weeks
2192	750 1/3 Neutral AL	4500	$19.5650	$88,042.50	36 weeks

Section 2: Because of market volatility and lead times related to these products, an exceptional circumstance exists, and it would be neither practical nor feasible to advertise for competitive bidding so that requirement is herein waived.

Section 3: Severability Provision: If any part of this Ordinance is held invalid, the remainder of this Ordinance shall continue in effect as if such invalid portion never existed.

Section 4: Repeal of Conflicting Ordinances: All Ordinances of the City Council, or parts of Ordinances of the City Council, in conflict herewith are hereby repealed to the extent of such conflict.

PASSED and APPROVED this _____ day of _____, 2022.

APPROVED:

_____
MAYOR

ATTEST:

_____
CITY CLERK

Agenda Item Form

Date of City Council Meeting	**3/8/2022**
Department	**Administration**
Submitted by	**Mayor Stephanie Orman**
Phone	**(479) 271-5966**

Item Type: (*Check Applicable Item Type)*

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

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

Mayor Orman recommends appointment of Ricky Cortes to the City of Bentonville's Advertising & Promotion Commission. Mr. Cortes' will be serving his first term that will expire December 31, 2025.

Estimated Cost	
Is this Item Budgeted?	☐ Yes ☐ No

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

March 3, 2022

To: City Council Members & City Clerk

From: Mayor Stephanie Orman

Subject: Appointment of Ricky Cortes to Bentonville's Advertising and Promotion Commission.

I recommend Ricky Cortes for appointment to the City of Bentonville's Advertising and Promotion Commission. Mr. Cortes' term expires on December 31, 2025.

SO
Stephanie Orman

VISIT Bentonville
A NEW AMERICAN TOWN

January 28, 2022

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

Dear Mayor:

On January 25, 2022, the Bentonville Advertising & Promotion Commission voted to submit to the City Council for their approval the appointment of Ricky Cortes as a restaurant representative on the commission. Mr. Cortes will be serving his first term on the Bentonville Advertising & Promotion Commission.

The term for this seat is January 1, 2022, through December 31, 2025.

We are enclosing a copy of his application and Commission terms summary for your convenience.

Please let me know if you have any questions.

Sincerely,

[redacted]

Kalene Griffith
President/CEO

VISIT Bentonville
A NEW AMERICAN TOWN

BENTONVILLE ADVERTISIING & PROMOTION COMMISSION

COMMISSIONER APPLICATION

NAME: *RICKY CORTES* DATE: *01/25/2022*

RESIDENCE ADDRESS: [redacted] *BENTONVILLE, ARKANSAS 72712*

MAILING ADDRESS: _____
(if different)

EMAIL ADDRESS: [redacted]

PHONE NUMBERS: [redacted] _____ _____ _____
(home) (work) (cell)

Name of Bentonville Advertising & Promotion tax collecting entity or tourism business with which you are associated:

AZUL TEQUILA MEXICAN CUISINE

What are your qualifications for serving on this commission? Include education and expertise in the tourism industry.

OWNER OF AZUL TE QUILA RESTAURANTS.
GRADUATED FROM UNIVERSITY OF ARKANSAS BA GEOGRAPHY/ECONOMICS 2009

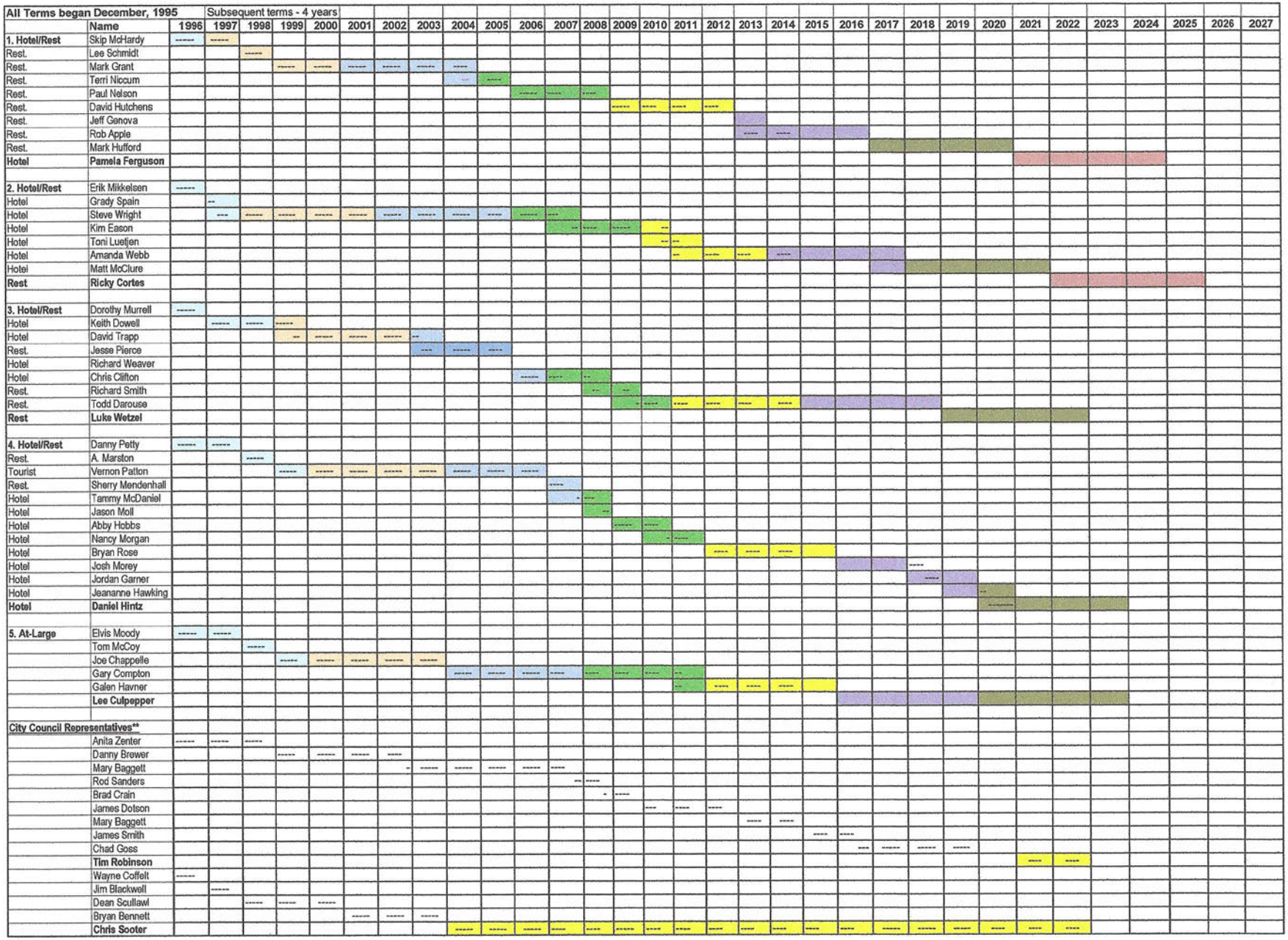
Why would you like to be considered for a position on the Bentonville Advertising & Promotion Commission?

TO INNOVATE AND INVEST BACK TO OUR COMMUNITY.

I am an own [redacted] *ntonville Advertising & Promotion tax collecting entity or a business in the tourism industry and* [redacted] *for serving on this commission.*

_____
Signature

Please return the completed form by November 24, 2015
Email: johnna@visitbentonville.com
Mail: **Bentonville A&P Commission 104 East Central Avenue Bentonville, AR 72712**



No term limits on City Council members - appointed by Mayor

Agenda Item Form

Date of City Council Meeting	**3/8/2022**
Department	**Administration**
Submitted by	**Legal**
Phone	**(479) 271-5966**

Item Type: (*Check Applicable Item Type)*

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

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

Resolution amending Resolution No. 11-9-21 E , for the addition of a City Council member to the Housing Affordability Work Group. This will ensure the establishing Resolution is consisten with the membership of the Group as approved by the City Council.

Estimated Cost	
Is this Item Budgeted?	☐ Yes ☑ No

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

No funding necessary.

RESOLUTION NO. _____

A RESOLUTION AMENDING RESOLUTION NO. 11-9-21 E; ADDING A SECOND BENTONVILLE CITY COUNCIL MEMBER TO THE HOUSING AFFORDABILITY WORK GROUP; AND FOR OTHER PURPOSES.

WHEREAS, two members of the Bentonville City Council expressed a desire to serve on the Housing Affordability Work Group; and

WHEREAS, the Resolution establishing this group should be amended to reflect the accurate number of members.

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

Section 1: That Section 3 of Resolution No. 11-9-21 E is amended to read as shown in the attached Exhibit "A";

Section 2 - Severability Provision: If any part of this Resolution is held invalid, the remainder of this Resolution shall continue in effect as if such invalid portion never existed; and

Section 3: Repeal of Conflicting Provisions: All Ordinances, Resolutions, or Orders of the City Council, or parts of the same, in conflict with this Resolution are repealed to the extent of such conflict.

PASSED this _____ day of _____, 2022.

APPROVED:

_____
STEPHANIE ORMAN, Mayor

Attest:

_____
KIRBY ROMINES, City Clerk

EXHIBIT "A"

Section 3: That the membership of The Work Group will consist of ~~7~~8 non-compensated members who shall be appointed by the Mayor, and affirmed by the City Council, to serve in this voluntary role. The membership should reflect representation from various community stake holders, for example: local non-profit housing authorities, local developers or builders, ULI or NWAHBA members, private citizens, etc. this suggested list is non-exhaustive. The Mayor shall appoint the Chairperson and Secretary from the ~~7~~8 members appointed. The Mayor shall appoint ~~1~~2 City Council member to serve as part of the ~~7~~8 member Work Group. The Mayor shall appoint at least 3 City staff members to serve in an advisory and informational capacity.

Agenda Item Form

Date of City Council Meeting	**3/8/2022**
Department	**Finance**
Submitted by	**Legal**
Phone	**(479) 271-5966**

Item Type: (*Check Applicable Item Type)*

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

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

Ordinance amending section 2-377 of the City of Bentonville Municipal Code to allow the Mayor to enter into contracts for purchases made from the State Procurement website. This will establish consistency between the Code and the City's purchasing policy and formalize the process currently in place. This change only applies to purchases where funding has already been approved by the City Council.

Estimated Cost	
Is this Item Budgeted?	☐ Yes ☑ No

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

No funding necessary.

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE VI, DIVISION 2-VI-2, SECTION 2-377, AUTHORITY OF MAYOR SPENDING LIMIT; AND FOR OTHER PURPOSES.

WHEREAS, various City of Bentonville departments make purchases from contracts solicited, awarded, and participated in by the State of Arkansas;

WHEREAS, these purchases do not need to be competitively bid at the City level;

WHEREAS, this Code amendment brings the current section in line with the purchasing policy, which was previously approved by City Council, and with current purchasing practices; and

WHEREAS, this update to the City of Bentonville Municipal Code allows the Mayor to enter into contracts for these purchases, when necessary, if the item amount has already been approved by the City Council.

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

Section 1: Chapter 2, Article VI, Division 2-VI-2, Section 2-377, of the Bentonville Municipal Code is amended to read as shown in the attached Exhibit "A";

Section 2: Severability Provision: If any part of this Ordinance is held invalid, the remainder of this Ordinance shall continue in effect as if such invalid portion never existed; and

Section 3: Repeal of Conflicting Provisions: All Ordinances, Resolutions, or Orders of the City Council, or parts of the same, in conflict with this Ordinance are repealed to the extent of such conflict.

PASSED this _____ day of _____, 2022.

APPROVED:

_____
STEPHANIE ORMAN, Mayor

Attest:

_____
KIRBY ROMINES, City Clerk

Agenda Item Form

Date of City Council Meeting	**3/8/2022**
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 approving a budget adjustment for Work Order # 1 with Garver Engineering in the amount of $10,000 for the Bid Package Development (Repackage) and Bidding Services Garver Project No. 21A13192. West side development of the Bentonville Municipal airport for Full Taxi Lane and Utility Infrastructure improvements for future hangar developments. Funding to come from funds received from the Through-the-Fence agreement previously approved by City Council. Those funds can only be spent on airport related items.

Estimated Cost	**$10,000.00**
Is this Item Budgeted?	☐ Yes ☑ No

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

Funding to come from funds received from the Through-the-Fence agreement previously approved by City Council. Those funds can only be spent on airport related items.

Budget Adjustment Request

Date of City Council Meeting	**3/8/2022**
Department	**Administration**
Submitted by	**Debbie Griffin**
Phone	**(479) 254-2028**

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

Budget adjustment for Work Order # 1 with Garver Engineering in the amount of $10,000 for the Bid Package Development (Repackage) and Bidding Services Garver Project No. 21A13192.

General Ledger Account Information*				
Org (Department)	**Object**	**Account Description**	**Revenue + (-)**	**Expense + (-)**
101650	**43210**	**Professional Services**		**$ 10,000.00**
		Totals	**$ -**	**$ 10,000.00**
		Net Impact on Fund Balance	**$**	**(10,000.00)**

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

WORK ORDER NO. 01
City of Bentonville
VBT Hangar Development
Bid Package Development (Repackage) and Bidding Services
Garver Project No. 21A13192

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**" or "**Engineer**") in accordance with the provisions of the MASTER AGREEMENT FOR PROFESSIONAL SERVICES executed on October 14, 2021 (the "Agreement").

Under this Work Order, the Owner intends to make the following improvements at Bentonville Municipal Airport (VBT):

> Construct a new hangar development area consisting of new taxilane and apron pavement construction and utility infrastructure improvements on the west side of the airfield.

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 See Exhibit A-01, attached.

1.2 In addition to those obligations set forth in the Agreement, Owner shall:
- 1.2.1 Give thorough consideration to all documents and other information presented by Garver and informing Garver of all decisions within a reasonable time so as not to delay the Services.
- 1.2.2 Make provision for the Personnel of Garver to enter public and private lands as required for Garver to perform necessary preliminary surveys and other investigations required under the applicable Work Order.
- 1.2.3 Obtain the necessary lands, easements and right-of-way for the construction of the work. All costs associated with securing the necessary land interests, including property acquisition and/or easement document preparation, surveys, appraisals, and abstract work, shall be borne by the Owner outside of this Agreement, except as otherwise described in the Services under Section 1.1.
- 1.2.4 Furnish Garver such plans and records of construction and operation of existing facilities, available aerial photography, reports, surveys, or copies of the same, related to or bearing on the proposed work as may be in the possession of Owner. Such documents or data will be returned upon completion of the Services or at the request of Owner.
- 1.2.5 Furnish Garver a current boundary survey with easements of record plotted for the project property.
- 1.2.6 Pay all plan review and advertising costs in connection with the project.
- 1.2.7 Provide legal, accounting, and insurance counseling services necessary for the project and such auditing services as Owner may require.
- 1.2.8 Furnish permits, permit fees, and approvals from all governmental authorities having jurisdiction over the project and others as may be necessary for completion of the project.

SECTION 2 – PAYMENT

For the Services set forth above, Owner will pay Garver on a lump sum basis.

The table below presents a summary of the fee amounts and fee types for this Work Order.

WORK DESCRIPTION	FEE AMOUNT	FEE TYPE
Bid Package Development (Repackage)	$5,700	LUMP SUM
Bidding Services	$4,300	LUMP SUM
TOTAL FEE	**$10,000**	

The lump sum amount to be paid under this Work Order is **$10,000**. For informational purposes, a breakdown of Garver's estimated costs is included herein with approximate current hourly rates for each employee classification.

Any unused portion of the fee, due to delays beyond Garver's control, will be increased six percent (6%) annually with the first increase effective on or about July 1, 2022.

The Owner will pay Garver on a monthly basis, based upon statements submitted by Garver to the Owner indicating the estimated proportion of the work accomplished. Payments not received within 60 days of invoice date will be subject to a one percent monthly simple interest charge.

As directed by the Owner, some billable Services may have been performed by Garver prior to execution of this Work Order. Payment for these Services will be made in accordance with the fee arrangement established herein, as approved by the Owner.

SECTION 3 – EXHIBITS

3.1 The following Appendices are attached to and made a part of this Work Order:
- 3.1.1 Exhibit A-01 – Scope of Services
- 3.1.2 Exhibit B-01 – Manhour Tables
- 3.1.3 Exhibit C-01 – Project Exhibit

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.

Approval and acceptance of this Work Order, including attachments listed in SECTION 3 – EXHIBITS, shall incorporate this document as part of the Agreement. Garver is authorized to being performance upon receipt of a copy of this Work Order signed by the Owner. The effective date of this Work Order shall be the last date written below.

CITY OF BENTONVILLE	GARVER, LLC
By: _____ *Signature*	By: [redacted] *Signature*
Name: _____ *Printed Name*	Name: Frank O. McIllwain *Printed Name*
Title: _____	Title: Senior Vice President
Date: _____	Attest: [redacted]
Attest: _____	

EXHIBIT A-01
(SCOPE OF SERVICES)

Generally, the Scope of Services includes the following professional services for improvements to the Hangar Development area at Bentonville Municipal Airport. Improvements will consist primarily of taxilane and apron pavement construction and utility infrastructure improvements as shown in Exhibit C. More specifically, this Scope of Services includes the following professional engineering and surveying services:

- Bid Package Development (Repackage)
- Bidding Services

A.1 Bid Package Development (Repackage)

Garver will update the previously designed (under Work Order 11, dated March 5, 2021) construction drawings, specifications, instructions to bidders, and general provisions and special provisions to better align with available project funding. All documents will be based on guides furnished to Garver by the Owner and FAA, or internally developed by Garver. Contract Documents (Plans, Specifications, and Estimates) will be prepared for award of one (1) construction contract. These designs shall conform to the standards of practice ordinarily used by members of Garver's profession practicing under similar conditions.

A.2 Bidding Services

Garver will assist the Owner in advertising for and obtaining bids or negotiating proposals for one prime contract for construction, materials, equipment and services; and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, and receive and process deposits for Bidding Documents. The Owner will pay advertising costs outside of this contract.

Garver will issue addenda as appropriate to interpret, clarify or expand the Bidding Documents. Garver will consult with and advise the Owner as to the acceptability of subcontractors, suppliers and other persons and organizations proposed by the prime contractor(s) (herein called "Contractor(s)") for those portions of the work as to which such acceptability is required by the Bidding Documents. Garver will consult with the Owner concerning the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution prior to the award of contracts is allowed by the Bidding Documents.

Garver will attend the bid opening, prepare a bid tabulation, and assist the Owner in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment, and services. Garver will assist the Owner in the execution of all contract documents and furnish a sufficient number of executed documents for the Owner and Contractor.

A.3 Construction Administration Services

To be added through future work order.

A.4 On-Site Resident Project Representative Services

To be added through future work order.

A.5 Materials Testing Services

To be added through future work order.

A.6 Project Closeout Services

To be added through future work order.

A.7 Project Deliverables

The following deliverables will be submitted to the parties identified below. Unless otherwise noted below, all deliverables shall be electronic.

1. 100% Issued for Bid Plans and Specifications to the Owner.
2. Issued for Construction Plans and Specifications to the Owner and Contractor.
3. Other electronic files as requested.

A.8 Additional Services

The following items are not included under this agreement but will be considered as additional services to be added under Amendment if requested by the Owner.

1. Redesign for the Owner's convenience or due to changed conditions after previous alternate direction and/or approval.
2. Deliverables beyond those listed herein.
3. Design of any telecommunications utility relocation.
4. Engineering, architectural, or other professional services beyond those listed herein.
5. Retaining walls or other significant structural design.
6. Construction Administration Services, On-Site Resident Project Representative Services, and/or Construction Materials Testing. These services will be added to the project through future work orders.
7. Environmental Handling and Documentation, including wetlands identification or mitigation plans or other work related to environmentally or historically (culturally) significant items.
8. Coordination with FEMA and preparation/submittal of a CLOMR and/or LOMR.
9. Project Closeout Services. These services will be added to the project through future work orders.
10. Services after construction, such as warranty follow-up, operations support.

A.9 Schedule

Garver shall begin work under this Agreement upon execution of this Agreement and shall complete the work within a mutually agreeable schedule with the Owner.

Exhibit B-01

City of Bentonville
VBT Hangar Development - Bid Package Development (Repackage) and Bidding Services

Bid Package Development (Repackage)

WORK TASK DESCRIPTION	E-5	E-4	E-3	E-2	E-1	T-2	T-1	X-1
	$78.80	$64.59	$55.25	$45.68	$39 35	$36.34	$28.70	$22.53
	hr	hr	hr	hr	hr	hr	hr	hr
1. Project Management								
Administration and Coordination					2			
Quality Control Review	2				2			
Submittals to Client					2			
Subtotal - Project Management	**2**	**0**	**0**	**0**	**6**	**0**	**0**	**0**
2. Civil Engineering								
Develop Final Plans					14			
Coordination with U ility Companies					2			
Develop Final Specifications/Contract Documents	1				2			
Develop Final Quantities					2			
Costs	1				1			
SWPPP Development					2			
Subtotal - Civil Engineering	**2**	**0**	**0**	**0**	**23**	**0**	**0**	**0**
3. Electrical Engineering								
Develop Final Plans				1			2	
Coordination with U ility Companies				2				
Develop Final Specifications				2				
Subtotal - Electrical Engineering	**0**	**0**	**0**	**5**	**0**	**0**	**2**	**0**
Hours	**4**	**0**	**0**	**5**	**29**	**0**	**2**	**0**
Salary Costs	$315.20	$0.00	$0.00	$228.40	$1,141.15	$0.00	$57.40	$0.00

SUBTOTAL - SALARIES:	**$1,742.15**
LABOR AND GENERAL ADMINISTRATIVE OVERHEAD:	**$3,196.67**
DIRECT NON-LABOR EXPENSES	
Document Printing/Reproduction/Assembly	$7.70
Postage/Freight/Courier	$10.00
Travel Costs	$0.00
SUBTOTAL - DIRECT NON-LABOR EXPENSES:	**$17.70**
SUBTOTAL:	**$4,956.52**
SUBCONSULTANTS FEE:	**$0.00**
PROFESSIONAL FEE	**$743.48**
TOTAL FEE:	**$5,700.00**

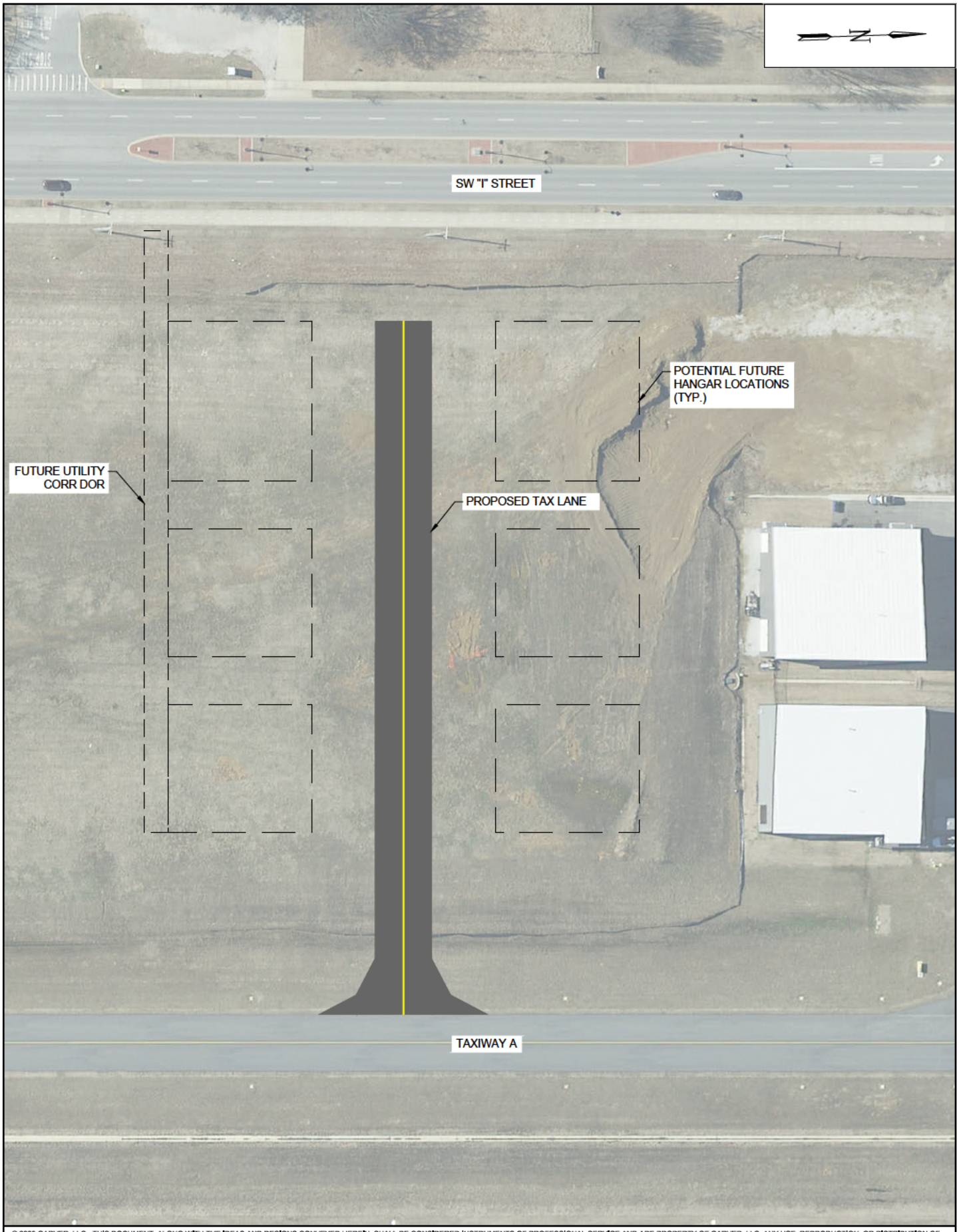
Exhibit B-01

City of Bentonville
VBT Hangar Development - Bid Package Development (Repackage) and Bidding Services

Bidding Services

WORK TASK DESCRIPTION	E-5	E-4	E-3	E-2	E-1	T-2	T-1	X-1
	$78.80	$64.59	$55.25	$45.68	$39 35	$36.34	$28.70	$22.53
	hr	hr	hr	hr	hr	hr	hr	hr
1. Civil Engineering								
Dispense Plans and Specs to Prospective Bidders					2			
Review and Respond to Request for Information (RFI)					2			
Draft and Distribute Addendums	1				2			
Bid Opening (1 person, on-site)					3			
Prepare Bid Tabulation	1				3			
Draft and Submit State Grant Application	1				4			
Award	1				2			
Prepare Contract Documents	1				4			
Prepare No ice to Proceed					1			
Subtotal - Civil Engineering	**5**	**0**	**0**	**0**	**23**	**0**	**0**	**0**
Hours	**5**	**0**	**0**	**0**	**23**	**0**	**0**	**0**
Salary Costs	$394.00	$0.00	$0.00	$0.00	$905.05	$0.00	$0.00	$0.00

SUBTOTAL - SALARIES:	**$1,299.05**
LABOR AND GENERAL ADMINISTRATIVE OVERHEAD:	**$2,383.63**
DIRECT NON-LABOR EXPENSES	
Document Printing/Reproduction/Assembly	$11.45
Postage/Freight/Courier	$15.00
Travel Costs	$30.00
SUBTOTAL - DIRECT NON-LABOR EXPENSES:	**$56.45**
SUBTOTAL:	**$3,739.13**
SUBCONSULTANTS FEE:	**$0.00**
PROFESSIONAL FEE	**$560.87**
TOTAL FEE:	**$4,300.00**



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GARVER
4300 South J.B. Hunt Drive
Suite 240
Rogers, AR 72758
(479) 257-9188

BENTONVILLE MUNICIPAL AIRPORT
BENTONVILLE, ARKANSAS

HANGAR DEVELOPMENT

TAXILANE EXHIBIT

FIGURE NUMBER
EXB

SHEET NUMBER 1

RESOLUTION NO._____

A RESOLUTION ALLOWING THE MAYOR AND CITY CLERK TO ENTER INTO WORK ORDER #1 WITH GARVER ENGINEERING; ADJUSTING THE 2022 BUDGET TO APPROPRIATE TEN THOUSAND DOLLARS ($10,000.00) FROM GENERAL FUND RESERVES INTO ACCOUNT #101650-43210 FOR THIS WORK ORDER; AND FOR OTHER PURPOSES.

WHEREAS, there is a need to re-bid Garver Project No. 21A13192 for the Bentonville Municipal Airport;

WHEREAS, Work Order #1 repackages the bid to include construction of a new hangar development area consisting of new taxi lane and apron pavement construction and utility infrastructure improvements on the west side of the airfield; and

WHEREAS, the ten thousand dollars ($10,000.00), to fund this work order, will come from monies received from the Though-the-Fence agreement previously approved by the City Council.

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

Section 1: The Mayor and City Clerk are authorized to enter into Work Order #1 to Garver Project No. 21A13192, for the Bentonville Municipal Airport;

Section 2: The 2022 Budget is adjusted to appropriate ten thousand dollars ($10,000.00) from General Fund Reserves to Account #101650-43210;

Section 3 - Severability Provision: If any part of this Resolution is held invalid, the remainder of this Resolution shall continue in effect as if such invalid portion never existed; and

Section 4: Repeal of Conflicting Provisions: All Ordinances, Resolutions, or Orders of the City Council, or parts of the same, in conflict with this Resolution are repealed to the extent of such conflict.

PASSED this _____ day of _____, 2022.

APPROVED:

_____
STEPHANIE ORMAN, Mayor

Attest:

_____
KIRBY ROMINES, City Clerk

Agenda Item Form

Date of City Council Meeting	**3/8/2022**
Department	**Human Resources**
Submitted by	**Ed Wheeler**
Phone	**(479) 271-3191**

Item Type: (*Check Applicable Item Type)*

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

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

Ordinance approving the addition of an "Additional Pay" (Add-Pay) to the 2022 Pay Plan for the City of Bentonville. The new add pay will compensate employees who have taken over the new roles of (1) Commercial Drivers License (CDL) Site Administrator, (1) Commercial Drivers License (CDL) Location Manager, and (1) Commercial Drivers License (CDL) Assistant Location Manager. The new Add-Pay amount will be $50.00 per pay period.

Estimated Cost	**$14,873.93 annually**
Is this Item Budgeted?	☐ Yes ☑ No

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

Funded from the reserves of the funds where the department is located.

Budget Adjustment Request

Date of City Council Meeting	**3/8/2022**
Department	**Human Resources**
Submitted by	**Ed Wheeler**
Phone	**(479) 271-3191**

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

Budget Adjustment for new add pays that will compensate employees who have taken over the new roles of (1) Commercial Drivers License (CDL) Site Administrator, (1) Commercial Drivers License (CDL) Location Manager, and (1) Commercial Drivers License (CDL) Assistant Location Manager. The new Add-Pay amount will be $50.00 per pay period.

General Ledger Account Information*

Org (Department)	Object	Account Description	Revenue + (-)	Expense + (-)
203810	41420	Add Pay		$ 2,200.00
203810	41510	FICA/Medicare		$ 167.75
203810	41810	APERS		$ 336.60
503020	41420	Add Pay		$ 2,200.00
503020	41510	FICA/Medicare		$ 167.75
503020	41810	APERS		$ 336.60
503010	41420	Add Pay		$ 2,200.00
503010	41510	FICA/Medicare		$ 167.75
503010	41810	APERS		$ 336.60
503030	41420	Add Pay		$ 2,200.00
503030	41510	FICA/Medicare		$ 167.75
503030	41810	APERS		$ 336.60
105020	41420	Add Pay		$ 2,200.00
105020	41510	FICA/Medicare		$ 167.75
105020	41810	APERS		$ 336.60
101630	41420	Add Pay		$ 1,100.00
101630	41510	FICA/Medicare		$ 83.88
101630	41810	APERS		$ 168.30
		Totals	$ -	$ 14,873.93
		Net Impact on Fund Balance	$	(14,873.93)

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

22 February, 2022

MEMORANDUM

From: Ed Wheeler, HR Manager

Subject: Add-Pay to Support the New Federal Commercial Driver's License (CDL) Program

The Federal Government (U.S. Department of Transportation - USDOT) has officially rolled out a new Commercial Driver's License (CDL) Program that applies to any employer, both public and private, that employ staff who's duties require them to drive vehicles that are subject to the Federal CDL program. The City of Bentonville is one of those employers – we have appx 101 licensed CDL drivers.

This new program places new restrictions on CDL employers to include:

Requiring us to register on the new CDL website;

Appointing a CDL Program Administrator;

Appointing a CDL Location Manager and CDL Assistant Location Manager for every department that has employees with CDLs;

Registering ALL newly-hired employees who need to acquire a CDL;

Establishing CDL driver training locations throughout the City for both academic training and road test training;

To comply with these new Federal requirement the City is requesting a new Add-Pay an Add-Pay (CDL Administrator) to compensate existing department staff to take on these new roles. The cost per year is $50.00 per pay period (Appx $15,000 annually) and involves 11 City staff. Using the add pay option will save the City over $45,000 annually - that would be associated with hiring a full-time employee to administer this program City-wide.

Respectfully,

Ed Wheeler
HR Manager

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE 2022 PAY PLAN FOR THE CITY OF BENTONVILLE; ADDING ADDITIONAL PAY TO COMPENSATE EMPLOYEES WHO HAVE TAKEN OVER NEW ROLES PURSUANT TO THE FEDERAL COMMERCIAL DRIVER'S LICENSE PROGRAM; AND FOR OTHER PURPOSES.

WHEREAS, the U.S. Department of Transportation has debuted a new Commercial Driver's License Program which places additional restrictions on employers; and

WHEREAS, establishing the new "Add-Pay" will compensate employees for taking on these new roles and additional responsibilities.

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

Section 1: The Pay Plan for the City of Bentonville should be and is hereby amended to include Additional Pay for new responsibilities undertaken pursuant to the new Federal Commercial Driver's License Program;

Section 2: The 2022 Budget is adjusted to appropriate fourteen thousand eight hundred seventy-three dollars and ninety-three cents ($14,873.93) to various accounts as noted below:

Org (Department)	Object	Account Description	Revenue + (-)	Expense + (-)
203810	41420	Add Pay		$ 2,200.00
203810	41510	FICA/Medicare		$ 167.75
203810	41810	APERS		$ 336.60
503020	41420	Add Pay		$ 2,200.00
503020	41510	FICA/Medicare		$ 167.75
503020	41810	APERS		$ 336.60
503010	41420	Add Pay		$ 2,200.00
503010	41510	FICA/Medicare		$ 167.75
503010	41810	APERS		$ 336.60
503030	41420	Add Pay		$ 2,200.00
503030	41510	FICA/Medicare		$ 167.75
503030	41810	APERS		$ 336.60
105020	41420	Add Pay		$ 2,200.00
105020	41510	FICA/Medicare		$ 167.75
105020	41810	APERS		$ 336.60
101630	41420	Add Pay		$ 1,100.00
101630	41510	FICA/Medicare		$ 83.88
101630	41810	APERS		$ 168.30
		Totals	$ -	$ 14,873.93
		Net Impact on Fund Balance	$	(14,873.93)

Section 3: Severability Provision: If any part of this Ordinance is held invalid, the remainder of this Ordinance shall continue in effect as if such invalid portion never existed; and.

Section 4: Repeal of Conflicting Provisions: All Ordinances, Resolutions, or Orders of the City Council, or parts of the same, in conflict with this Ordinance are repealed to the extent of such conflict.

PASSED this _____ day of _____, 2022.

APPROVED:

_____
STEPHANIE ORMAN, Mayor

ATTEST:

_____
KIRBY ROMINES, City Clerk

Agenda Item Form

Date of City Council Meeting	**3.8.2022**
Department	**Fire**
Submitted by	**Brent Boydston**
Phone	**(479) 271-3151**

Item Type: (*Check Applicable Item Type)*

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

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

Resolution amending the contract with Pyro Shows to increase the amount of the per year cost to $40,000.00 for the City of Bentonville July 4th fireworks show. This increase was budgeted in the 2022 budget.

Estimated Cost	**$40,000.00**
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: 3.8.2022

Re: Amending Pyro Shows Contract

The Fire Department is asking Council to allow the Mayor to amend the contract with Pyro Shows to increase the per year cost to $40,000.00.

Due to inflation and shipping cost, the original amount of $30,000.00 has decreased the amount of fireworks in the show.

The new amount of $40,000.00 was budgeted in the 2022 budget and is split between the City of Bentonville and Visit Bentonville.

Thank you for your consideration.

CITY OF BENTONVILLE, ARKANSAS

Purchasing Department 1000 SW 14th Street, Bentonville Arkansas 72712

City Hall – 305 SW A Street Bentonville, Arkansas 72712

AMENDMENT TO AGREEMENT

AGREEMENT FOR: FIREWORKS DISPLAY

This Amendment (the "Amendment"), dated February (month) 4 (day), 2022 is made by the City of Bentonville, Arkansas ("CITY") and Pyro Shows Inc., ("Pyro Shows"), parties to the Multi-Year Contract Agreement, for Fireworks Display Services , dated December 10 (month, day), 2020 (the "Agreement").

1. The Original Agreement provided for a $30,000.00 Fireworks Display for the 2021 July 4th Fireworks Display, representing the Fire Department's budgeted amount for 2021.

2. The Agreement is Amended as Follows:

    a. The Agreement has been renewed for the 2022 Calendar Year, for the 2022 Fireworks Display.
    b. The Fire Department budgeted $40,000.00 for the 2022 Fireworks Display.
    c. The Agreement is amended to allow for a $40,000.00 Fireworks Display, due to the Fire Department's increased budget amount.

3. Except as set forth in this Amendment, the Agreement is unaffected and shall continue in full force and effect in accordance with its terms. If there is conflict between this Amendment and the Agreement, or any earlier Amendment, the terms of this Amendment shall prevail.

THE CITY OF BENTONVILLE, ARKANSAS

BY: _____

Name (printed): Stephanie Orman, Mayor

Pyro Shows, Inc

B [redacted]

Name(printed): Michael E. Walden

Title: V. P.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CLERK TO ENTER INTO AN AMENDMENT TO THE CONTRACT WITH PYRO SHOWS TO INCREASE THE CONTRACT AMOUNT FOR THE ANNUAL FIREWORKS DISPLAY TO FORTY THOUSAND DOLLARS ($40,000.00) PER YEAR AND FOR OTHER PURPOSES.

WHEREAS, the City of Bentonville entered into the original multi-year agreement with Pyro Shows for fireworks display services on December 10, 2020; and

WHEREAS, said agreement provided for a fireworks display in the budgeted amount of thirty thousand dollars ($30,000.00); and

WHEREAS, this agreement has been renewed for the 2022 calendar year; and

WHEREAS, the City's 2022 budget provides funds for a forty thousand dollar fireworks display; and

WHEREAS, the parties desire to amend the agreement to make use of the additional budgeted funds.

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

Section 1: That the Mayor and Clerk be and are hereby authorized to enter into an amendment to the agreement with Pyro Shows to increase the contract amount for the annual fireworks display to forty thousand dollars ($40,000.00);

Section 2 - Severability Provision: If any part of this Resolution is held invalid, the remainder of this Resolution shall continue in effect as if such invalid portion never existed; and

Section 3: Repeal of Conflicting Provisions: All Ordinances, Resolutions, or Orders of the City Council, or parts of the same, in conflict with this Resolution are repealed to the extent of such conflict.

PASSED and APPROVED this _____ day of _____, 2022.

APPROVED:

_____
MAYOR

ATTEST:

_____
CITY CLERK

Agenda Item Form

Date of City Council Meeting	**3.8.2022**
Department	**Fire**
Submitted by	**Brent Boydston**
Phone	**(479) 271-3151**

Item Type: (*Check Applicable Item Type)*

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

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

Resolution accepting a grant from the Walton Foundation to fund six personnel for the Bentonville Fire Department. The foundation will fund 75% of wages for year one and two, 25% for year three. The City will fully fund the personnel after year three.

Estimated Cost	**$540,606.84**
Is this Item Budgeted?	☐ Yes ☑ No

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

Walton Foundation Grant and Budget Adjustment.

Budget Adjustment Request

Date of City Council Meeting	**03.08.2022**
Department	**Fire**
Submitted by	**Brent Boydston**
Phone	**(479) 271-3151**

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

City's percentage of grant to fund six personnel for the Bentonville Fire Department.

General Ledger Account Information*				
Org (Department)	**Object**	**Account Description**	**Revenue + (-)**	**Expense + (-)**
102020				**$ 540,606.84**
		Totals	**$ -**	**$ 540,606.84**
		Net Impact on Fund Balance	**$**	**(540,606.84)**

***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: 3.8.2022

Re: Walton Foundation Grant

The Bentonville Fire Department recognizes the increased demand in our area for outdoor recreation and tourism. The increase in tourism has also increased the amount of calls for service on the trail systems which at times stretches our current staffing levels. In response to this, we recognize the need for preemptive services on the trails to increase the experience locals and tourist have while using our world class trail systems. Unfortunately with current staffing measures we are unable to fulfill this need until 2025-2026. Assistance with staffing cost would allow us to move this timeline up and fulfill the need of the community sooner with a state of the art trail response system.

WALTON FAMILY
FOUNDATION

February 3, 2022

Mayor Stephanie Orman
City of Bentonville
117 West Central Boulevard
Bentonville, AR 72712

RE: Grant 00106754

Dear Mayor Orman,

It is my pleasure to inform you that the Walton Family Foundation, Inc. ("Foundation" or "WFF") has approved a grant in the amount of $725,943.00 to City of Bentonville ("Grantee"). The project term will be January 31, 2022 to April 1, 2025. This grant is at the recommendation of Steuart Walton and Tom Walton and is subject to the following terms and conditions:

1. **Purpose:** The purpose of the grant is to support City of Bentonville's development and staffing of a trail response team to assist with emergencies on the trail system in Bentonville. Grantee agrees to use all grant funds exclusively for the grant's purposes. Any changes in these purposes must be authorized in advance by the Foundation in writing.

2. **Amount: $725,943.00 USD**

   Grant payments will be made as follows:

Installment	Amount	Requirement	Date
1	$300,075.00	Upon completion of a signed grant agreement	February 2022
2	$313,884.00	Upon approval of Progress Report	April 1, 2023
3	$111,984.00	Upon approval of Progress Report	April 1, 2024

3. **Payable:** Initial installment of $300,075.00 shall be initiated upon receipt of this completed agreement from Grantee acknowledging the terms and conditions set forth herein. Grantee should receive the initial installment electronically within 14 business days of completion.

   Further installments shall be contingent upon the Foundation's approval of the Grantee's activities of the grant as evidenced by the reports described in the Reporting and Evaluation paragraph below and other information the Foundation may gather.

4. **Accounting:**

a. The Foundation encourages, whenever feasible, the deposit of grant funds in an interest-bearing account. For purposes of this agreement, the term "grant funds" includes the grant and any income earned thereon.
b. Grantee will maintain records of receipts and expenditures made in connection with the grant funds and will keep these records during the period covered by the Grantee's reporting obligations specified in the Reporting and Evaluation paragraph and for at least four years thereafter ("Maintenance Period"). Grantee will make its books and records in connection with the grant funds available for inspection by the Foundation during normal business hours as the Foundation may request at any time during the Maintenance Period.

5. **Reporting and Evaluation:** Grantee will provide the Foundation with financial and narrative reports by the due dates listed in the report schedule below. Each report shall include an account of expenditures of grant funds, and a brief narrative of what was accomplished (including a description of progress made in fulfilling the purposes of the grant and a confirmation of Grantee's compliance with the terms of the grant).

Report Type	Report Due Date
Progress Report	April 1, 2023
Progress Report	April 1, 2024
Final Report	April 1, 2025

All reports will be submitted electronically using the Foundation's online grants management system. Any questions regarding this process should be addressed to your contact listed in the Contact paragraph of this document, or by emailing smartsimplehelp@wffmail.com. Please reference Grant 00106754 on all communication.

Grantee payments are always contingent upon the Foundation's approval of Grantee's operations based on the above reports and the Foundation's satisfaction with such information as it chooses to obtain from other sources.

6. **Representations:** Grantee represents and warrants to the Foundation that:
   a. Grantee is an organization in good standing, is either an organization described in section 501(c)(3) of the Internal Revenue Code ("Code") or a governmental unit, and is not a "private foundation" described in section 509(a) of the Code. Grantee will promptly notify the Foundation of any change in Grantee's tax status under the Code.
   b. In no event will Grantee use any grant funds:
      i. to carry on propaganda, or otherwise to attempt, to influence legislation;
      ii. to influence the outcome of any specific public election or to carry on, directly or indirectly, any voter registration drive; or
      iii. to undertake any activity other than for a charitable, educational or other exempt purpose specified in section 170(c)(2)(B) of the Code.
   c. Grantee will comply with all applicable laws and regulations.

7. **Anti-Discrimination:** It is the Foundation's expectation that, in the application of Foundation's funds, Grantee will encourage equal opportunities for all and will not use the Foundation's funds to promote or engage in: exploitation, abuse, bullying, harassment, criminal acts of violence, terrorism, hate crimes, or any behavior which would be considered a violation of federal anti-discrimination laws, which prohibit discrimination on the basis of age, race, national origin, religious beliefs, sex (including gender, pregnancy, sexual orientation, and

gender identity), disability, and veteran status. It is also the Foundation's expectation that Grantee has established appropriate policies and procedures for training staff and receiving and addressing complaints regarding violence, exploitation, abuse, harassment, and discrimination, and other forms of misconduct.

8. **Repayment, Rescission, and/or Termination:** The Foundation, in its sole discretion, may discontinue or suspend funding, rescind payments made, require the return of any unspent funds, or terminate this agreement if any of the following events occur:
    a. Grantee ceases to maintain its tax-exempt status as described in paragraph 6(a) above;
    b. Grantee fails to comply with the terms of this agreement, including, but not limited to, failure to submit any required reports on a timely basis;
    c. There is a material change in Grantee's key personnel that in the sole opinion of the Foundation adversely affects Grantee's management of the grant;
    d. Grantee does not use funds for the purpose of this grant;
    e. The Foundation is not satisfied with the progress of the activities funded by this grant as measured in the performance measures in Appendix A;
    f. The Foundation determines that Grantee will be unable to achieve the purposes for which the grant was made;
    g. The Foundation becomes aware of actual or alleged acts or omissions to act by Grantee or one or more of Grantee's directors, officers, employees, volunteers, sub-grantees or contractors which the Foundation believes pose a reputational risk to the Foundation, and for which the Foundation determines Grantee has not taken immediate and effective remedial measures;
    h. There is an investigation or allegation of unlawful action or gross misconduct by Grantee, any officer, director, trustee, employee, or agent of Grantee, or any organization affiliated with Grantee, and the Foundation, in its sole discretion, determines such investigation or allegation to be credible; or
    i. The Foundation determines that making any payment, in the judgment of the Foundation, might expose the Foundation to liability, adverse tax consequences, or constitute a taxable expenditure.

    The Foundation will provide notice of any determinations made under this paragraph and, in its sole discretion, may provide Grantee up to 30 days to respond to and resolve the issues identified in the Foundation's notice. However, the determination to suspend funding, terminate, or continue the grant will remain in the Foundation's sole discretion.

9. **Grant Publicity:** Grant publicity related to this grant consistent with Grantee's normal practice is permitted, subject to the following provisions. The Foundation expects any announcements and other publicity to focus on Grantee's work and the project or issue funded by the grant. Recognition of the Foundation's role in funding the project is permitted, provided that the timing, content and strategic focus of such publicity should be approved by the Foundation contact listed in the Contact paragraph of this document. Publicizing the grant and the Foundation in Grantee's publications and communications in a manner consistent with similar grants obtained by Grantee is permitted. If publicized or recognized, the grant should be listed as from the "Walton Family Foundation."

    The Foundation may ask Grantee to provide illustrations, photographs, videos, recordings, information or other materials related to the grant (collectively "Grant Work Product") for use in Foundation communications including the Foundation's website, annual report, newsletters, board materials, presentations, communications and other publications. Grantee agrees to provide the Foundation with such items upon the Foundation's reasonable request and hereby

grants to the Foundation and anyone acting under the authority of the Foundation a fully paid-up, world-wide, right and license to use, reproduce, display and distribute the Grant Work Product in connection with the Foundation's charitable operations and activities. In connection therewith, Grantee shall be responsible for obtaining all necessary rights and permissions from third parties for the Foundation to use the Grant Work Product for these purposes. By signing this agreement, Grantee also acknowledges and agrees to use by the Foundation of historical, programmatic and other information relating to Grantee and the grant hereunder.

10. **Gratuities:** The Foundation desires that all of Grantee's resources be dedicated to accomplishing its philanthropic purposes. Therefore, Grantee agrees that it will not furnish the Foundation or its Board of Directors, officers, staff or affiliates with any type of benefit related to this grant including tickets, tables, memberships, commemorative items, recognition items, or any other benefit or gratuity of any kind.

11. **Contact:** For all communications regarding this grant, your point of contact at the Foundation will be Gary Vernon, Senior Program Officer. Gary can be contacted via phone (479) 644-5830 or email gvernon@wppg.org. Please reference Grant 00106754 in your communication.

By electronically signing this grant agreement, the Grantee acknowledges and agrees to the terms and conditions herein. A copy of the completed document will be emailed to the Grantee through DocuSign. If the electronic signing of this agreement is not completed by March 31, 2022, the Foundation will consider the Grantee to have declined the grant.

On behalf of the Foundation, I extend every good wish for the success of your organization's endeavors.

Sincerely,

Caryl M. Stern
Executive Director

ACKNOWLEDGED AND AGREED

By:_____
Mayor Stephanie Orman
City of Bentonville

cc: Kevin Boydston

RESOLUTION NO. R-22-_____

A RESOLUTION ACCEPTING A GRANT FROM THE WALTON FAMILY FOUNDATION IN THE AMOUNT OF SEVEN HUNDRED TWENTY FIVE THOUSAND NINE HUNDRED FORTY THREE DOLLARS ($725,943.00) FOR THE CITY OF BENTONVILLE FIRE DEPARTMENT IN ORDER TO SUPPORT STAFFING AND DEVELOPMENT OF A TRAIL RESPONSE TEAM, ADJUSTING THE 2022 BUDGET TO APPROPRIATE THE FIRST YEAR'S INSTALLMENT OF THREE HUNDRED THOUSAND, SEVENTY FIVE DOLLARS ($300,075.00) INTO CERTAIN ACCOUNTS; AND FOR OTHER PURPOSES.

WHEREAS, the Bentonville Fire Department has received a grant from the Walton Family Foundation in the amount of seven hundred twenty five dollars, nine hundred forty three dollars ($725,943.00), payable in three (3) installments over three (3) years; and

WHEREAS, the first installment in the amount of three hundred thousand seventy five dollars ($300,075.00) should be appropriated by budget adjustment to allow the Fire Department to staff and develop a trail response team to respond to emergencies on the trail system in Bentonville; and

WHEREAS, the 2023 and 2024 grant payments will be included in future budgets.

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

Section 1: The Mayor should be and is hereby authorized to accept the grant from the Walton Family Foundation in the amount of seven hundred twenty five thousand, nine hundred forty three dollars ($725,943.00), payable in three (3) installments over three (3) years and execute appropriate paperwork;

Section 2: The 2022 Budget is hereby adjusted to accept the first year grant amount of three hundred thousand, seventy five dollars ($300,075.00) and to appropriate the same to various accounts as noted below:

General Ledger Account Information*				
Org (Department)	Object	Account Description	Revenue + (-)	Expense + (-)
102020	33810	Local Grants	$ 300,075.00	
102020	41010	Salaries		$ 301,474.26
102020	41510	FICA/Medicare		$ 4,058.85
102020	41710	Health Insurance		$ 44,838.00
102020	41711	H.S.A		$ 6,300.00
102020	41620	Workers Comp		$ 5,256.96
102020	41720	LTD		$ 718.03
102020	41740	Dental Insurance		$ 2,836.70
102020	41810	LOPFI		$ 29,817.00
102020	42020	Uniform		$ 4,800.00
		Totals	$ 300,075.00	$ 400,099.80
		Net Impact on Fund Balance	$	(100,024.80)

Section 3 - Severability Provision: If any part of this Resolution is held invalid, the remainder of this Resolution shall continue in effect as if such invalid portion never existed; and

Section 4: Repeal of Conflicting Provisions: All Ordinances, Resolutions, or Orders of the City Council, or parts of the same, in conflict with this Resolution are repealed to the extent of such conflict.

PASSED this _____ day of _____, 2022.

APPROVED:

_____
STEPHANIE ORMAN, Mayor

Attest:

_____
KIRBY ROMINES, City Clerk

Agenda Item Form

Date of City Council Meeting	**3.8.2022**
Department	**Fire**
Submitted by	**Brent Boydston**
Phone	**(479) 271-3151**

Item Type: (*Check Applicable Item Type)*

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

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

Ordinance requesting a Waiver of Bid to purchase eight Physio Control Heart Monitors, supplies, and an eight year service and maintenance agreement for a total not to exceed $346,819.64 including tax. All of our existing monitors will be traded in for a reduction on the cost of the new ones.

Estimated Cost	**$346,819.64**
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	**03.08.20222**
Department	**Fire**
Submitted by	**Brent Boydston**
Phone	**(479) 271-3151**

Vendor	**Stryker Medical**
Total Cost	**$ 346,819.64**

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):***

(8) Physio Control Lifepak 15 Heart Monitors, supplies and an eight year service and maintenance agreement.

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

Our existing monitors have reached end of life, and Physio Control will no longer service our monitors. The service agreement will allow us to pay a one time contract price without incurring a percentage increase every year for the next eight years. This is a sole source item that we have been using since the Bentonville Fire Department started a paramedic ambulance service in the early 80's.

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: 3.8.2022

Re: Replacement of all Physio Control Heart Monitors

Fire Department Staff is requesting an Ordinance for a Waiver of Bid to purchase and replace our existing Physio Control Lifepak 15 heart monitors with supplies and service agreement.

Our existing monitors have reached end of life, and Physio Control will no longer service or repair the units.

We are asking for a waiver of bid to continue the use of Physio Control product that has been in service with the Bentonville Fire Department since the early 1980's. We have had exceptional service and reliability from Physio Control products.

Thank you for your consideration.

stryker

Bentonville FD 10 LP15

Quote Number: 10469611

Version: 1

Prepared For: BENTONVILLE FIRE DEPT

Attn:

Remit to: **Stryker Medical**
P.O. Box 93308
Chicago, IL 60673-3308

Rep: Logan Cruse

Email: logan.cruse@stryker.com

Phone Number:

Quote Date: 02/21/2022

Expiration Date: 05/22/2022

Delivery Address		**End User - Shipping - Billing**		**Bill To Account**	
Name:	BENTONVILLE FIRE DEPT	Name:	BENTONVILLE FIRE DEPT	Name:	CITY OF BENTONVILLE
Account #:	1298188	Account #:	1298188	Account #:	1298187
Address:	800 SW A ST	Address:	800 SW A ST	Address:	1000 SW 14TH ST
	BENTONVILLE		BENTONVILLE		BENTONVILLE
	Arkansas 72712-6225		Arkansas 72712-6225		Arkansas 72712-3625

Equipment Products:

#	Product	Description	Qty	Sell Price	Total
1.0	99577-001588	LIFEPAK 15 V4 Monitor/Defib - Manual & AED, Trending, Noninvasive Pacing, SpO2, SpCO, SpMet, NIBP, 12-Lead ECG, EtCO2, BT. Incl at N/C: 2 pr QC Electrodes (11996-000091) & 1 Test Load (21330-001365) per device, 1 Svc Manual CD(26500-003612) per order	8	$33,429.75	$267,438.00
2.0	41577-000288	Ship Kit -QUIK-COMBO Therapy Cable; 2 rolls100mm Paper; RC-4, Patient Cable, 4ft.; NIBP Hose, Coiled; NIBP Cuff, Reusable, adult; 12-Lead ECG Cable, 4-Wire Limb Leads, 5ft; 12-Lead ECG Cable, 6-Wire Precordial attachment	8	$0.00	$0.00
3.0	21330-001176	LP 15 Lithium-ion Battery 5.7 amp hrs	24	$395.69	$9,496.56
4.0	11171-000049	Masimo™Rainbow™ DCI Adult Reusable Sp02, SpC0, SpMet Sensor, 3 FT. For use with RC Patient Cable.	8	$441.60	$3,532.80
5.0	11171-000050	Masimo™Rainbow™ DCIP Pediatric Reusable Sp02, SpC0, SpMet Sensor, 3 FT. For use with RC Patient Cable.	8	$564.71	$4,517.68
6.0	11160-000011	NIBP Cuff-Reusable, Infant	8	$18.42	$147.36
7.0	11160-000013	NIBP Cuff-Reusable, Child	8	$20.83	$166.64
8.0	11160-000017	NIBP Cuff -Reusable, Large Adult	8	$28.84	$230.72
9.0	11160-000019	NIBP Cuff-Reusable, Adult X Large	8	$40.85	$326.80
10.0	11577-000002	LIFEPAK 15 Basic carry case w/right & left pouches; shoulder strap (11577-000001) included at no additional charge when case ordered with a LIFEPAK 15 device	8	$272.00	$2,176.00
11.0	11220-000028	LIFEPAK 15 Carry case top pouch	8	$48.86	$390.88
12.0	11260-000039	LIFEPAK 15 Carry case back pouch	8	$69.70	$557.60

stryker

Bentonville FD 10 LP15

Quote Number: 10469611

Version: 1

Prepared For: BENTONVILLE FIRE DEPT

Attn:

Remit to: **Stryker Medical**
P.O. Box 93308
Chicago, IL 60673-3308

Rep: Logan Cruse

Email: logan.cruse@stryker.com

Phone Number:

Quote Date: 02/21/2022

Expiration Date: 05/22/2022

#	Product	Description	Qty	Sell Price	Total
13.0	11171-000082	Masimo™;RC Patient Cable - EMS, 4 FT.	8	$200.25	$1,602.00
14.0	11171-000046	Masimo™M-LNCS® DCI, Adult Reusable SpO2 only Sensor. For use with RC Patient Cable.	8	$114.94	$919.52
15.0	11171-000047	Masimo™M-LNCS® DCIP, Pediatric Reusable SpO2 only Sensor. For use with RC Patient Cable.	8	$114.94	$919.52
16.0	11171-000042	Masimo™M-LNCS® Neonatal/Adult Single Patient Use Adhesive SpO2 only Sensor. Box of 20. For use with RC Patient Cable.	1	$287.36	$287.36
17.0	11996-000093	Electrode EDGE QUIK-COMBO pediatric RTS	8	$36.85	$294.80
18.0	11996-000017	Electrode QUIK-COMBO w/REDI-PAK preconnect	16	$21.74	$347.84
19.0	11240-000032	Strip chart recorder paper, 100mm, 2 rolls/pkg	8	$8.66	$69.28
20.0	MVPO	FILTERLINE,ADV, PED, ORAL-N, O2, STD, S-TERM, 25	1	$337.75	$337.75
21.0	MVAIH	FILTERLINE,ADV, AD, PED,INTUBATED, L-TERM, 25	1	$190.00	$190.00
22.0	MVAO	FILTERLINE,ADV, AD, ORAL-N, O2, STD, S-TERM, 25	1	$285.96	$285.96
			Equipment Total:		$294,235.07

Trade In Credit:

Product	Description	Qty	Credit Ea.	Total Credit
TR-15V1V2-LP15	TRADE-IN-STRYKER LP15V1/V2 TOWARDS PURCHASE OF LIFEPAK 15	6	-$6,500.00	-$39,000.00
TR-LP12B-LP15	TRADE-IN-STRYKER LIFEPAK 12B TOWARDS PURCHASE OF LIFEPAK 15	2	-$5,000.00	-$10,000.00

ProCare Products:

#	Product	Description	Qty	Sell Price	Total
25.1	78000643	ProCare LIFEPAK 15 Prevent Service: Annual ship in preventive maintenance inspection and unlimited repairs including parts, labor and travel with battery coverage for LIFEPAK 15 V4 Monitor/Defib - Manual & AED, Trending, Noninvasive Pacing, SpO2, SpCO, SpMet, NIBP, 12-Lead ECG, EtCO2, BT. Incl at N/C: 2 pr QC Electrodes (11996-000091) & 1 Test Load (21330-001365) per device, 1 Svc Manual CD(26500-003612) per order	8	$8,936.90	$71,495.20

JEFFERSON APPROVED

stryker

Bentonville FD 10 LP15

Quote Number: 10469611

Version: 1

Prepared For: BENTONVILLE FIRE DEPT

Attn:

Quote Date: 02/21/2022

Expiration Date: 05/22/2022

Remit to: **Stryker Medical**
P.O. Box 93308
Chicago, IL 60673-3308

Rep: Logan Cruse

Email: logan.cruse@stryker.com

Phone Number:

ProCare Total:	$71,495.20

Time of Sale Procare discount of 15% and locked in for all 8 years this contract covers.

Price Totals:

Estimated Sales Tax (9.500%):	$30,089.38
Freight/Shipping:	$0.00
Grand Total:	$346,819.64

Comments:

NASPO OK-SW-300

Prices: In effect for 90 days

Terms: Net 30 Days

Contact your local Sales Representative for more information about our flexible payment options.

PENDING APPROVAL

Capital Terms and Conditions:
Deal Consummation: This is a quote and not a commitment. This quote is subject to final credit, pricing, and documentation approval. Legal documentation must be signed before your equipment can be delivered. Documentation will be provided upon completion of our review process and your selection of a payment schedule. Confidentiality Notice: Recipient will not disclose to any third party the terms of this quote or any other information, including any pricing or discounts, offered to be provided by Stryker to Recipient in connection with this quote, without Stryker's prior written approval, except as may be requested by law or by lawful order of any applicable government agency. A copy of Stryker Medical's Acute Care capital terms and conditions can be found at https://techweb.stryker.com/Terms_Conditions/index.html. A copy of Stryker Medical's Emergency Care capital terms and conditions can be found at https://www.strykeremergencycare.com/terms.

PENDING APPROVAL

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE MAYOR AND THE CITY CLERK TO ENTER INTO AN AGREEMENT WITH STRYKER MEDICAL FOR THE PURCHASE OF PHYSIO CONTROL LIFEPAK 15 HEART MONITORS IN THE AMOUNT OF THREE HUNDRED FORTY SIX THOUSAND EIGHT HUNDRED NINETEEN DOLLARS AND SIXTY FOUR CENTS ($346,819.64.), DECLARING CERTAIN LIFEPAK MONITORS AS SURPLUS PROPERTY AND AUTHORIZING DISPOSAL BY TRADE-IN, WAIVING THE REQUIREMENT OF COMPETITIVE BIDDING AND FOR OTHER PURPOSES.

WHEREAS, the City of Bentonville Fire Department requires Physio Control Lifepak Heart Monitors for use in its ambulances;

WHEREAS, the City of Bentonville Fire Department seeks to replace a total of eight (8) obsolete Lifepak Heart Monitors with eight (8) new Lifepak Heart Monitors;

WHEREAS, soliciting bids would not produce competitive bids as Lifepak Heart Monitors are a sole source item available only through Stryker Medical;

WHEREAS, this purchase will be made using budgeted funds.

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 for the purchase of Physio Control Lifepak Heart Monitors from Stryker Medical in the amount of three hundred forty six thousand, eight hundred nineteen dollars and sixty four cents ($346,819.64.).

Section 2: Because these are a sole source item available from Stryker Medical, an exceptional circumstance exists, and it would be neither practical nor feasible to advertise for competitive bidding so that requirement is herein waived.

Section 3: That six (6) Stryker Lifepak 15V1V2 monitors and two (2) Stryker Lifepak 12B monitors should be and the same are hereby declared surplus property, and the disposal by trade as set forth herein is authorized in accordance with Arkansas law.

Section 4: A record shall be maintained of all items disposed of pursuant to this surplus declaration.

Section 5: Severability Provision: If any part of this Ordinance is held invalid, the remainder of this Ordinance shall continue in effect as if such invalid portion never existed.

Section 6: Repeal of Conflicting Ordinances: All Ordinances of the City Council, or parts of Ordinances of the City Council, in conflict herewith are hereby repealed to the extent of such conflict.

PASSED and APPROVED this _____ day of _____, 2022.

APPROVED:

_____
MAYOR

ATTEST:

_____
CITY CLERK

Agenda Item Form

Date of City Council Meeting	**3/8/2022**
Department	**ENGINEERING**
Submitted by	**TRACY BILLINGS**
Phone	**(479) 696-0229**

Item Type: (*Check Applicable Item Type)*

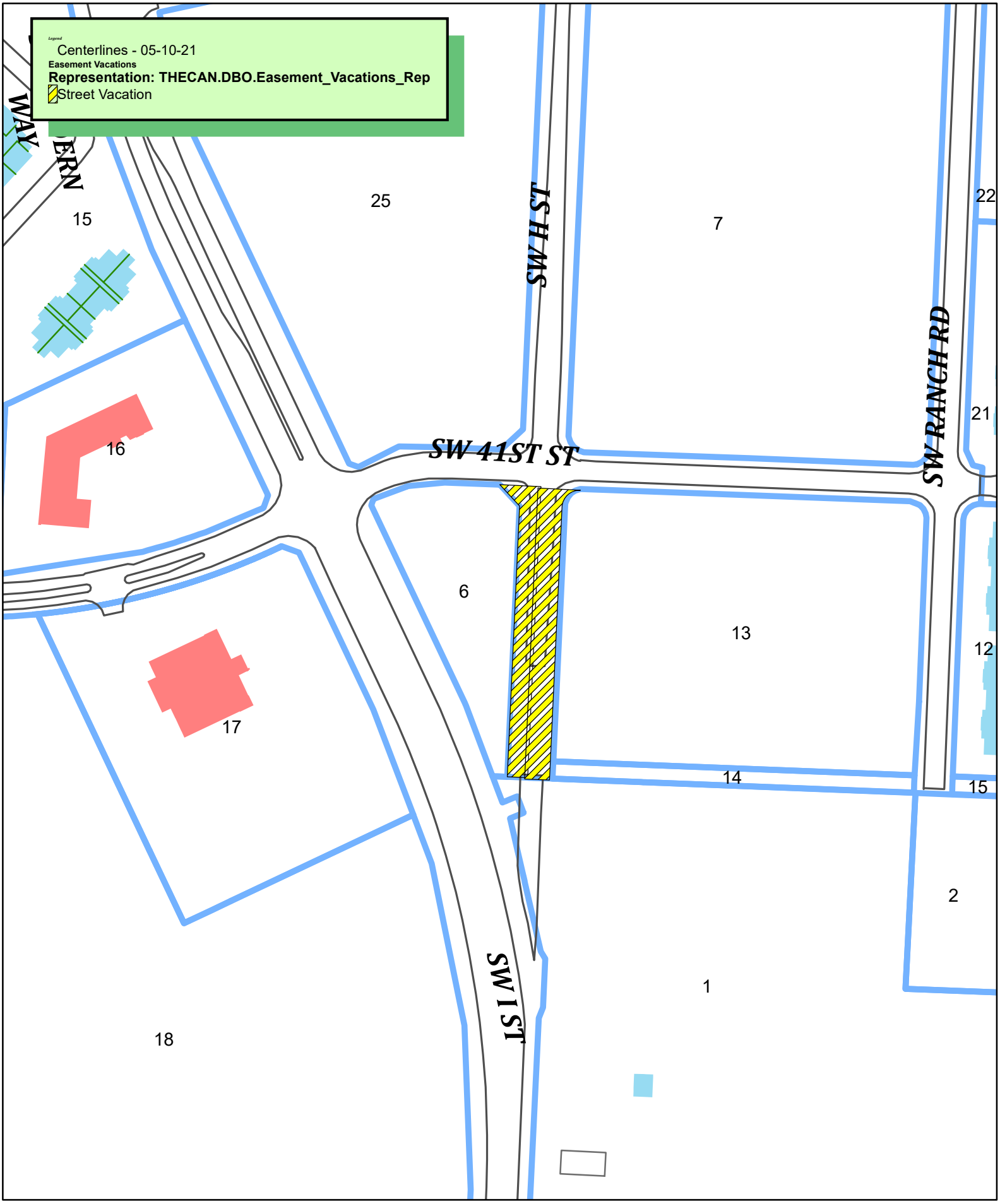
☐ Budget Adjustment	☐ Change Order	☐ Informational	☑ Ordinance	☐ Resolution	☐ Bid Award

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

Public hearing and ordinance vacating Street Right of Way and establishing a Utility Easement requested by the City of Bentonville for lot 6 of Eversole Addition (VAC22-0005).

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 = 172 feet

VAC22-0005
Proposed Right-of-Way Vacation

ORDINANCE NO_____

ORDINANCE VACATING RIGHT OF WAY AND ESTABLISHING A UTILITY EASEMENT LOCATED AT LOT 6 OF EVERSOLE ADDITION TO THE CITY OF BENTONVILLE, ARKANSAS, BENTON COUNTY ARKANSAS.

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

West Right of Way Vacation Description

A part of Lot 6, Eversole Addition to the City of Bentonville and filed for record at Plat Book 2011 Page 120 and also being a part of a tract described in Warranty Deed Book 2009 Page 47852 all in Section 7, Township 19 North, Range 30 West of the Fifth Principal Meridian, Benton County, Arkansas and more particularly described as follows:
Commencing at an existing mag nail with PS 1304 washer at the intersection of right of way for Southwest I Street and the southernmost corner of Lot 7, Eversole Addition to the City of Bentonville and filed for record at Plat Book 2011 Page 120: thence North 02°36'24" East a distance of 139.60 feet to the Southeast Corner of Lot 6 being the Point of Beginning; thence North 87°43'51" West along the south line of Lot 6 a distance of 29.02 feet to a point on the westerly right of way of old Highway 102; thence North 02°36'09" East along said right of way, a distance of 384.35 feet to an angle point; thence North 42°45'36" West a distance of 41.21 to a point on the north line of Lot 6, Eversole Addition and being the south right of way of SW 41st Street; thence South 87°16'41" East a distance of 58.35 feet the northeast corner of Lot 6; thence South 02°36'24" West along the east line of Lot 6, a distance of 413.02 feet to the Point of Beginning, containing 0.28 acres, more or less.

AND

East Right of Way Description

A part of Section 7, Township 19 North, Range 30 West of the Fifth Principal Meridian, Benton County, Arkansas and more particularly described as follows:
Beginning at the Southwest Corner of Lot 14, Limestone Ranch Subdivision as filed for record at Plat Book 2015 Page 651: thence North 87°44'12" West a distance of 35.11 feet; thence North 02°36'24" East a distance of 413.02 feet to an angle point; thence South 87°02'07" East a distance of 60.27 feet to an existing chiseled cross on the south right of way of Southwest 41st Street and the north line of Lot 13, Limestone Ranch Subdivision; thence along an arc having a length of 39.04, chord direction of South 47°39'29" West, and chord distance of 35.10 feet, and a radius of 24.69 feet to a five eighths (5/8") rebar; thence continuing along the existing right of way, South 02°39'12" West a distance of 387.67 feet to the Point of Beginning, containing 0.34 acres, 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 right of way.

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

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

A part of Lot 6, Eversole Addition to the City of Bentonville and filed for record at Plat Book 2011 Page 120 and being a part of a tract described in Warranty Deed Book 2009 Page 47852, also a part of Limestone Ranch Subdivision as filed for record at Plat Book 2015 Page 651 all in Section 7, Township 19 North, Range 30 West of the Fifth Principal Meridian, Benton County, Arkansas and more particularly described as follows:

Beginning at the Southwest Corner of Lot 14, Limestone Ranch Subdivision as filed for record at Plat Book 2015 Page 651: thence North 87°44'12" West a distance of 35.11 feet; thence North 02°36'24" East a distance of 393.02 feet to an angle point; thence North 87°16'41" West a distance of 38.05 feet; thence North 42°45'36" West a distance of 28.53 feet to a point on the north line of Lot 6, Eversole Addition and being the south right of way of SW 41st Street; thence South 87°16'41" East a distance of 58.35 feet the northeast corner of Lot 6; thence South 87°02'07" East a distance of 60.27 feet to an existing chiseled cross on the south right of way of Southwest 41st Street and the north line of Lot 13, Limestone Ranch Subdivision; thence along an arc having a length of 39.04, chord direction of South 47°39'29" West, and chord distance of 35.10 feet, and a radius of 24.69 feet to a five eighths (5/8") rebar; thence continuing along the existing right of way, South 02°39'12" West a distance of 387.67 feet to the Point of Beginning, containing 0.36 acres, more or less.

Section 2: Concurrently, The City of Bentonville Arkansas establishes a permanent utility easement to lay, construct, remove, relay, enlarge, maintain, inspect, repair and operate all municipally owned and franchised/permitted utilities including but not limited to water and sewer line or lines, manholes, sewer force main, fire hydrants, poles, electric lines and other appurtenances thereto, with right of ingress and egress to and from the same, on over, across and under the following described real estate to-wit:

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

Section 4: This Ordinance shall take effect and be in force from and after its passage. The above and foregoing Ordinance was passed, approved, and adopted the ____ day of _____, 2022, at a regular meeting of the City Council of the City of Bentonville, Arkansas.

_____	_____
KIRBY ROMINES, City Clerk and Recorder for the City of Bentonville, Arkansas	**STEPHANIE ORMAN, Mayor City of Bentonville, Arkansas**

Agenda Item Form

Date of City Council Meeting	**3/8/2022**
Department	**ENGINEERING**
Submitted by	**TRACY BILLINGS**
Phone	**(479) 696-0229**

Item Type: (*Check Applicable Item Type)*

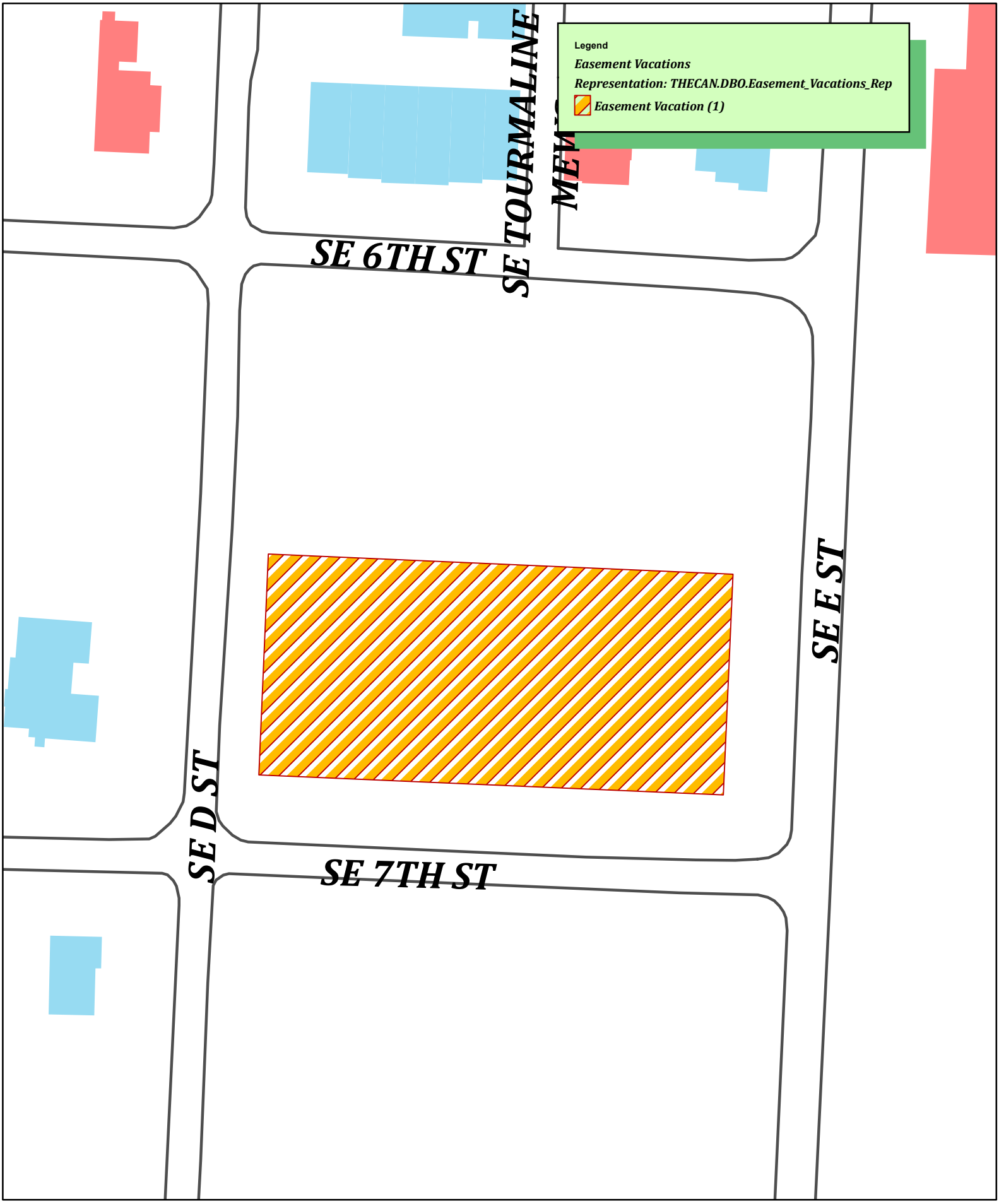
☐ Budget Adjustment	☐ Change Order	☐ Informational	☐ Ordinance	☑ Resolution	☐ Bid Award

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

Resolution setting a public hearing for March 29, 2022 for a Utility Easement Vacation requested for 609 SE D Street of Orchards Addition (VAC22-0002).

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 = 76 feet

VAC22-0002
Proposed Easement Dedication

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 Todd Renfrow requesting a utility easement vacation (VAC22-0002) within the City of Bentonville, Arkansas be vacated, which said utility easement is described as follows:

A 20' EASEMENT FOR THE PURPOSE OF UTILITIES, AS SHOWN ON INSTRUMENT L202160631 AND INSTRUMENT 201909341, TO THE CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS, TO BE VACATED, THE CENTERLINE OF SAID EASEMENT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND 5/8" REBAR BEING THE SOUTHEAST CORNER OF SAID BLOCK K, OF ORCHARD ADDITION, THENCE N87°31'52"W 15.43'; THENCE N02°32'52"E 10.00' TO THE TRUE POINT OF BEGINNING; THENCE N87°31'52"W 290.31' THENCE N02°28'33"E 138.09'; THENCE S87°31'52"E 290.48'; THENCE S02°32'52"W 148.09' TO THE POINT OF BEGINNING, SAID EASEMENT BEING 10' ON EACH SIDE OF THE CENTERLINE DESCRIBED HEREON. CONTAINING 0.394 ACRES MORE OR LESS.

WHEREAS, Ark. Code Ann. Section 14-301-302(c) provides that the City Council shall by resolution fix a day for the hearing of the petition and shall direct the City Clerk and Recorder to give notice of the meeting, by publication, once per week for two (2) consecutive weeks in some newspaper published in and having general circulation in Bentonville, Benton County, Arkansas.

NOW, THEREFORE, BE IT RESOLVED, by the City of Bentonville, Arkansas, that the petition to close the above described utility easement is set for a hearing March 22, 2022 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 _____ 2022 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	**3/8/2022**
Department	**Parks and Recreation**
Submitted by	**Scott Mendenhall**
Phone	**(479) 271-3190**

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 Award Bid IFB-22-12 to Titan Lawn and Landscape for mowing services as needed throughout the year at a weekly rate of $2,069.55, for an estimated annual total of $61,963.00 per the unit prices attached. Due to budgetary reasons, the City has selected the ten (10) following parks for 2022: Park Springs Park, Back Side of Park Springs Park, Wildwood Park, Old Tiger Track, Merchants Park, Bike Park, Bark Park, North Trail, Durham Park, and Enfield Park. This contract is for a one year term, renewable annually until 2025. Additional park locations, included in the bid but not being awarded at this time due to budgetary reasons, may be added in renewal years via Change Order.

Estimated Cost	**$61,963.00**
Is this Item Budgeted?	☑ Yes ☐ No

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

Memo

To: City Council, Mayor Orman

Thru: David Wright, Parks and Recreation Director

From: Scott Mendenhall, Parks Maintenance Manager

Date: February 23, 2022

Re: Bid Award, in the amount of $61,963.00 to Titan Lawn and Landscape for Mowing Services for Parks and Recreation.

Parks and Recreation Staff is requesting City Council's approval to award Bid IFB-22-12 to Titan Lawn and Landscape for mowing services at ten (10) park sites consisting of Park Springs Park, Back Side of Park Springs Park, Wildwood Park, Old Tiger Track, Merchants Park, Bike Park, Bark Park, North Trail, Durham Park and Enfield Park, as needed throughout the year at a weekly mow rate of $2069.55, for an estimated annual total of $61,963.00. This contract is for a one year term, renewable annually until 2025. Additional park locations, included in the bid but not being awarded at this time due to budgetary reasons, may be added in renewal years via Change Order.

As Bentonville Parks and Recreation has grown over the years, we have used contract labor to supplement the mowing of some of our smaller parks to avoid adding new full-time personnel. This has allowed our maintenance staff to focus on the turf of our athletic fields, as well as our higher profile parks such as the downtown Square.

We have $110,000 budgeted for contract mowing services for 2022. As the mowing contract established in 2019 for a one year term that was renewed annually upon written mutual agreement for a total maximum term of three (3) years was fulfilled in 2021, Parks and Recreation returned to the marketplace to source bids for continuing these critical mowing services. The balance of the 2022 mowing services budget, $48,037.00, was awarded to Empire Group Property Management for mowing services at the Bentonville Community Center in 2021 and was renewed in 2022 upon mutual written agreement. This will allow parks to be mowed weekly providing an enjoyable experience for the citizens of our community. It allows our staff to dedicate more man-hours for the growing number of work orders / time on buildings, restrooms, pavilions, restrooms, gates/fencing etc.

If you have any questions regarding this item, please let me know. Please call me at 271-3190, or email: smendenhall@bentonvillear.com.

Attachments:

Bid Tabulation

City of Bentonville Official Bid Tabulation: IFB-22-12

		Fine Cut Lawns	Precision	Titan Lawn & Landscape
PARK OR TRAIL NAME AND ADDRES	**APPROXIMATE ACREAGE, MILEAGE OR FEET**	**PRICE PER WEEKLY MOW**	**PRICE PER WEEKLY MOW**	**PRICE PER WEEKLY MOW**
PARK SPRINGS PARK 300 NW 10th St	1.9 ACRES	$ 125.00	$ 164.25	$ 172.46
BACK SIDE OF PARK SPRINGS 301 Along the south side of Tiger Blvd to the corner of Tiger & NW A St then south of Tiger Blvd along the west side of NW A St approximately 330 feet.	1 ACRE	$ 100.00	$ 109.50	$ 86.23
WILDWOOD PARK 3800 Bright Road	1.62 ACRES	$ 100.00	$ 131.40	$ 172.46
ENFIELD PARK 1205 NE Waverly Way	1.52 ACRES	$ 125.00	$ 131.40	$ 172.46
OLD TIGER TRACK 517 Tiger Blvd.	5.33 ACRES	$ 300.00	$ 410.63	$ 287.44
MERCHANTS PARK (excludes sports fields) 201 Elm Tree Rd	5.26 ACRES	$ 300.00	$ 438.00	$ 402.41
BIKE PARK* 2400 N Walton Blvd	2.2 ACRES	$ 175.00	$ 197.10	$ 258.69
BARK PARK* 2400 N Walton Blvd	3.24 ACRES	$ 225.00	$ 266.09	$ 287.44
NORTH TRAIL* Parallel with Bark Park and Bike Park (located at 2400 N Walton Blvd)	0.65 MILE	$ 200.00	$ 65.70	$ 114.98
NORTH WALTON TRAIL* From 1401 N Walton Blvd to The North Walton Tunnel at Bark Park (Including the connector trails at Stonehenge Dr. and Somerset St.)	1 MILE	$ 225.00	$ 657.00	$ 172.46
DURHAM PARK 913 Durham Place	0.71 ACRE	$ 75.00	$ 82.13	$ 114.98
GILMORE PARK* SW 5th St and SW D ST Including the trail from SW D St to SW E St and trail from SW C St to SW B St.	1.72 ACRES	$ 150.00	$ 164.25	$ 229.95
AUSTIN-BAGGETT PARK 601 SE D St	1.43 ACRES	$ 125.00	$ 131.40	$ 172.46
TRAIN STATION PARK 400 S Main St	0.41 ACRE	$ 75.00	$ 131.40	$ 114.98
TRAIL AT TRAIN STATION PARK* 400 S Main St The approximate 175-feet of trail that runs toward the west to SW A St.	175 FEET	$ -	$ 65.70	$ 49.28
NE A ST RESTROOM 906 NE A St	0.82 ACRE	$ 75.00	$ 131.40	$ 143.72
LAWRENCE PLAZA 215 NE A St	0.80 ACRE	$ 75.00	$ 131.40	$ 114.98
TRAIL AT LAWRENCE PLAZA* 215 NE A St – the approximate 315-feet of trail from 3rd to NE Blake & NE B St.	315 FEET	$ 10.00	$ 65.70	$ 49.28
DAVE PEEL PARK 206 E Central Ave	1.75 Acres	$ 125.00	$ 273.75	$ 172.46
PHILLIPS PARK (excludes sports fields) 3108 SE J Street	12 Acres	$ 1,500.00	$ 985.50	$ 689.85
LAKE BENTONVILLE 2100 SW I Street	4 Acres	$ 375.00	$ 328.50	$ 344.93
Two Cities Trail* 1.5 mile trail Runs from S Dodson Rd to SW I St	1.5 Mile	$ 675.00	$ 985.50	$ 258.69
102/14th St Trail (102 Ditches) 850ft Trail including ditches between trail and city street.	850 Feet	$ 75.00	$ 125.93	$ 114.98
Tristan Trail Along a 460ft soft surface trail along NW A St near the City Compost Facility	460 Feet	$ 75.00	$ 87.60	$ 87.60
	Total Bid Price	**$ 5,285.00**	**$ 6,261.23**	**$ 4,785.17**

Bid Opening Date: February 18, 2022 at 2:30PM
purchasing@bentonvillear.com - (479) 271-3115

CITY OF BENTONVILLE, ARKANSAS
PURCHASING OFFICE

1000 SW 14TH STREET BENTONVILLE, AR 72712 – (479) 271-3115 – PURCHASING@BENTONVILLEAR.COM

ADDENDUM TO SOLICITATION

Solicitation ID:	IFB-21-12	**Solicitation Title:**	PARKS MOWING
Addendum Number:	1	**Date of Issuance:**	February 1, 2022

TO: Prospective Bidders

This Addendum modifies the original Bidding Document(s) dated January 23, 2022.

This Addendum Number 1 consists of 2 page(s).

Pricing Sheet:

1.0 Amended Dates for IFB-22-12.

1.1 Due to inclement weather expected on February 2, 2022, the City of Bentonville has closed all building lobbies.

1.2 Due to this closure, the inclement weather, and for the safety of Bidders and City staff, the Mandatory Pre-Bid Meeting originally scheduled for February 2nd has been rescheduled.

1.3 Due to the rescheduling of the Mandatory Pre-Bid Meeting date, revision of all other mandatory dates is required for the bid process (Mandatory Ride-A-Long, Question Deadline and Bid Opening).

1.4 The dates have been Amended as follows:

1.4.1 **Mandatory Pre-Bid Meeting:** February 8, 2022 at 10:45 AM

1.4.2 **Mandatory Ride-A-Long Dates:** February 14, 2022

1.4.3 **Deadline for Submission of Questions:** February 16, 2022 at 12:00 PM

1.4.4 **Bid Opening Date and Time:** February 18, 2022 at 2:30 PM

[END OF ADDENDUM NUMBER 1]

CITY OF BENTONVILLE, ARKANSAS
PURCHASING OFFICE

1000 SW 14TH STREET BENTONVILLE, AR 72712 – (479) 271-3115 – PURCHASING@BENTONVILLEAR.COM

ADDENDUM TO SOLICITATION

Solicitation ID:	IFB-22-12	**Solicitation Title:**	Parks Mowing
Addendum Number:	2	**Date of Issuance:**	February 16, 2022

TO: Eligible Bidders

This Addendum modifies the original Bidding Document(s) dated January 23, 2022.

This Addendum Number 2 consists of 6 page(s).

Pre-Bid Meeting: Communicated Expectations/Scope of Work

1.0 The Contractor is expected to uphold the City's high standard and expectation for the orderly appearance of the Parks.

Pre-Bid Meeting: Clarifications/Reminders Regarding Bid Submittal

1.0 Attendance to BOTH the Mandatory Pre-Bid Meeting and Mandatory Ride-A-Long Appointments are required to be eligible to submit a Bid.

2.0 Acknowledgement of ALL issued Addenda is required in any Bid Submission.

3.0 Bidders should carefully review the Bidding Documents and be sure to complete ALL Required Response Fields (where applicable).

4.0 This Invitation for Bid requires a $500.00 Bid Bond to be included in the Bid Submission.

a. Bid Bonds are returned to all Bidders, including the awarded Bidder, once the awarded Contract has been signed. Bid Bonds in the form of a surety are not automatically returned; Bidders must request return of surety Bonds.

5.0 The Bidding Documents include a Non-Collusion Affidavit – this document must be SIGNED AND NOTARIZED and included in the Bid Submission.

CITY OF BENTONVILLE, ARKANSAS

PURCHASING DEPARTMENT– (479) 271-3115 – PURCHASING@BENTONVILLEAR.COM
ADMINISTRATIVE SERVICES BUILDING -1000 SW 14TH ST. BENTONVILLE, ARKANSAS 72712

FOR PUBLICATION

PUBLICATION DATE January 23,2022

NOTICE TO BIDDERS
Invitation For Bid (IFB)-22-12
PARKS MOWING SERVICES

The City of Bentonville, Arkansas is accepting formal, sealed bids from properly qualified, capable, applicably licensed and insured, and experienced entities with the necessary equipment to perform the services for the mowing of various City Park locations within the City limits of Bentonville. The awarded Contract will be for a one (1) year term, for 2022 services, and shall be renewable annually upon mutual written agreement for a total maximum term of three (3) years.

All Bids must be accompanied by a Bid Guarantee in the form of a bid bond, certified check, or cashier's check in the amount of five hundred dollars ($500.00), payable without condition to the City of Bentonville, as a guarantee that the Bidder will enter into a contract and execute performance and payment bonds after the Notice of Award has been issued. The Bid Guarantee shall provide that the Bidder or surety must pay the damage, loss, cost, and expense subject to the amount of the Bid Bond directly arising out of the Bidder's default in failing to execute and deliver the Contract and bonds. Personal checks and company checks are NOT acceptable as a Bid Guarantee. Any bid submitted shall be void unless accompanied by a cashier's check drawn upon a bank or trust company doing business in the State of Arkansas or by a corporate bid bond. Bidders shall adhere to the bonding requirements as specified in the Bidding Documents for this solicitation.

The City reserves the right to cancel this request at any time in accordance with the City's best interest. The City also reserves the right to reject any Bid received and to waive irregularities in accordance with the City's best interest. Submitters agree that such rejection shall be without liability on the part of the City of Bentonville for any damage or claim brought by any Bidder because of such rejections, nor shall the Submitter seek any recourse of any kind against the City because of such rejections. The filing of any Bids in response to this Invitation shall constitute an agreement of the Bidder to these conditions.

The City of Bentonville Purchasing Department encourages all qualified small, minority and women owned businesses to participate and submit Bids for City projects/purchases.

Interested parties can obtain the required Bid Packet by emailing purchasing@bentonvillear.com, by calling 479-271-3115, or from the Purchasing Department located at the address below. The Bid Packet may also be downloaded from the Purchasing Page of the City's website (http://www.bentonvillear.com/211/Purchasing) by clicking 'Review Open Bids'; however, Bidders are encouraged to notify Purchasing that they have downloaded the Bid Packet to ensure they are on the distribution list for Addenda and/or Q&A. Interested Parties should note that there may be a 24-48 hour delay from the date of publication for the documents to be available on the City's website.

There will be a Mandatory Pre-Bid Meeting for this solicitation on Wednesday, February 2 at 10:45 A.M.at the Bentonville Municipal Complex. 2nd Floor, Transportation Conference Room, located at 3200 SW Municipal Drive Bentonville, AR 72712.

There will be Mandatory Ride-A-Long Appointments scheduled during the Mandatory Pre-Bid Meeting; these Mandatory Ride-A-Long Appointments will be scheduled for Tuesday, February 8, as schedules permit. The Ride-A-Long Appointments will consist of riding with a City employee to view the locations in the Scope of Work.

Attendance to both the Mandatory Pre-Bid Meeting and Mandatory Ride-A-Long Appointment are required to be eligible to submit a Bid.

Due to the ongoing COVID-19 pandemic, all attendees to the Pre-Bid Meeting are highly encouraged to wear a facemask at all times while at the Pre-Bid Meeting and observe social distancing protocols when possible during the meeting. Bidders shall not allow a company representative to attend the meetings who is experiencing any COVID-19 symptoms, who has tested positive for COVID-19 fewer than ten days prior to the meeting or who is still experiencing COVID—19 symptoms after testing positive, or who is known or assumed to have been in contact with a person known to have tested positive for COVID-19 within ten days prior to the meeting (Bidders shall send an alternate representative).

Bidders whom have concerns regarding attendance to the Mandatory Pre-Bid Meeting and/or Mandatory Ride-A-Long Appointments must contact the Bentonville Purchasing Department at least two (2) business days prior to the Meeting date(s) to notify the Purchasing Department of the concern for the City's consideration.

Bidders who wish to deliver a Bid Submission prior to the Bid Opening date/time may do so by delivering the Bid Submission to the Purchasing Department located at the address below. Bidders may also choose to deliver their Bid Submission at the Public Bid Opening, but must do so prior to the Public Bid Opening time.

There will be a Public Bid Opening for IFB-22-12 held at 2:30 P.M. on Wednesday, February 16, 2022; the Bid Opening will be held at the City of Bentonville Administrative Services Building in Room A239 on the 2nd floor, located at 1000 SW 14th Street Bentonville, AR 72712. The Purchasing Department is also located on the 2nd floor. All Bid Submissions must be received by Purchasing prior to the Public Bid Opening time. Late Submissions, Submissions which do not contain the required Bid Bond and unsigned Bid Submissions will be rejected, without exception.

Questions must be submitted via written communication only to purchasing@bentonvillear.com. The deadline to submit questions related to this solicitation is February 10, 2022 at 4:00 P.M.

Department responsible for advertising costs: Accounting

CITY OF BENTONVILLE, ARKANSAS
PURCHASING DEPARTMENT
ADMINISTRATIVE SERVICES BUILDING
1000 SW 14TH STREET BENTONVILLE, AR 72712
(479)-271-3115 – purchasing@bentonvillear.com

INVITATION FOR BID (IFB) SOLICITATION

SOLICITATION INFORMATION			
Bid Number:	IFB-22-12	**Date of Issuance:**	JANUARY 23, 2022
Description:	PARKS MOWING SERVICES		
Requesting Department:	CITY OF BENTONVILLE PARKS AND RECREATION DEPARTMENT		
Pre-Bid Meeting Information:	**MANDATORY PRE-BID MEETING ON FEBRUARY 2, 2022 AT 10:45AM** SEE THE PRE-BID MEETING SECTION OF THIS IFB DOCUMENT FOR DETAILS		
Bid Bond Requirement:	**$500.00 BID BOND REQUIRED (SEE BID BOND SECTION OF THIS IFB)**		

BID OPENING DATE & TIME	
Bid Opening Date and Time:	**FEBRUARY 16, 2022 AT 2:30 P.M. CST**
Bid Opening Location:	**City of Bentonville Administrative Services Building** Bid Opening Room – 2nd Floor – Room A239 1000 SW 14th Street Bentonville, AR 72712

DELIVERY OF BID SUBMISSION	
Location (and mailing address) for Bid Submission Delivery:	**City of Bentonville Administrative Services Building** **Purchasing – 2nd Floor** 1000 SW 14th Street. Bentonville, AR 72712
Bid Submission Requirements:	All Bids must be received by the Purchasing Office prior to the date and time listed herein for the Bid opening, in a sealed envelope with the following information clearly marked on the outer envelope: - Solicitation ID (IFB Number) - Bidder's Name/Company Name & Phone Number Bids which must be opened to be identified may be rejected. Bids which are not sealed or are opened upon delivery will not be accepted. Late Bids, unsigned Bids, or Bids which do not contain a Bid bond (when required) will be rejected, without exception. In accordance with Arkansas Procurement Laws and Rules, it is the responsibility of the Bidder to submit their Bid submission correctly and to the designated location prior to the Bid opening time.

Deadline for Submission of Requests for Information, Questions or Clarifications:	February 10, 2022– 4:00 P.M. CST
Questions should be submitted only to the Purchasing Office via written communication only to purchasing@bentonvillear.com.	

CITY OF BENTONVILLE, ARKANSAS
PURCHASING DEPARTMENT
ADMINISTRATIVE SERVICES BUILDING
1000 SW 14TH STREET BENTONVILLE, AR 72712
(479)-271-3115 – purchasing@bentonvillear.com

EXECUTION OF BID PAGE (REQUIRED)

Upon signing this Bid, the Bidder certifies that he/she has read and agrees to the requirements set forth in this Bid proposal including specifications, conditions and pertinent information regarding the articles being Bid on, and agrees to furnish these articles at the prices stated. All information on this page must be completed.

Unsigned Bids will be rejected - no exceptions.

Name of Firm: TITAN LAWN & LANDSCAPE **Phone Number:** 479-200-6702

Business Address (Full Street/City/State/Zip): 6250 WEDINGTON DR FAYETTEVILLE AR 72704

Is this address able to accept mail deliveries (for the purpose of returning Bid bonds etc.): ✓ Yes __No

Name of Contact Person: RAY LOVELL **Email:** lawntitan@gmail.com

Signature of Authorized Person: [redacted] **Date:** 2-17-2022

Printed or Typed Name: RAY LOVELL **Title:** OWNER

Arkansas Contractors License Number: 0412090322

Sales or Use Tax ID Number: 83-3311738

Bid Bond Included: ✓ Yes ___No (only required if specified in this IFB Document)

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CITY OF BENTONVILLE, ARKANSAS
PURCHASING DEPARTMENT
ADMINISTRATIVE SERVICES BUILDING
1000 SW 14TH STREET BENTONVILLE, AR 72712
(479)-271-3115 – purchasing@bentonvillear.com

SECTION 1: OVERVIEW

1. INTENT

The intent of this Invitation for Bid (IFB) is for the weekly cycles of Park Mowing Services to be performed at the various City Park locations defined in this IFB Document for the City of Bentonville, Arkansas Parks and Recreation Department (BPR).

The City reserves the right to award the Contract in whole for all locations defined, or remove locations from the award based on budgetary considerations or otherwise in the best interest of the City.

2. REQUIRED RESPONSE DOCUMENTS

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

- Invitation for Bid (IFB) document, all response fields complete.
- Proof that bidder is insured or is able to obtain the insurance, as required.
- Required Response Documents: Appendix A, B, C
  *Appendix B MUST be notarized.
- $500.00 Bid Guarantee, as specified.
- Attendance to the Mandatory Pre-Bid and Mandatory Ride-A-Long

3. APPENDIXES

- **APPENDIX A: VENDOR DISCLOSURE (REQUIRED RESPONSE DOCUMENT)**
- **APPENDIX B: NON-COLLUSION AFFIDAVIT (REQUIRED RESPONSE DOCUMENT)**
- **APPENDIX C: BIDDER QUALIFICATIONS (REQUIRED RESPONSE DOCUMENT)**

SECTION 2: REQUIREMENTS, TERMS & CONDITIONS

BIDDERS: THIS SECTION CONTAINS REQUIRED RESPONSE FIELDS

1. GUARANTEE OF BID

Bidders may not withdraw their Bids for a period of 60 days after the Public Bid Opening. The City of Bentonville has 60 (sixty) days from the Bid Opening date in which to evaluate Bids and recommended award to City Council if it is determined to be in the City's best interest. Bidders may only withdraw their Bids in accordance with the Terms and Conditions herein.

[This space has been intentionally left blank]

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2. BONDS

A. BID BOND (BID GUARANTEE) (WHEN REQUIRED)

Bidders are required to include a Bid Bond as specified when the 'Bid Bond Required' field below has an "x" mark or when otherwise required in this document.

_X__Bid Bond Required __Bid Bond Not Required for this Solicitation

All Bids must be accompanied by a Bid Bond/Bid Guarantee in the form of a Bid bond, certified check, or cashier's check in the amount of five hundred dollars ($500.00), payable without condition to the City of Bentonville. The Bond shall not have an expiration date of less than the number of days specified for the Guarantee of Bid in this IFB document. Personal checks and company checks are NOT acceptable as a Bid guarantee.

Bids received that do not include a Bid Bond when required and as specified in this Invitation for Bid will be rejected without exception.

B. PERFORMANCE & PAYMENT BOND (WHEN REQUIRED)

The awarded Bidder is required to submit Performance and Payment Bonds at the time of Contract signing when the 'Performance & Payment Bonds Required' field below has an "x" mark or when otherwise required in this document.

___Performance and Payment Bond Required _X_ Performance and Payment Bond Not Required for this Solicitation

The awarded Bidder shall furnish Performance and Payment Bonds after the Notice of Award is issued and upon the time of signing the binding Contract, each in an amount at least equal to the Total Bid Price as security for the faithful performance and payment of all of the awarded Bidder's obligations under this Invitation for Bid and the awarded binding Contract. These Bonds shall remain in effect for a period of one (1) year after a formal Completion of Work Notice is issued by the City.

C. BONDS – GENERAL

All bonds shall be executed by such sureties as are named in the list of Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Management Service, Surety Bond Brand, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.

If the surety on any bond furnished by the awarded Bidder is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of set forth herein, the awarded Bidder shall promptly notify the City and shall, within twenty (20) days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements set forth herein.

All bonds and insurance required by this Invitation for Bid and by the binding contract documents executed after the Notice of Award, to be purchased and maintained by the awarded Bidder, shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the work defined herein is to be performed.

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3. INSURANCE

Bidders are required to include proof of the required insurance or their ability to obtain the required insurance (such as a Letter of Intent from a qualified insurance company), as described herein, in their Bid Submission. If awarded, upon execution of the Contract the awarded Bidder must provide proof of insurance naming the City of Bentonville as a Certificate Holder.

Bid submittals that do not include proof of insurance or proof of Bidder's ability to obtain the required insurance may be rejected. The awarded Bidder 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 any other claims which may arise out of or result from the awarded Bidder's performance of the work; whether it is to be performed by the awarded Bidder, 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 – Each Occurrence

4. WARRANTIES/SERVICE FAILURES

The awarded Bidder shall assume that the City prefers all work (workmanship and materials) and/or items furnished to the City to be warrantied and shall furnish any and all applicable workmanship/material/product warranties to the City.

Bidders are required to respond 'As Specified' or 'Alternate' to the applicable warranty specification for the field(s) below when marked with an "x" or when otherwise required in this document; if no warranty specification is marked, or if the 'no warranty required' specification is marked, there is no warranty required in this IFB. *If Bidders response is 'Alternate', the Bidder is required to provide additional information for the City's review.*

_X_The awarded Bidder shall correct any service failure, where service performed is not in accordance with the Specifications contained herein or is otherwise not approved by the City, within forty-eight (48) hours from notification of such service failure by the City's contact. In the event that correction within 48 hours is not possible (due to reasons such as inclement weather), the awarded Bidder shall obtain written approval from the City's contact of the date that the service failure will be corrected.

Bidder understands that the City reserves the right to terminate the Contract immediately in the event of five or more service failures. In the event of Contract termination, the City will pay the awarded Bidder for all work completed and approved by the City up to the termination date.

In the event that a service failure occurs and Contractor fails to make the necessary correction within the specified time frame, the City may use City staff or outside contractors to correct the issue(s). Any costs the

WARRANTY/SERVICE FAILURES CONTINUED.

City incurs for correcting such issue(s) resulting from Contractor's service failure(s) may be deducted from monies due to Contractor.

Bidder Response: X As Specified ___Alternate (Bidder MUST provide more information)

5. LAWS AND REGULATIONS

The Bidder's attention is directed to the fact that all applicable Federal and State Laws, and the rules and regulations of all authorities having jurisdiction over the construction of the project or the purchase or sale of the item(s) shall apply to the contract throughout, and they will be deemed to be included herein and in any awarded contract the same as though herein written out in full.

6. ENOURAGEMENT FOR PARTICIPATION

Pursuant to Arkansas Code Annotated § 22-9-203, the City encourages all qualified small, minority owned, and women owned business enterprises to submit Bids 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 all qualified small, minority and women owned businesses to participate and submit Bids for City projects/purchases.

7. QUESTIONS/REQUESTS FOR INFORMATION (RFIs)/REQUESTS FOR CLARIFICATION (RFCs)/ADDENDA

All questions or requests related to this Invitation for Bid shall be directed solely to the Purchasing Department via written communication only, via one of the methods below. A copy of the question and the City's response will be distributed to all known document holders via an 'RFI (Request for Information) Response' or via Addenda (Addendum 1, 2 etc.).

All questions should reference the IFB number when submitted

Submit Via Email: purchasing@bentonvillear.com

Submit Via Mail: City of Bentonville Administrative Service ATTN: Purchasing Office (solicitation number) 1000 SW 14th Street Bentonville, AR 72712

For Phone Calls: (479) 271-3115

The Purchasing Department will not respond to or otherwise acknowledge requests received after the deadline for submission of these requests stated herein. Questions requesting the Bid Opening date, Bid Bond requirement, and other details clearly outlined herein will not be included in RFI Responses or Addenda unless there are changes in the information after the Advertisement has published.

NOTE: No information communicated verbally or in any other form than a formal RFI Response or Addendum shall be considered firm or contractual; only information contained herein or otherwise in an RFI Response or Addendum shall be contractual.

Bidders are required to acknowledge any Addenda issued in their Bid Submission, per the requirements in the Addendum.

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8. EQUIVALENT ITEMS/REFERENCED SPECIFICATIONS

Whenever these specifications mention an item by name and use specific descriptions as reference thereto (such as model, part, brand names etc.), it is intended to convey to the Bidder an understanding of the standard of excellence required. Items that Bidders believe to be of equal type, quality, and size that will conform substantially to the standard of excellence established to provide equivalent merit, strength, durability, and to perform the required function in accordance with these specifications may be offered. Bids containing items proposed as equivalent (or alternate) shall clearly describe the equivalent (or alternate) article being offered and indicate how it differs from the City's original specification and how it conforms to the specification. Descriptive literature or manufacturer's specifications, in addition to any supplemental information necessary for comparison purposes should also be submitted with the Bid. It is the Bidder's responsibility to demonstrate to the City that a equivalent (or alternate)/substitute offer is equivalent to and meets the standard of quality indicated by the City's specifications. The City of Bentonville shall have the final approval of whether a substitute (or alternate) item is equal to the item specified. Submitting false claims that an item is 'as specified' when the item is an alternate or is otherwise not conforming to the specification shall be considered a lack of responsibility and the Bid from that Bidder may be rejected.

9. INDEMNIFICATION

Due to the City statutory tort Immunity, the City does not carry liability insurance for such claims. Accordingly, any contract entered into with the awarded Bidder may not include a clause in which the City agrees that it or its' officials or employees will indemnify the other party.

The awarded Bidder agrees to indemnify the City and hold it harmless against all claims, liability, loss, damage or expense, including but not limited to counsel fees, arising from or by reason of any actual or claimed trademark, patent or copyright infringement or litigation based thereon, with respect to the service or any part thereof covered by this order, and such obligation shall survive acceptance of the services and payment thereof by the City.

10. DAMAGES

Any damage occurring to City (public) or private property within the worksite area(s) or otherwise out of the awarded Bidders performance of this Contract shall be corrected at the awarded Bidder's expense.

The awarded Bidder shall be responsible for maintaining the job site and keeping it clean and orderly. Failure to maintain the cleanliness and orderliness of any job site in relation to this Invitation for Bid shall be considered a service failure, and may result in the City employing City forces for the purpose of job site cleanup and organization. Any costs the City incurs for the purpose of correcting the awarded Bidder's service failure will be deducted from the monies due to the awarded Bidder.

Any damages which occur during the performance of the services described herein shall be immediately communicated to the City's contact, or designated assignee and repaired at the awarded Bidder's expense.

11. PAST PERFORMANCE/REFERENCES

The City reserves the right to request references and to contact those references as part of the evaluation of Bids submitted to this Invitation for Bid. The City reserves the right to use the information gained from contacting references or from reviewing a Bidder's prior performance with the City in the evaluation of Bids, including but not limited to evaluating a Bidder's prior performance of the same or similar scope of work or delivery of items for the City or any other entity for whom the Bidder has performed work. The City reserves the right to request additional information from the apparent low Bidder if it is deemed to be in the City's best interest, and use that information in the evaluation for award based on what is in the City's best interest.

12. TOBACCO PRODUCTS AND LITTERING

The use of tobacco products is only permitted in designated areas marked with proper cigarette disposal containers on site. No disposal of tobacco products or littering of any kind shall be tolerated on the work premises or during performance of work for the City.

13. ARKANSAS FREEDOM OF INFORMATION ACT (FOIA)

By submitting a Bid in response to this IFB, Bidder acknowledges and understands that the City is subject to the Arkansas Freedom of Information Act (FOIA) and City contracts and documents prepared while performing City work are subject to this Act. In the event that a FOIA request is presented to the City, the awarded Bidder agrees to do everything possible to provide any requested documents that they may be in possession of in a prompt and timely manner as prescribed in A.C.A. §25-19-101.

14. BIDDER'S DOCUMENTS

The only terms and conditions that will become part of the award/awarded Contract are those documents issued by the City as part of this IFB, or documents furnished by the awarded Bidder (such as a contract) that are in accordance with the terms and conditions contained in this IFB and/or are approved for Mayor's signature by the City's Legal Department.

Bidder's inclusion of their terms and conditions or other types of documents containing terms and conditions regarding payment, invoicing, indemnification or any other type of term are not accepted based on inclusion in the Bid Submission and will not be acknowledged as conditions to the Bid. No conditional bids will be accepted.

Bidders are required to use ONLY the prescribed City forms in their Bid Submission unless Bidder has included additional information for the City's consideration of an 'equivalent'/'alternate' item (i.e. product data sheets etc. are acceptable).

[This space has been intentionally left blank]

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15. INVOICING

The awarded Bidder shall provide an invoice to the City for review and approval prior to payment. The City will not pay from any document other than an invoice (i.e. payments will not be processed based on contracts etc.).

The invoicing option(s) available to Bidders for this IFB are indicated below by an "x" mark in the option(s) available.

___Invoice upon 100% completion (As approved by the City)

_X__Progress invoicing (Payment will be made only for actual work completed and approved by the City)

__ Invoice upon delivery (Payment within 14 days)

___ Invoice 14 days prior to delivery for payment upon delivery
(All product(s) or work must be approved by an authorized
City of Bentonville employee prior to payment being furnished).

Payment will not be made for incomplete work or for item(s) delivered out of spec (not as specified). Any return or correction shall be at the awarded Bidder's expense. The City reserves the right to cancel an order due to receiving out of spec item(s) or request a replacement, whatever is in the City's best interest.

Unless otherwise specified, invoices will be paid within fourteen (14) days of receipt of an approved invoice.

All invoices should be submitted to the City of Bentonville Accounts Payable Office, address and email below:

City of Bentonville Administrative Services
ATTN: Accounts Payable
1000 SW 14th ST
Bentonville, AR 72712
accountspayable@bentonvillear.com

16. BIDDER REQUESTED PAYMENT TERMS

Bidders must use the space provided below to communicate their requested payment terms. Requests are not guaranteed for approval.

_X_NET 30 Days from Invoice Submission ___NET 60 Days from Invoice Submission __Other (Specify Below)

_____

_____

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17. PRE-BID MEETING

There will be a mandatory pre-Bid meeting when indicated by an "x" mark in one of the fields below or when otherwise indicated in this IFB document.

_X_Mandatory Pre-Bid Meeting (Bidder must attend to be eligible to submit a Bid)

_X_In Person __Zoom or Other Virtual Method

__Optional Pre-Bid Meeting (Bidder attendance is highly encouraged but not required)

__In Person __Zoom or Other Virtual Method

__No Pre-Bid Meeting (There is no pre-Bid meeting scheduled for this IFB)

Pre Bid Meeting Information: There will be a MANDATORY Pre-Bid Meeting (in-person) held on Wednesday, FEBRUARY 2, 2022 at 10:45AM CST at the Bentonville Municipal Complex, 2nd Floor, Transportation Conference Room, located at 3200 SW Municipal Drive, Bentonville AR 72712, to allow Bidders an opportunity to view the work area and field verify any needed measurements. (address); Bidders shall meet City staff at (location).

Pre-Bid Meeting COVID-19 Precautions:

Due to the ongoing COVID-19 pandemic, all attendees to the Pre-Bid Meeting are highly encouraged to wear a facemask at all times while at the Pre-Bid Meeting and observe social distancing protocols when possible during the meeting. Bidders shall not allow a company representative to attend the meetings who is experiencing any COVID-19 symptoms, who has tested positive for COVID-19 fewer than ten days prior to the meeting or who is still experiencing COVID—19 symptoms after testing positive, or who is known or assumed to have been in contact with a person known to have tested positive for COVID-19 within ten days prior to the meeting (Bidders shall send an alternate representative).

18. TERM

The Section with an "x" mark below shall apply to this Invitation for Bid.

_X_Contract Term (for services, construction projects etc.)

The awarded Bidder will be required to enter into a binding Contract with the City of Bentonville, for the services listed herein. The term of the awarded Contract shall be one (1) year(s) renewable annually upon mutual written agreement for a maximum term of three (3) years.

19. SUBCONTRACTING

Bidders are not authorized to subcontract any portion of this work. All work must be completed by the entity submitting the Bid.

[This space has been intentionally left blank]

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SECTION 3: SCOPE OF WORK & DELIVERY

BIDDERS: THIS SECTION CONTAINS REQUIRED RESPONSE FIELDS

1. SCOPE OF WORK

Bidder agrees to furnish all labor, equipment, transportation and all other items as necessary to perform the weekly cycles of parks mowing services. The estimated average number of mows per year for each location listed herein is 30 (thirty) mows per year.

There is no guarantee of a minimum number of mowing cycles per year. Additionally, there is no guarantee that all locations included in this IFB will be awarded; the City reserves the right to remove locations in accordance with the City's best interest prior to award. Any acreage or sizes included herein are estimates only and not guaranteed to be accurate. Bidders are responsible for field verification and making themselves familiar with the Scope of Work prior to submitting a Bid.

Each cycle will include all services that are industry standard when performing parks mowing services, including but not limited to: edging of grass, litter and debris removal (prior to and post mowing), weed-eating, leaf blowing, blowing off debris or clippings from sidewalks, curbs, streets, trails and driveways. Lawn clippings and debris should also be keep clear of landscape beds and tree rings. Parks mowing services also include the trimming of tree canopies over trails or walkways where applicable to an eight-foot (8') canopy. Ditches, water detention ponds, streams, and around other bodies of water, where applicable, should also be kept mowed, trimmed, and clear of debris. The City of Bentonville expects the awarded bidder to uphold a high standard of excellence in their mowing procedures, ensuring that the City's parks are well maintained for patrons to enjoy.

The City reserves the right to inspect parks where cycles have been completed and to withhold payment for cycles that have not been completed.

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

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

The delivered materials shall be as specified and without defect.

SAFETY AND SUPERVISION. The Contractor shall be solely responsible for the safety, supervision and direction of Contractor's employees and personnel while performing the work pertaining to the awarded Contract. The Contractor shall use their best skills and general industry best practices to ensure a safe work environment for the Contractor, Contractor's employees and personnel, and the civilians that may be located within the City parks at the time when mowing cycles are being performed. The Contractor shall, at all times, enforce strict discipline and good order among their employees and personnel, and shall not employ or contract any person to perform the services to be provided to the City that is not skilled or is unfit for providing such services.

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ADMINISTRATIVE SERVICES BUILDING
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PROFESSIONAL CONDUCT AND ATTIRE. The Contractor shall have an established code of uniformity that achieves a cohesive, professional and safe appearance and functionality that portrays credibility, unity and quality of service. The Contractor and any of their employees working on City property or otherwise performing work under the awarded contract is required to display a professional appearance, including grooming, cleanliness, and attire. Uniforms shall be free from holes, tears, and excessive staining. Sleeveless shirts, cut shirts, and clothing depicting inappropriate or unprofessional images or verbiage is strictly prohibited while performing work on City property. Failure to adhere to these requirements will be considered a performance failure and may result in termination of the Contract.

2. DELIVERY

The City of Bentonville requests (specifies) the below completion and or delivery date(s) as indicated by an "x" mark in the applicable field. **If the requested (specified) schedule cannot be met, Bidder must specify the date(s)/schedule that Bidder is able to commit to in the fields provided. Failure to state a date/schedule obligates the Bidder to perform the work or delivery the item(s) or services and complete services within the City's requested timeline.** Alternate or extended delivery dates may be considered when in the best interest of the City.

Estimated Award Date (not guaranteed, subject to change): ___March 8_____

Delivery/Work-Site Address: Various locations in Bentonville, AR

*Bidders note that a change in the estimated award date will not release Bidder from the specified delivery date(s).

_X__Reoccurring Service Specified Date(s)

City's Specification:

The awarded Bidder shall be available to begin work within one (1) week from the date the Contract is fully executed and work shall be performed as specified thereafter as directed by the City. The exact date work will begin will be determined by the City as needed, dependent on variable such as vegetation growth.

Bidder Response: X AS SPECIFIED __ALTERNATE DATES REQUESTED *(REQUIRES COMPLETION OF FIELDS BELOW)*

Alternate Dates Requested: *(REQUIRED RESPONSE IF 'ALTERNATE DATES REQUESTED' IS MARKED ABOVE)*

The awarded Bidder shall be available to begin work within _____ from the date the Contract is fully executed and work shall be performed as specified thereafter as directed by the City. The exact date work will begin will be determined by the City as needed, dependent on variable such as vegetation growth.

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SECTION 4: SPECIFICATIONS

BIDDERS: THIS SECTION CONTAINS REQUIRED RESPONSE FIELDS

- **AS SPECIFIED:** Bidder must indicate, "AS SPECIFIED", by placing an "X" in the designated space ('As Specified') provided.
- **EQUIVALENT:** Bidders must indicate (and describe) any item being offered to the City that does not fully conform to the City's specification but is being offered to the city as being an "EQUIVALENT" (including alternate or substitute)" to the City's specifications. It is the responsibility of Bidders to demonstrate and provide clear evidence of the item's equivalency to the City's specification. The City shall have the final determination as to whether an item is equivalent and meets the City's needs.

The specifications in this Section do not necessarily include all specifications and/or requirements for this IFB. Bidder is responsible for the complete review of this IFB document and all appendixes, any issued clarifications, addenda, or any other document released by the City related to this IFB and for familiarizing themselves with the work to be performed and/or products to be supplied prior to submitting a bid to ensure accurate pricing.

1. GENERAL SPECIFICATIONS			
SPECIFICATION LINE NUMBER	**SPECIFICATION DESCRIPTION**	**BIDDER INDICATE IN THIS COLUMN IF 'AS SPECIFIED'**	**BIDDER INDICATE IN THIS COLUMN IF 'EQUIVALENT'**
1	Bidder has examined this entire Bid Packet, including all attached appendices and agrees to perform the work and provide the materials as specified.	✓	
2	The awarded Bidder shall follow all federal, state and local safety regulations and laws.	✓	
3	The awarded Bidder shall be responsible for furnishing all materials, labor, equipment, transportation and any other items required to perform the work as specified.	✓	
4	Bidder shall coordinate all schedules and delays with the City's designated contact for parks mowing.	✓	
5	Bidder will use only equipment standard to a professional landscaping business and suitable for performing parks mowing services. Bidder understands that the City may inspect the equipment to be used and use information gained in that inspection in the evaluation of the most responsive and responsible Bidder for award.	X	
6	Bidder will have equipment available for inspection by the City prior to beginning services.	X	

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ADMINISTRATIVE SERVICES BUILDING
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SPECIFICATION LINE NUMBER	SPECIFICATION DESCRIPTION	BIDDER INDICATE IN THIS COLUMN IF 'AS SPECIFIED'	BIDDER INDICATE IN THIS COLUMN IF 'EQUIVALENT'
7	Parks mowing services will only be permitted to be performed from 7:00 A.M. to 7:00 P.M Monday through Friday, and in accordance with the City of Bentonville Noise Ordinance. Mowing services are only permitted to be performed during daylight hours.	X	
8	Bidder understands that the City seeks to provide the patrons of Bentonville with high quality, well-maintained parks and that the awarded bidder will be expected to be professional, detail oriented, and quality driven.	X	
9	Bidder agrees that they will be required to notify the City's designated contact for parks mowing no less than five (5) days prior to performing a mowing cycle and within 24 hours of completing each mowing cycle.	X	
10	Bidder understands that litter removal may be required prior to mowing and at the conclusion of mowing to ensure that litter does not become spread, cause property damage, or cause an unsightly appearance.	X	
11	Bidder understands that the expected uniform grass height will be between 2.5 (two and one half)to 3 (three) inches in height and that some hand trimming of vegetation may be required around fixed objects.	X	
12	Bidder understands that mowing services shall not be performed in conditions saturated to the point that turf damage or rut damage would occur and that any such damage as a result of the mowing operation would require the Bidder to repair the damaged area(s) at no cost to the City, as directed by the City.	X	
13	Bidder will complete the mowing cycle within (5) working days of commencement of work.	X	
14	Turf tires may be required where the City deems necessary. The City shall have the right to make the final determination of tire requirements for specific parks.	X	
15	All rotary type mowers shall be equipped with a chute guard or chute guard blocker to restrict foreign objects from being thrown out of the cutting unit enclosures.	X	

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SPECIFICATION LINE NUMBER	SPECIFICATION DESCRIPTION	BIDDER INDICATE IN THIS COLUMN IF 'AS SPECIFIED'	BIDDER INDICATE IN THIS COLUMN IF 'EQUIVALENT'
16	Bidder will conduct the mowing operations within the parks system at a time of day (usually early morning) when there are the least amount of patrons within the park that is being mowed.	X	
17	Bidder understands that some park locations will include trails and that all trails must be mowed through the easement (10-feet on each side of the trail) unless the trail is on City property, in which case the areas must be mowed to the property lines.	X	
18	Bidder agrees that in parks where applicable, all tree canopy that is over trails or walkways shall be kept at an 8-foot canopy to keep branches, limbs, etc. from encroaching upon walkways.	X	

19. PRE-BID MEETING ATTENDENCE (REQUIRED RESPONSE)

Indicate below if Bidder attended the Pre-Bid Meeting for this Invitation for Bid.

_X_ Yes, attended the Pre-Bid Meeting
___ No, did not attend the Pre-Bid Meeting *(!!Pre-Bid attendance is mandatory to be eligible to submit a Bid!!)*

20. PRE-BID MEETING ATTENDENCE (REQUIRED RESPONSE)

Indicate below if Bidder attended the Ride-A-Long Appointment for this Invitation for Bid.

_X_ Yes, attended the Pre-Bid Meeting
___ No, did not attend the Pre-Bid Meeting *(!!Ride-A-Long attendance is mandatory to be eligible to submit a Bid!!)*

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SECTION 5: BIDDER ACKNOWLEDGEMENTS

Bidders are required to verify that the following required documents and bonds have been included with their Bid submission or will be furnished when due.

DESCRIPTION	BIDDER'S INITIALS
Attended Mandatory Pre-Bid Meeting (February 2 at 10:45AM)	RL
Attended Mandatory Ride-A-Long Appointment (scheduled during pre-bid)	RL
Invitation for Bid document, executed with all fields complete and thoroughly reviewed. Complete Invitation for Bid Document included in Bid Submission.	RL
Bid Bond, As Specified in the amount of $500.00 (Bid is automatically rejected if a Bid Bond is not included)	RL
Proof of insurance or the ability to obtain the required insurance, as specified.	RL
Appendix A: Vendor Disclosure (Required Response Document)	RL
Appendix B: Non Collusion Affidavit, signed and notarized (Required Response Document)	RL
Appendix C: Bidder Qualifications (Required Response Document)	RL
Addenda: Bidders are required to acknowledge all addenda issued for this IFB. Bidders may acknowledge issued addenda either by inclusion in their Bid Submission or by noting the Addendum Number and Date of Issuance below in the fields provided. **ADDENDUM NUMBER** / **DATE OF ISSUANCE** 1 — 2-1-2022 2 — 2-16-2022	RL

CITY OF BENTONVILLE, ARKANSAS
PURCHASING OFFICE

1000 SW 14TH STREET BENTONVILLE, AR 72712 – (479) 271-3115 – PURCHASING@BENTONVILLEAR.COM

ADDENDUM TO SOLICITATION

6.0 Bid Submissions must be received BEFORE the Bid Opening Time. Bid Submissions must be delivered to Purchasing sealed.

7.0 The City has the right to add (if the location was included in the bid) or remove locations in accordance with the best interest of the City and budgetary considerations prior to or after award. The City may not award each location included in this Invitation for Bid. The Bidder to be awarded will be notified which locations they are being awarded prior to award being made.

Amendments to the Specifications/Scope of Work/Locations & Amended Bid Form

1.0 Bark Park: This location has a posted maintenance period until 11:00AM each Wednesday. It would be ideal if the Contractor could schedule mowing operations to be performed during this scheduled maintenance period.

2.0 The following locations are being removed from this Invitation for Bid via this Addendum:

Orchards Park
Town Branch

An Amended Bid Form has been included in this Addendum Number 2 to remove these locations.

Amendments to the Deadline for Questions

1.0 Deadline for Questions: the deadline for questions was stated in Addendum Number 1 as 12:00PM on February 16, 2022.

1.01 The deadline has been amended to **February 16 at 4:30pm** due to the delay in distribution of Addendum Number 2.

Amended Bid Form Follows

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ADDENDUM TO SOLICITATION

An * indicates that a trail is present.

PARK OR TRAIL NAME AND ADDRES	APPROXIMATE ACREAGE, MILEAGE OR FEET	PRICE PER WEEKLY MOW
PARK SPRINGS PARK 300 NW 10th St	1.9 ACRES	$ 172.46
BACK SIDE OF PARK SPRINGS 301 Along the south side of Tiger Blvd to the corner of Tiger & NW A St then south of Tiger Blvd along the west side of NW A St approximately 330 feet.	1 ACRE	$ 86.23
WILDWOOD PARK 3800 Bright Road	1.62 ACRES	$ 172.46
ENFIELD PARK 1205 NE Waverly Way	1.52 ACRES	$ 172.46
OLD TIGER TRACK 517 Tiger Blvd.	5.33 ACRES	$ 287.44
MERCHANTS PARK (excludes sports fields) 201 Elm Tree Rd	5.26 ACRES	$ 402.41

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PARK OR TRAIL NAME AND ADDRES	APPROXIMATE ACREAGE, MILEAGE OR FEET	PRICE PER WEEKLY MOW
BIKE PARK* 2400 N Walton Blvd	2.2 ACRES	$ 258.69
BARK PARK* 2400 N Walton Blvd	3.24 ACRES	$ 287.44
NORTH TRAIL* Parallel with Bark Park and Bike Park (located at 2400 N Walton Blvd)	0.65 MILE	$ 114.98
NORTH WALTON TRAIL* From 1401 N Walton Blvd to The North Walton Tunnel at Bark Park (Including the connector trails at Stonehenge Dr. and Somerset St.)	1 MILE	$ 172.46
DURHAM PARK 913 Durham Place	0.71 ACRE	$ 114.98
GILMORE PARK* SW 5th St and SW D ST Including the trail from SW D St to SW E St and trail from SW C St to SW B St.	1.72 ACRES	$ 229.95
AUSTIN-BAGGETT PARK 601 SE D St	1.43 ACRES	$ 172.46
TRAIN STATION PARK 400 S Main St	0.41 ACRE	$ 114.98

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PARK OR TRAIL NAME AND ADDRES	APPROXIMATE ACREAGE, MILEAGE OR FEET	PRICE PER WEEKLY MOW
TRAIL AT TRAIN STATION PARK* 400 S Main St The approximate 175-feet of trail that runs toward the west to SW A St.	175 FEET	$ 49.28
NE A ST RESTROOM 906 NE A St	0.82 ACRE	$ 143.72
LAWRENCE PLAZA 215 NE A St	0.80 ACRE	$ 114.98
TRAIL AT LAWRENCE PLAZA* 215 NE A St – the approximate 315-feet of trail from 3rd to NE Blake & NE B St.	315 FEET	$ 49.28
DAVE PEEL PARK 206 E Central Ave	1.75 Acres	$ 172.46
PHILLIPS PARK (excludes sports fields) 3108 SE J Street	12 Acres	$ 689.85
LAKE BENTONVILLE 2100 SW I Street	4 Acres	$ 344.93
Two Cities Trail* 1.5 mile trail Runs from S Dodson Rd to SW I St	1.5 Mile	$ 258.69

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ADDENDUM TO SOLICITATION

PARK OR TRAIL NAME AND ADDRES	APPROXIMATE ACREAGE, MILEAGE OR FEET	PRICE PER WEEKLY MOW
102/14th St Trail (102 Ditches) 850ft Trail including ditches between trail and city street.	850 Feet	$ 114.98
Tristan Trail Along a 460ft soft surface trail along NW A St near the City Compost Facility	460 Feet	$ 87.60
Total Bid Price (stated in figures) (the Sum of the Price Per Weekly Mow for all locations listed)	$ 4785.17	
Total Bid Price (stated in words) (the Sum of the Price Per Weekly Mow for all locations listed)	Four thousand Seven hundred eighty five dollars and Seventeen cents	

BIDDER DECLARATION

The Undersigned hereby declares that he has carefully examined the Invitation, Scope of Work, Specifications and all other information related to the performance of the work or delivery of materials or items as described herein, has visited the actual location of the work (when), has consulted his sources of supply, has satisfied himself as to all quantities and conditions, and understands that in signing this proposal, he waives all right to pleas of any misunderstanding regarding the same.

Company Name: Titan Lawn & Landscape By (Authorized Person's Signature): [redacted]

Printed Name and Title: Roy Lovell OWNER

Date: 2-17-2022

*If Bidder is a corporation, indicate state of incorporation, under the Firm's Signature, and if a partnership, give full names of all partners.

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SECTION 6: BID PRICING

Bidder, having examined this Invitation for Bid document in its entirety and having performed a thorough examination of the work site(s) and/or product specifications hereby agrees to furnish all labor, products, materials, equipment, staging, transportation, and supervision of such, and all other components to produce 100% completion of the project in accordance with the specifications contained herein and as are industry standard and best practice when performing the type of work described herein.

Bid prices shall include all costs, **including but not limited to: tax,** all labor, products material, equipment, disposal fees, transportation, staging, mobilization, overhead, profit, insurance, shipping and handling and all other costs to the City of Bentonville, Arkansas to cover the finished work and/or delivered products.

The City of Bentonville is NOT exempt from sales tax. The City of Bentonville Sales Tax is 9.5%.

AWARD OF THIS INVITATION FOR BID WILL BE BASED ON (applicable award method marked with an "x"):

_X__Total Bid Price: The award will be based on the lowest and most responsible Total Bid Price with all factors considered. The Total Unit Price Bid shall be written in words and in figures. In case of discrepancy between the written amount and the figures, the written amount shall govern. In case of discrepancy between the Unit Price and the Extended Price, the Unit Price shall govern.

The awarded Bidder will only be compensated for completed mowing cycles at each location. The City reserves the right to withdraw any cycles or locations at any time.

Deductive Alternates apply when indicated by an "x" in the fields below
___Deductive Alternates Included _X__Deductive Alternates are not Included in this IFB

The City reserves the right to award the project in any manner that is deemed in its best interest, or to reject any or all Bids and to waive any irregularities.

No Bid shall be withdrawn for a period of sixty (60) days after the opening of Bids without the consent of the City; 60 days shall be allowed to the City in which to determine the manner in which to award or not award the Contract.

THE BID FORM IS LOCATED ON THE FOLLOWING PAGE

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SECTION 7: INVITATION FOR BID ADDITIONAL TERMS & CONDITIONS/INSTRUCTIONS TO BIDDERS

1. **SCOPE:** These instructions and conditions shall be in force unless otherwise modified by the City in this Bid Document. Bidders shall be advised that the City of Bentonville is not responsible for the content of any Bid package received through any 3rd party Bid service. It is the sole responsibility of the vendor to ensure the completeness of the documents received from any 3rd party source.

2. **DEFINITIONS (AS USED HEREIN):**
   a. The term "Invitation For Bid" means a solicitation for formal , competitive sealed Bids. The acronym "IFB" means Invitation for Bid. "Solicitation" may also be used throughout to refer to the Invitation for Bid.
   b. The term "Bid" means the offer by the Bidder.
   c. The term "Bidder" means the person or organization responding to the Invitation for Bid.
   d. The term "Contractor" means a person or organization who is the successful Bidder and who enters into a contract with the City.
      *At times in this document the terms Bidder and Contractor are interchangeable.
   e. The term "Change Order" means a written order from or approved by the Purchasing Department directing the Contractor to make changes to a Contract.
   f. The term "City" means the City of Bentonville, Arkansas.
   g. The term "City Council" means the governing body of the City of Bentonville, Arkansas.

3. **PREPARATION OF BIDS:** Bidders shall review the specifications, drawings, and all special and general conditions and any other documents included as part of this Invitation for Bid. Bidders are responsible for field verifying to work or other means of familiarizing themselves with the Scope of Work of this Invitation for Bid. Failure to do so will be at the Bidder's risk.

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

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

   The Bidder must state a definite time for delivery of supplies or performance of services; in cases where the Bidder does not state a definite time, the City's specified timeline shall apply.

   Multiple Bids: Bidders are prohibited from submitting multiple Bids for the same product in response to a competitive sealed Bid solicitation. In the event that a Bidder submits multiple Bids for the same product, all Bids from that Bidder will be rejected
   Exception for Different Models: In the event that the Bidder believes they have multiple different models or products (such as equivalent items) that meet the City's specifications, the Bidder may submit multiple Bids in response to a competitive sealed Bid solicitation as long as the following requirements are met:
   (1) The Bids are submitted in separate sealed envelopes;
   (2) The products being proposed in each submission are different makes, models or otherwise types of products.

4. **SUBMITTING A BID:** Bids must be received by the City of Bentonville Purchasing Department **BEFORE** the time of opening indicated in the solicitation. All references to time shall be Bentonville, Arkansas time (Central Time Zone). Late Bids will be rejected without exception. Any exceptions or additional information required on a solicitation will

be noted in the Bid documents or issued via clarification or Addendum. Failure to provide any requested information or to follow these procedures may result in the rejection of your Bid.

5. **BID DOCUMENT MISTAKES:** The Bidder shall not be allowed to modify or correct mistakes in the Bid document after the opening of the Bid, unless the mistake is determined to be non-judgmental by the Purchasing Manager. Failure to complete the entire Bid accurately may result in declaring the Bid as non-responsive and the Bid may be rejected.

   Bids may be withdrawn by the Bidder after submission for revisions or modifications at any time prior to the deadline for receipt of Bids (or Bid opening). Any such request for withdraw must be in writing either by email or other acceptable electronic manner as outlined in the Bidding documents, hand delivered or mailed communication. After Bids are opened, they shall be irrevocable for the period specified in the Bid documents, unless a nonjudgmental mistake (such as a math error), as determined by the Purchasing Manager, is suspected by the Purchasing Manager or the Bidder, or unless Bidder is permitted to withdraw their Bid pursuant to Arkansas State Law. If a nonjudgmental mistake is suspected, such as a math error, the Bidder shall submit a written request to the Purchasing Department requesting either to withdraw their Bid submission or to correct the nonjudgmental mistake. In the event that the City becomes aware of the mistake prior to the Bidder, the Bidder shall respond within two (2) days of receiving notification of the discovery with a written request to the Purchasing Department to verify a correction or requesting to withdraw their Bid. Any such request for withdraw or correction must be in writing either by email (or other acceptable electronic manner as outlined in the Bidding documents), hand delivered or mailed communication. Once a Bid has been verified, it shall be considered submitted, as verified.
   (1) In the event of discrepancy between a unit price and an extended price, the unit price shall govern.
   (2) At no point shall a correction of a mistake result in reduction or increase of a Bidder's unit price(s). If correction of the mistake would result in either an increase or decrease in the unit price, the Bid shall be considered nonresponsive and shall be rejected.

   The City shall permit a Bidder to withdraw its Bid without penalty or forfeiture of Bid security if: (a) a nonjudgmental mistake is evidence on the face of the Bid, or (b) the Bidder establishes by clear and convincing evidence that a nonjudgmental mistake was made.

6. **ACCEPTANCE OF OFFER:** The submitted Bid is considered an offer on the part of the Bidder; such offer is deemed accepted upon issuance by the City of a Purchase Order, Notice of Award, Contract or other contractual or otherwise binding document.

   Bidder's accept all terms and conditions herein upon submission of their signed Bid.

7. **FIRM PRICES:** By submitting the Bid, Bidder signifies that the prices, terms and conditions quoted in their Bid will be firm for acceptance for a period of not less than ninety (90) days from the Bid opening date unless otherwise specified in the solicitation. Prices quoted must remain firm for the period of performance of any resulting purchase order or contract to be performed over a specified period of time as indicated in the solicitation.

   UNIT PRICES: Unit prices and all other pricing shall be rounded to the nearest cent. In the event of discrepancy between the unit price and the extended price, the unit price shall govern. At no point shall a correction of a mistake result in reduction or increase of a Bidder's unit price(s). If correction of the mistake would result in either an increase or decrease in the unit price, the Bid shall be considered nonresponsive and shall be rejected.

8. **CONTRACT RENEWAL**: The City reserves the right to renew any contract resulting from this solicitation at the same prices, specifications, terms and conditions, upon mutual agreement between the City and the contractor.

9. **ESTIMATED QUANTITIES**: Whenever a Bid requests prices to be firm for a period of performance, the quantities or usages shown are estimated only with no guarantee made by the City. The quantities are for the Bidder's information only, and the City will be bound only for actual quantities ordered.

10. **DISCOUNTS**: Cash discounts will be considered in determining the award. Unless otherwise indicated in the IFB, discounts offering 10 days or more will be taken by the City's Accounts Payable Division, with payment made on the nearest pay period after receipt, inspection and acceptance of articles, and receipt of correct invoice(s).

11. **SAMPLES**: Samples of items, when required, must be submitted within the time specified at no expense to the City. If not destroyed by testing, samples may be returned at the Bidder's expense unless otherwise indicated in the solicitation.

12. **AWARD**: Award will be made to the lowest most responsive and responsible Bidder, which will be judged on the basis of price, conformance to specifications, quality, delivery time, references, past performance, payment terms, and in the best interest of the City of Bentonville, all factors being considered.

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

    The Purchasing Manager has the authority to cancel award of a solicitation if, in their discretion and the City Department's (over the project) discretion, Bids received do not meet the City's needs or for any other reason where award would not be in the City's best interest.

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

    Conditional Bids are not acceptable and are subject to rejection in whole or in part at the sole discretion of the City.

    In the event of two or more identical low Bids, award will be made to the lowest and most responsible and responsive Bidders as determined by the City through the Bid evaluation process.

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

13. **BRAND NAMES:** If brand names, make, name of any manufacturer, trade name, or vendor catalog number are specified in these Bid documents, it is for the purpose of establishing a grade or quality of material only. When the City does not wish to rule out other brands or makes, the phrase OR EQUAL (OR EQUIVALENT, OR ALTERNATE) is added. However, if a product other than that specified is Bid, it is the Bidder's responsibility to identify such product in their Bid and prove to the City that the product is equal to or better than the product specified. Unless otherwise indicated, evidence in the form of samples may be requested if the proposed brand is other than that specified by the City. Such samples are to be furnished as specified in the solicitation or upon request of the City. Any samples requested by the City must be received by the City no later than four (4) days after formal request is made. The decision to accept a proposed item is solely the City's.

14. **VARIATIONS OF SPECIFICATIONS**: For purposes of evaluation, Bidder must indicate any variances from any provision, specification, or condition stated in this solicitation, no matter how slight. If Bidder does not indicate any variations, it will be assumed that the product or service fully complies with the provisions, specifications, or conditions as stated. If the City determines that variances exist in the specification which the Bidder did not indicate (or falsely represented a lack of variances), the City reserves the right to declare the Bid non-responsive and reject the Bid from that Bidder.

If satisfactory Bids are not received for the City's specifications, the City reserves the right to consider alternate Bids containing deviations from stated specifications.

15. **QUALITY:** Unless otherwise identified in the solicitation, all materials used in the manufacture or construction of supplies, materials or equipment covered by this solicitation shall be new. The items Bid must be the latest make or model in current production, as offered to commercial trade, and of the highest quality material and workmanship. Used, shopworn, demonstrator, prototype, or discontinued models are not acceptable.

16. **ECO-FRIENDLY (GREEN) PRODUCTS:** The City of Bentonville supports the use of products that are ecologically friendly to the environment. Bidders are urged to include information with their Bid that describes the human health and environmental impact of products proposed. This eco-friendly approach takes into account, but is not limited to, waste production, energy and water use, greenhouse gas emissions, indoor air quality, recycled and reused content and packaging, and the presences of hazardous substances. Consideration may be given to these eco-friendly products when compared to mainstream products in cost and packaging.

17. **MATERIAL SAFETY DATA SHEET (MSDS):** It is mandatory for a manufacturer, supplier, or distributor of hazardous material to supply an MSDS as required by 29CFR 1910.1200 with the first shipment. Any time the content of an MSDS is revised, the vendor is required to provide a new MSDS to the City.

18. **ACCEPTANCE OF MATERIAL**: The material delivered under this Bid shall remain the property of the seller until a physical inspection and actual usage of this material and/or service is made and is accepted by the City. It must comply with the terms of this IFB, and fully comply with specifications, and be of the highest quality. In the event the material and/or services supplied to the City is found to be defective or does not conform to specifications, the City reserves the right to cancel the order upon written notice to the contractor and return product to contractor at the contractor's expense. In the event that the City does not cancel the order but requests Bidder to bring the item(s), material(s) or service(s) to specification (correct the items), the corrections must be made at the awarded Bidder's expense and responsibility and must be completed within a timely manner as indicated by the City. If Bidder attempts to correct the item, material or service but fails to do so, or fails to do so in a timely manner, the City may elect to cancel the order at the awarded Bidder's expense.

19. **CODES AND REGULATIONS:** All products supplied and work performed within the scope of this request shall be supplied by the successful Bidder to all applicable current prevailing City, State and Federal codes and regulations.

20. **DELIVERY:** Bidders must complete the Delivery Section of this IFB. Delivery time may be considered in making an award. The City reserves the right to cancel any order, or any part of that order, without obligation if delivery is not made within the time(s) specified on in this IFB.

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

    All deliveries shall be FOB Destination to the location listed on the purchase order , contract, other approved form or as specified in this IFB unless otherwise specified by the City. Bidders may be requested to provide separate pricing for delivery of all items in this solicitation.

21. **THIRD PARTY FREIGHT SERVICE:** The City of Bentonville may, at its discretion, use a third party freight service to arrange for delivery of the goods ordered as a result of this solicitation. In this case, the freight terms will be FOB Destination/Third Party Prepaid.

22. **PRICE CHANGES ON CONTRACTS**: If this solicitation is for an estimated quantity of supplies, consideration in awarding Bid for yearly contracts will be given:
    - First to Bidder offering firm prices for full contract period; and
    - Second to Bidder offering firm prices subject to market price adjustment.

23. **COPYRIGHT OR PATENT RIGHTS**: By submitting the Bid, Bidder signifies that there has been no violation of copyrights or patent rights in manufacturing, producing or selling the goods shipped or ordered as a result of the Bid, and Bidder agrees to hold the City harmless from any and all liability, loss, or expense caused by any such violation.

24. **CONFLICT OF INTEREST**: The contractor, by signing the Bid form in the solicitation or by acceptance of any purchase order resulting from this solicitation, certifies that to the best of their knowledge or belief, no elected or appointed official of the City is financially interested, directly or indirectly, in the purchase of the goods or services specified on this order or in the contract.

25. **TAXES**: The City of Bentonville is not tax exempt from any taxes imposed by the State and/or Federal Government. Applicable taxes should be included on all bids.

    The City of Bentonville sales tax rate is 9.5%; all products shall be delivered to the City of Bentonville or work shall be performed within City limits.

    It is the responsibility of the Bidder to include sales tax in their Bid when applicable regardless of the Bidder's ability to remit sales tax to the State of Arkansas. In no event should applicable taxes cause the City to pay more than the submitted Bid price.

26. **MANUFACTURER'S CERTIFICATION:** The City reserves the right to request from Bidders a separate manufacturer certification of all statements made in the Bid. Failure to provide any requested certification may result in rejection of Bid or termination of contract for which the Bidder must bear full liability.

27. **TERMINATION:** Subject to the following provisions, any contract resulting from this solicitation may be terminated by either party upon thirty (30) days advance written notice to the other party; but if any work or service is in progress but not completed as of the date of termination, then said contract may be extended upon written approval of the City until said work or services are completed and accepted. Types of termination include, but are not limited to:

    1. Termination for Convenience
       In the event that the contract is terminated or cancelled upon request and for the convenience of the City, without the required thirty (30) days advance written notice, then the City shall negotiate reasonable termination costs, if applicable.

    2. Termination for Cause
       Termination by the City for cause, default or negligence on the part of the contractor shall be excluded from the foregoing provision; termination costs, if any, shall not apply. The thirty (30) days advance notice requirement is waived in the event of termination for cause.

    3. Termination Due to Unavailability of Funds
       When funds are not appropriated or otherwise made available to support continuation of performance, the contract shall be cancelled at the discretion of the City and without penalty to the City.

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28. **W-9 REQUIREMENT:** The City of Bentonville requires a Form W-9 (Request for Taxpayer Identification Number and Certification), updated annually, from all contractors that do business with the City of Bentonville. The Form W-9 verifies the Tax Identification Number of the contractor so the City can correctly report to the IRS all funds paid to the contractor.

29. **DEFAULT OF CONTRACT:** In case of default by the contractor, the City may procure the items or services from other sources and hold the contractor responsible for any excess costs caused by such procurement. Failure of a Bidder to furnish the equipment, supplies, material, and/or services as specified is cause for elimination of the Bidder from the active Bidder's list for the products or services concerned.

30. **BID BOND:** If required in this solicitation, Bidders shall include a Bid guarantee in the form of a Bid bond, certified check, cashier's check in the amount specified, payable without condition to the City of Bentonville. Personal or company checks are not acceptable The Bid bond shall be accompanied by a power of attorney showing the authority of the person executing the bond on behalf of the surety company and shall adhere any other requirements regarding Bid Bonds as set forth in this IFB document. Failure to include a Bid bond or Bid guarantee with your Bid submission when required will result in automatic rejection of the Bid. Bid guarantees (submitted by certified or cashier's checks) will be returned to unsuccessful Bidders when the successful Bidder is determined and the contract is executed.

31. **PERFORMANCE & PAYMENT BOND:** At the discretion of the City, a performance bond may be required under the contract resulting from this solicitation. Such bond must be of a type and amount suitable for the nature of the commodity or services purchased and for the full dollar amount of the contract as indicated in this solicitation. The performance bond shall be for the duration of the contract, guaranteeing the faithful performance of the contract and payment of all of Contractor's subcontractors and/or vendors, and otherwise conditioned as required by law. The Performance and Payment Bonds shall be accompanied by a power of attorney showing the authority of the person executing the bond on behalf of the surety company and shall conform to all other requirements for these bonds as specified in this IFB document. Bond forms must be executed with a surety company licensed to do business in the State of Arkansas. The cost of the bond shall be included in the Bidder's offer; at no time will the City be liable for the costs associated with a Performance and/or Payment Bond.

32. **MODIFICATIONS FOR CHANGES**: No agreement or understanding to modify this solicitation and resultant purchase orders or contract shall be binding upon the City unless made in writing by the Purchasing Department of the City of Bentonville.

33. **ORDER OF PRECEDENCE:** In the event of an inconsistency between provisions of the solicitation, the inconsistency will be resolved in the following order: (a) the IFB document; (b) Additional Terms and Conditions and Instructions to Bidders ; (c) special provisions; (d) other provisions of the contract, whether incorporated by reference or otherwise; and, (e) the specifications.

34. **WARRANTY:** Supplies or services furnished as a result of this solicitation shall be covered by the most favorable commercial warranties, expressed or implied, that the Bidder and/or manufacturer gives to any customer. The rights and remedies provided herein are in addition to and do not limit any rights afforded to the City by any other clause of this Bid. The City reserves the right to request from Bidders a separate manufacturer certification of all statements made in the Bid.

35. **PAYMENT**: Payment for materials or services received under this contract will be made upon completion of delivery for each purchase order and submission of invoice to the Accounts Payable Department, 1000 SW 14th Street, Bentonville, AR 72712. Normal payment terms are payment via check within fourteen days from receipt of invoice.

38. **GOVERNING LAW:** Any agreement resulting from this solicitation shall be interpreted under and governed by the laws of the State of Arkansas.

39. **ESCALATION/DE-ESCALATION CLAUSE:** In the event prevailing market conditions warrant an adjustment in contract pricing, the following escalation/de-escalation clause shall be the only clause acceptable to the City:

    1. Contractor shall give written notice to the Purchasing Department of any proposed changes from contract prices not less than fifteen (15) calendar days prior to the effective date of price changes.
    2. Such notice must be accompanied by a copy of the supplier's notification to the contractor of a justifiable price change.
    3. No price escalation will be authorized in excess of the amount of the increase indicated on the supplier's notice.
    4. The approved price change shall be honored for all orders received by the contractor after the effective date of such price change.
    5. Approved price changes are not applicable to orders already issued and in process at time of price change.
    6. The City reserves the right to audit and/or examine any pertinent books, documents, papers, records, or invoice relating directly to the price increase after reasonable notice and during normal business hours.
    7. The Purchasing Department retains the right to determine whether or not such proposed price changes are in the best interests of the City.
    8. If in the opinion of the Procurement Department any proposed increase is found unacceptable, the Purchasing Department reserves the right to cancel the contract upon fifteen (15) calendar days' written notice.
    9. Contractors must tie any price change clause to an industry-wide or otherwise nationally recognized index or some other form of verifiable document. Contractor will put the Procurement Department on the mailing lists for such publications so the Purchasing Department can monitor said changes. Such membership will be at no cost to the City.
    10. If parties to the contract cannot agree on renewal terms, it is understood that the contract will be cancelled and a new contract will be solicited.

40. **ADDITIONAL INFORMATION:** Additional information may be obtained from the Purchasing Department at (479) 271-3115.

CITY OF BENTONVILLE, ARKANSAS
PURCHASING DEPARTMENT
ADMINISTRATIVE SERVICES BUILDING
1000 SW 14TH STREET BENTONVILLE, AR 72712
(479)-271-3115 – purchasing@bentonvillear.com

APPENDIX A

VENDOR DISCLOSURE
(REQUIRED RESPONSE DOCUMENT)

Contractor/Vendor Disclosure

THIS DOCUMENT MUST BE COMPLETED AND INCLUDED IN ANY SUBMISSION

Company Name: TITAN LAWN & LANDSCAPE

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

Immediate Relation includes:

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

_____

_____

_____

_____

OR

☑ Check this box if you there are no applicable relationships to disclose.

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

RL Initials

CITY OF BENTONVILLE, ARKANSAS
PURCHASING DEPARTMENT
ADMINISTRATIVE SERVICES BUILDING
1000 SW 14TH STREET BENTONVILLE, AR 72712
(479)-271-3115 – purchasing@bentonvillear.com

APPENDIX B

NON-COLLUSION AFFIDAVIT
(REQUIRED RESPONSE DOCUMENT)

NON-COLLUSION AFFIDAVIT

BID INVALID IF THIS AFFIDAVIT IS NOT SIGNED AND NOTARIZED AND SUBMITTED WITH THE BID

State of Arkansas

County of Washington

I ~~Tonya Shepard~~ Roy Lovell of lawful age, being first duly sworn, on oath says that:

1.(s)he is the duly authorized agent of the Bidder and/or contractor submitting the Competitive Bid and/or procuring the contract which is attached to this statement, for the purpose of certifying the facts pertaining to the existence of collusion among Bidders and between Bidders and City officials or employees, as well as, facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the letting of any contract pursuant to the Invitation for Bids to which this statement is attached;

2. (s)he is fully aware of the facts and circumstances surrounding the making of the Bid and/or the procurement of the contract to which this statement is attached and has been personally and directly involved in the proceedings leading to the submission of such Bids;

3. Neither the Bidder/contractor nor anyone subject to the Bidder/contractor's direction or control has been a party;

a. to any collusion among Bidders in restraint of freedom of competition by agreement to bid at a fixed rate or to refrain from submitting;

b. to any collusion with any City official or employee as to quantity, quality or price in the prospective contract, or as to any other terms of such prospective contract, nor

c. in any discussions between Bidders and any City official concerning exchange of money or other thing of value for special consideration in the letting of a contract;

d. to paying, giving, donating or agreeing to pay, give or donate to any officer or employee of the city of Bentonville, any money or other thing of value, either directly or indirectly, in procuring the contract to which his/her statement is attached.

Signature: [redacted] Title: OWNER

Subscribed and swo[redacted] February 2022

Notary Public: [redacted] My commission expires: 11/08/31

TONYA SHEPARD
NOTARY PUBLIC
WASHINGTON COUNTY, ARKANSAS
COMM. EXP. 11/08/31
COMMISSION NO. 12717002

CITY OF BENTONVILLE, ARKANSAS
PURCHASING DEPARTMENT
ADMINISTRATIVE SERVICES BUILDING
1000 SW 14TH STREET BENTONVILLE, AR 72712
(479)-271-3115 – purchasing@bentonvillear.com

APPENDIX C

BIDDER QUALIFICATIONS
(REQUIRED RESPONSE DOCUMENT)

CITY OF BENTONVILLE, ARKANSAS
PURCHASING DEPARTMENT
ADMINISTRATIVE SERVICES BUILDING
1000 SW 14TH STREET BENTONVILLE, AR 72712
(479)-271-3115 – purchasing@bentonvillear.com

BIDDER QUALIFICATIONS (REQUIRED RESPONSE DOCUMENT)

Bidders shall provide at least three references from within the last two (2) years in the space provided below. References provided must be from the performance of the same or similar type of work as described herein.

The City reserves the right to contact references provided and use the information obtained in the evaluation of Bidder's Bid submission.

Contact Name	Contact Phone Number	Description of Work	Date/Date Range When Services Were Performed
City of Bentonville Jerome Todd	479-616-7109	Mowing	2019 - Present
Storms Orthodontics	479-283-7932	Mowing	2017 - Present
Ross Rader	479-640-6471	Landscape mowing	2019 - Present

OTHER RELEVANT WORK EXPERIENCE/NOTES (OPTIONAL):

RESOLUTION NO. _____

A RESOLUTION AWARDING BID IFB-22-12; AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A CONTRACT WITH TITAN LAWN AND LANDSCAPE OF FAYETTEVILLE, ARKANSAS, FOR MOWING SERVICES OF VARIOUS CITY PARKS; AND FOR OTHER PURPOSES.

WHEREAS, Titan Lawn and Landscape is the lowest qualified bidder for bid IFB-22-12;

WHEREAS, this contract covers mowing services for ten (10) City parks for the 2022 year; and

WHEREAS, the estimated annual cost is sixty-one thousand nine hundred sixty-three dollars ($61,963.00).

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

Section 1: The Mayor and City Clerk are authorized to enter into a contract with Titan Lawn and Landscape, of Fayetteville, Arkansas, for mowing services of ten (10) City parks for the 2022 year;

Section 2: The estimated contract cost is sixty-one thousand nine hundred sixty-three dollars ($61,963.00);

Section 3: Severability Provision: If any part of this Resolution is held invalid, the remainder of this Resolution shall continue in effect as if such invalid portion never existed; and

Section 4: Repeal of Conflicting Resolutions: All Ordinances, Resolutions, or Orders of the City Council, or parts of the same, in conflict with this Resolution are repealed to the extent of such conflict.

PASSED and APPROVED this _____ day of _____, 2021.

APPROVED:

_____
STEPHANIE ORMAN, Mayor

ATTEST:

_____
KIRBY ROMINES, City Clerk

Agenda Item Form

Date of City Council Meeting	**3/8/2022**
Department	**Parks and Recreation**
Submitted by	**Josh Stacey, Recreation Services Manager**
Phone	**(479) 696-0204**

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 the Peel Compton Foundation for the maintenance of certain spaces located in Lake Bentonville Park and Osage Park.

Estimated Cost	**NA**
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:	February 22, 2022
Re:	Osage Park Maintenance Memorandum of Understanding

Resolution authorizing the Mayor to enter into an agreement with the Peel Compton Foundation for the maintenance of certain spaces located in Lake Bentonville Park and Osage Park.

Lake Bentonville Park and Osage Park share borders, with south play area, southwest natural spaces and paths, and the entirety of Lake Bentonville belonging to the City of Bentonville and the north and east areas of the property belonging to the Peel Compton Foundation. To allow for consistency and for the parks to be maintained effectively and efficiently, some areas of the parks require the non-owning agency to provide the ongoing maintenance. These areas are highlighted in the attached map.

The Peel Compton Foundation will be maintaining the lake shore on the north and northeast areas of the lake which are owned by the City of Bentonville. This allows for consistency in the grasses and natural spaces in that area. Any application of chemical or natural products to treat or fertilize this area will be first approved by Bentonville Parks and Recreation to ensure the product/application is safe to be used in or near the Lake. A section of the park located along I Street, owned by the Peel Compton Foundation, will be maintained by the City of Bentonville to allow for consistent mowing, turf maintenance, and tree management of the connecting areas.

If you have any questions regarding this item, please let me know. Please call me at 696.0204, or email jstacey@bentonvillear.com.

Memorandum of Understanding

Between

Bentonville Parks and Recreation

and

Peel Compton Foundation

This Memorandum of Understanding (MOU) sets forth the terms and understanding between Bentonville Parks and Recreation and Peel Compton Foundation to maintain Lake Bentonville and Osage Park

Background
Bentonville Parks and Recreation and Peel Compton Foundation manage the adjacent properties of Lake Bentonville and Osage Park respectively. Due to the layout and accessibility of both properties both parties benefit from an agreement allowing the other party to maintain part of their property.

Purpose
This MOU will allow both properties to be well maintained for the enjoyment of park visitors by distinguishing the area which each party is expected to maintain.

The above goals will be accomplished by undertaking the following activities:

- Bentonville Parks and Recreation is expected to maintain (mow, weed-eat, edge as needed) the area owned by Peel Compton Foundation directly adjacent to the Osage Park entrance from I Street. This area is indicated in yellow on the attached map;
- Peel Compton Foundation is expected to maintain (mow, weed-eat, edge as needed) the area owned by Bentonville Parks and Recreation surrounding the shore of Lake Bentonville. This area is indicated on the attached map in red;
- Both parties may use pesticides, fertilizers, and pre-emergent in these areas to maintain the sod with prior written permission by the other party. Use of chemicals will be approved on a case-by-case basis;
- Peel Compton Foundation is not expected to maintain the fishing piers that fall within its expected area of maintenance; and
- Maintenance expectations by both parties in the areas outlined in this MOU are limited to mowing, weed eating, and edging.

Reporting
Both parties are responsible for ensuring that the property maintained under the terms of this MOU is kept up to the respective standards. Each party will notify the other of any potential hazardous conditions within 24 hrs.

Funding
This MOU is not a commitment of funds nor conveyance of ownership.

Duration
This MOU is at-will and may be modified by mutual consent of authorized officials from Bentonville Parks and Recreation and Peel Compton Foundation. This MOU shall become effective upon signature by the authorized officials from Bentonville Parks and Recreation and Peel Compton Foundation and will remain in effect until modified or terminated by any one of the parties.

Contact Information
Peel Compton Foundation
Debra Layton
Executive Director
312 N Main St, Bentonville, AR 72712
479-254-3870
Debra.Layton@peelcompton.org

City of Bentonville
Stephanie Orman
Mayor
117 W Central Ave, Bentonville, AR 72712
479-271-3112
Sorman@bentonvillear.com

_____ _____
(Organization signature) (Date)
Debra Layton, Executive Director of the Peel Compton Foundation
Osage Park

_____ _____
(Organization signature) (Date)
Stephanie Orman, Mayor
Lake Bentonville

Bentonville Parks and Rec Property
maintained by Peel Compton Foundation

Peel Compton Foundation Property
maintained by Bentonville Parks and Rec

Approximate Property line

RESOLUTION NO._____

A RESOLUTION ALLOWING THE MAYOR AND CITY CLERK TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE PEEL COMPTON FOUNDATION FOR THE MAINTENANCE OF CERTAIN SPACES IN LAKE BENTONVILLE AND OSAGE PARKS; AND FOR OTHER PURPOSES.

WHEREAS, Lake Bentonville and Osage parks share borders with property belonging to the Peel Compton Foundation;

WHEREAS, in order to maintain maintenance consistency, some areas of the parks benefit from a non-owning agency, such as the Peel Compton Foundation, providing maintenance while the City provides maintenance for privately owned sections of the park; and

WHEREAS, no application of chemical or natural products, to treat or fertilize, will be used without approval by the Bentonville Parks and Recreation Department.

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

Section 1: The Mayor and City Clerk are authorized to enter into a Memorandum of Understanding with the Peel Compton Foundation for maintenance work on Lake Bentonville and Osage Parks;

Section 2 - Severability Provision: If any part of this Resolution is held invalid, the remainder of this Resolution shall continue in effect as if such invalid portion never existed; and

Section 3: Repeal of Conflicting Provisions: All Ordinances, Resolutions, or Orders of the City Council, or parts of the same, in conflict with this Resolution are repealed to the extent of such conflict.

PASSED this _____ day of _____, 2022.

APPROVED:

_____
STEPHANIE ORMAN, Mayor

Attest:

_____
KIRBY ROMINES, City Clerk

Agenda Item Form

Date of City Council Meeting	**3/8/2022**
Department	**Parks and Recreation**
Submitted by	**Wade Tomlinson, Parks Planner**
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 and City Clerk to enter into a professional services agreement with Nabholz Construction Corporation, in the amount of $35,000.00 plus reimbursable expenses, to provide preconstruction services for the development of the Phillips Park project. This Firm was selected in accordance with §14-58-1001, for Projects exceeding $2 million dollars.

Estimated Cost	**$35,000**
Is this Item Budgeted?	☐ Yes ☑ No

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

Paid for using 2021 Bond Issue.

Memo

To:	City Council, Mayor Orman
Thru:	David Wright, Parks and Recreation Director
From:	Wade Tomlinson, Parks Planner
Date:	February 24, 2022
Re:	Resolution for contracting with Nabholz Construction Corporation for Construction Management services for construction of the renovated Phillips Park Sports Complex.

Resolution – Staff requests City Council approval for a Resolution authoring the Mayor and City Clerk to enter into a professional services agreement with Nabholz to provide preconstruction services for the Phillips Park project in the amount of $35,000 plus reimbursable expenses.

Upon contract execution Nabholz will collaborate with the project designer Crafton Tull to provide input in finalizing the drawings, cost estimates and associated project services. The services rendered will include assistance with construction cost estimating, project constructability analysis, value engineering and other construction efficiency input and analysis.

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

The Phillips Park project will transform this current five (5) ballfield park into a ten (10) field sports complex. The finished project may include turf infields, new sports lighting, new concession facilities, covered spectator seating and neighborhood park amenities. The finished project should certainly become one of the top youth sports destinations in the state. Funding from this project comes from the Bond approved in 2021.

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

Attachments:
Agreement with Nabholz

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 Fifteenth day of February in the year Two Thousand Twenty-Two
(In words, indicate day, month, and year.)

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

City of Bentonville
305 S.W. A Street
Bentonville, AR 72712

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

Nabholz Construction Corporation, dba/
Nabholz Construction Services
3301 North Second Street / P.O. Box 277
Rogers, AR 72757-0277

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

Phillips Park Sports Complex
City of Bentonville

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

Crafton Tull
1450 E Zion Road #9
Fayetteville, AR 72703

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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TABLE OF ARTICLES

1 INITIAL INFORMATION

2 GENERAL PROVISIONS

3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

4 OWNER'S RESPONSIBILITIES

5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

7 COST OF THE WORK FOR CONSTRUCTION PHASE

8 DISCOUNTS, REBATES, AND REFUNDS

9 SUBCONTRACTS AND OTHER AGREEMENTS

10 ACCOUNTING RECORDS

11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

12 DISPUTE RESOLUTION

13 TERMINATION OR SUSPENSION

14 MISCELLANEOUS PROVISIONS

15 SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT
EXHIBIT B INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

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

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

Re-development of the existing Phillips Park.

§ 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.)

Construction of facilities and related site development associated with the Bentonville Phillips Park Sports Complex.

§ 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.)

$11-$14 million dollars.

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

.1 Design phase milestone dates, if any:

.2 Construction commencement date:

.3 Substantial Completion date or dates:

.4 Other milestone dates:

§ 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.)

§ 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.)

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

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

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

Wade Tomlinson
City of Bentonville
305 S.W. A Street
Bentonville, AR 72712
Email: **wtomlinson@bentonvillear.com**
Phone: (479)271-3392, office (479)644-3358, cell

§ 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.)

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User Notes: (2000045672)

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

.1 Geotechnical Engineer:

.2 Civil Engineer:

.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.)

Barry Williams
Crafton Tull
1450 E Zion Road #9
Fayetteville, AR 72703
Email: barry.williams@craftontull.com
Phone: (479)636-4838, office

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

Kent Doughty, Senior Project Manager
Nabholz Construction Services
3301 North 2nd Street
Rogers, AR 72757
Email: **kent.doughty@nabholz.com**
Phone: (479)659-7893, office (479)531-6591, cell

§ 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:

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

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.1.1 Construction Manager shall exercise the degree of care, skill and diligence in the performance of the Construction Manager's Work, to assure its Work is performed in a good and workmanlike manner, consistent with construction industry standards for similar projects and circumstances in the same geographic area (hereinafter the "Construction Manager's Standard of Care"). The Construction Manager shall be responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Construction Manager's Work under this Agreement, including all coordination of the duties of all trades, and shall furnish efficient business administration and supervision of the Work.

Construction Manager's Standard of Care specifically excludes any design or design-related responsibilities, and any action taken by Construction Manager under this Agreement does not and shall not be construed to approve, represent or warrant the adequacy and suitability of the plans and specifications for the purpose for which they are provided.

§ 2.1.2 To the extent the Owner requests that the Construction Manager provide services within its Standard of Care, such as value analysis and/or constructability suggestions or comments with respect to the Drawings and Specifications, Owner acknowledges that such services are advisory only and not professional design services. The Owner shall refer all suggestions and comments to the Architect or other design professionals for review and evaluation prior to Owner's acceptance thereof. The Owner further acknowledges that the Construction Manager is not responsible for adequacy of the drawings and specifications or for identifying errors or omissions that may exist therein. The Owner shall cause the Architect to revise the Drawings and Specifications to reflect all value analysis and constructability suggestions and comments accepted by the Owner without delay or disruption to the timely and orderly progress of the work. The contract sum and contract time may be adjusted upon the Contractor's review and pricing of the revised Drawings and Specifications.

§ 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 an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests and the Construction Manager's Standard of Care. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. Nothing herein shall negate Construction Manager's right to equitable adjustments in the Contract Time or Contract Sum in accordance with the Contract Documents.

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§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction (as amended), 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; Article 15, Claims and Disputes. The term "Contractor" as used in A201–2017 (as amended) 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 (as amended), which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 (as amended), 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(as amended) 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 provided by the Construction Manager.. The Construction Manager 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, and possible cost reductions.

§ 3.1.3.3 The Owner and Architect shall consult with the Construction Manager in establishing building information modeling and digital data protocols for the Project to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: completion of various elements of the

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Architect's work, submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor (or appropriate breakdown of the Work); ordering and delivery of products, including those that must be ordered in advance of construction (if such products are known by or communicated to the Construction Manager) 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 in an effort 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 [Intentionally Omitted]

§ 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 [Intentionally Omitted]

§ 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

[Intentionally Omitted]

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§ 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 When the Drawings and Specifications have been completed, the Construction Manager will solicit trade contractors for competitive bids in relevant trade categories. The Construction Manager shall endeavor to acquire at least three bids in each trade category. Upon completion of the bidding cycle, the Construction Manager shall propose a Guaranteed Maximum Price ("GMP"), and submit it for the Owner's and Architect's review, and Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Project Contingency as described in Section 3.2.4, the Construction Manager's Fee as described in Section 6.1.2, and General Conditions.

§ 3.2.2 The Owner and Construction Manager acknowledge that the Construction Manager will/has developed the Guaranteed Maximum Price based upon completed Contract Documents.

In the event that the Owner and Construction Manager agree that the Construction Manager will develop a Guaranteed Maximum Price before the completion of the Contract Documents, in that such Drawings and Specifications do not contain all details and requirements of the Work, the Guaranteed Maximum Price will be based on certain assumptions by the Construction Manager. To the extent that the Contract Documents are anticipated to require further development, the Construction Manager will include an allowance to be identified in the GMP Amendment for 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, or any condition which was not reasonably anticipated by the Construction Manager's assumptions regarding the completion of the design, all of which, if required shall be incorporated by Change Order for additional cost and/or time as required. If the Contract Documents or final Drawings and Specifications require performance of the Work in any manner different from such assumptions, or contain changes in the scope of the Work to be performed by the Construction Manager, the Construction Manager shall as soon as practicable notify the Owner thereof and of the Construction Manager's estimate of the resulting increase or decrease in the Guaranteed Maximum Price. At such time as the Owner and the Construction Manager have agreed upon the effect of such difference and/or changes in the scope of the Work, a Change Order shall be issued substituting the finished Contract Documents for those described in this Agreement and the Guaranteed Maximum Price and Contract Time shall be adjusted as agreed by the parties. .

§ 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.
.6 The Date of Commencement of the Work shall be within ten (10) days of receipt of 1) Owner's Notice to Proceed, 2) the issuance of all applicable permits, and 3) Proof of adequate financing for the Work by the

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Owner and/or Owner's lender (in a form suitable to the Construction Manager shall include its), whichever is later.

§ 3.2.4 The GMP shall contain a mutually agreeable and separately identified contingency (the "Project Contingency") for the sole use by the Construction Manager. The Project Contingency is not allocated to any particular item of the cost of the Work and is established for the Cost of the Work incurred by the Construction Manager, including mitigation of weather impact, losses, expenses or damages not covered by insurance or bonds, low estimates or deviations from the estimated cost and overly aggressive scheduling, supply chain delays or shortage of properly skilled workforce. It is understood by the Parties that this contingency is not to be allocated to costs due to errors and omissions in the Contract Documents or to remedy, correct or resolve any inconsistencies, ambiguities, errors or omissions contained within the Architect's work product on which the Construction Manager's Guaranteed Maximum Price was based. The Owner retains the right to approve the use of the Project Contingency however the Owner deems appropriate, including changes in scope or to resolve inconsistencies in the Contract Documents, in consultation with the Architect and Construction Manager.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, with the exception of reimbursable costs associated with Preconstruction Services, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

§ 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, provided the Architect clouds all changes to the Drawings and Specifications on which the Guaranteed Maximum Price was based.

§ 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 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 (as amended), 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 acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs first. Prior to acceptance of the Guaranteed Maximum Price proposal, the Construction Phase shall commence only 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.

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§ 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 (as amended).

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 (as amended) 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

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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 designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. The Owner's representative shall render decisions promptly and furnish information expeditiously, 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 (as amended), the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 4.3 Architect

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

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

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

(Paragraph deleted)

The fee for preconstruction services shall be a lump sum equal to one-quarter of one percent (0.25%) of the Cost of Work, not to exceed Thirty-Five Thousand Dollars ($35,000.00). Any miscellaneous costs associated with the delivery of preconstruction services (printing, advertising, travel, etc.) shall be invoiced at direct cost of the item without mark-up or profit for the Construction Manager. Preconstruction Services will be invoiced on a pro-rata monthly basis for the term of the preconstruction services as identified in Article 5.1.2.

§ 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.)

Compensation for Preconstruction Phase Services shall be equitably adjusted if such services extend beyond (24) months from the date of this Agreement or if the originally contemplated scope of services is significantly modified.

(Table deleted)

§ 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

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sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 [Intentionally Omitted]

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services will be in accordance with 5.1.1.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid *(Paragraphs deleted)*
sixty (60) days after the payment is due shall bear interest at the highest rate allowed by law until paid.

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.)

Construction Manager shall receive a Fee of five-point two five percent (5.25%) of the Guaranteed Maximum Price (GMP).

§ 6.1.3 The Construction Manager's Fee shall be adjusted for changes in the Work by zero percent (0%) for deductive changes and five-point two five percent (5.25%) for additive changes.

§ 6.1.4 [Intentionally Omitted]

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed One Hundred percent (100 %) 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.)

§ 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.

§ 6.2.1 [Intentionally Omitted]

§ 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 (as amended), General Conditions of the Contract for Construction.

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§ 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 (as amended), General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017 (as amended), 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 (as amended) 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 Included in the Guaranteed Maximum Price

§ 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.

§ 7.1.1.1 The sum for General Conditions will be billed as a lump sum and paid in monthly installments commencing with the next calendar month following the date of commencement of construction of the Project and concluding on the date of completion of the Work. Payments will be pro-rated for part of a calendar month at the commencement of construction and the calendar month in which Final Completion occurs.

§ 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 [Intentionally Omitted]

§ 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 at off-site locations or workshops.

§ 7.2.2 Salaries and burden of the Construction Manager's supervisory, project/operations management, executive, safety and administrative personnel when engaged in execution of the Work, whether at the site, at the Construction Manager's principal office or offices other than the site office. These person costs will be charged on an hourly basis and will be included in an agreed upon General Conditions costs.

§ 7.2.2.1
(Paragraphs deleted)
[Intentionally Omitted]

§ 7.2.3 [Intentionally Omitted]

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, collectively referred to as "Labor Burden", provided that such costs are based on wages and salaries included in the Cost of the Work as described herein.

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§ 7.2.4.1 The Contract Sum is based upon the Project not being subject to State and Federal Prevailing Wage Law. In the event that this Project becomes subject to State or Federal Prevailing Wage Law, the Contract Sum will be adjusted accordingly.

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

§ 7.3 Subcontract Costs

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

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

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

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

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

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Equipment owned by the Construction manager shall be rented at a rate not to exceed the standard rental rate in the geographical area in which the project is located.

§ 7.5.3 Costs of removal of debris and/or costs associated with diverting waste to a waste recycling center 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 That portion of insurance including deductibles and bond premiums that can be directly attributed to this Contract and expenses for Subcontractor and Supplier Surety for Contractor's Subcontractor Supplier Default Insurance (SDI) or Payment and Performance Bonds (Surety Bond). At the Construction Manager's option, a combination of the above may be used. Application of SDI or surety bond shall be at the sole discretion of the Construction Manager.

The cost of the Construction Manager's insurance program. Rates shall be subject to adjustment on the first day of each calendar year if required by the Construction Manager.

Builders Risk Insurance maintained by the Construction Manager to insure the components of the Project while under construction.

§ 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.

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§ 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 (as amended) or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

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

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager knew 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 (as amended). 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, data lines, telephone service, electronic equipment, and software, directly related to the Work and located at the site.

§ 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.

§ 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 (as amended).

§ 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 (as amended) 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.

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§ 7.8 Related Party Transactions

§ 7.8.1 [Intentionally Omitted]

§ 7.8.2 [Intentionally Omitted]

§ 7.9 Costs Not To Be Reimbursed

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

.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;

.2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;

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

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

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

.6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;

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

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

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 Construction Manager and 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. 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

§ 10.1 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 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.

§ 10.2 The Contractor shall not be obligated to provide any services, information or documentation relating to its Work to auditors working on a contingency fee basis (auditor's fees calculated as a percentage of the client's net recovery), nor shall any reimbursement obligation otherwise required by the Contract Documents be applicable to Contractor when an auditor is hired by Owner on a contingency fee basis.

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 an Application for Payment is received by the Architect not later than the 1st day of the month, the Owner shall make payment to the Construction Manager not later than the 14th day of the **same** month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than 14 days after the Architect received the Application for Payment. Owner and Construction Manager agree that the terms outlined in 5.2.2 shall apply to this Article 11.1.3. An Application for Payment shall be deemed certified 5 business days after submittal unless the Owner or Architect objects to all or part of the Application for Payment within 5 business days of submittal.

§ 11.1.4 If required by the Owner, with each Application for Payment, the Construction Manager shall submit a detailed cost transaction report generated from the Construction Manager's accounting system, and upon request by the Owner or Architect, shall provide any other evidence reasonably required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager, less (2) that portion of those payments attributable to the Construction Manager's Fee, plus (3) payrolls for the period covered by the present Application for Payment.

§ 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.

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§ 11.1.5.2 Owner acknowledges that the Guaranteed Maximum Price applies in the aggregate to all categories and line items of the Cost of the Work. The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

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

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

§ 11.1.7 In accordance with AIA Document A201–2017 (as amended) 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 (as amended);

.3 [Intentionally Omitted];

.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 (as amended);

.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.)

Five percent (5.0%)

§ 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.)

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

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

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

§ 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 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than five percent (5%).

§ 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.

§ 11.1.13 The receipt by Construction Manager of a partial payment of any amount due to Construction Manager endorsed as payment in full will be deemed to be a part payment only, and any endorsements or statements on a check or other form of commercial paper, or any other document accompanying the payment, shall not be deemed an accord and/or satisfaction, notwithstanding such endorsements.

§ 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 (as amended);
.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

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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 (as amended). The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017 (as amended). 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 (as amended). A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

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

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

Amounts unpaid sixty (60) days after payment is due shall bear interest at the highest rate allowed by law until paid.

(Paragraph deleted)

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 (as amended). 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.

§ 12.1.2 [Intentionally Omitted]

(Paragraphs deleted)

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017 (as amended), the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

[ ] Arbitration pursuant to Article 15 of AIA Document A201–2017 (as amended)

[X] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

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

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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 (as amended).

§ 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. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

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

§ 13.2.1 Termination

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

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§ 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 (as amended), the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 (as amended) 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 (as amended).

§ 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 with the consent of Construction Manager and that is not otherwise included in the Cost of the Work.. 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 (as amended), then the Owner shall pay the Construction Manager a termination fee as follows:

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

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017 (as amended); in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017 (as amended), 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 (as amended). Where reference is made in this Agreement to a provision of AIA Document A201–2017 (as amended) 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 (as amended), 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 Owner shall provide Construction Manager with advance written notice of such assignment. The Construction Manager shall execute all consents reasonably required to facilitate the assignment and acceptable to Construction Manager.

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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 Two million dollars ($ 2,000,000.00) for each occurrence and two million dollars ($ 2,000,000.00) 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 two million dollars ($ 2,000,000.00) 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 of one million dollars ($ 1,000,000.00) each accident for bodily injury, one million dollars ($ 1,000,000.00) each employee for bodily injury by disease, and one million dollars ($ 1,000,000.00) policy limit for bodily injury by disease.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of two million dollars ($ 2,000,000.00) per claim and two million dollars ($ 2,000,000.00) 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

§ 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 if required in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents. Bonds may be obtained through the Construction Manager's usual source and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum.

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§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017 (as amended), may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 14.5 Other provisions:

§ 14.5.1 Owner acknowledges that Contractor is an independent contractor and the Owner has no ownership or control over Contractor, a private entity. Contractor has not agreed to act as a custodian of public records for the Owner subject to the provisions of the Arkansas Freedom of Information Act, Ark. Code Ann. §25-19-101, *et seq.* Owner further acknowledges and agrees that certain documents and information provided to Owner pursuant to the terms and conditions of this agreement may place Contractor and Owner at a competitive disadvantage if the information is disclosed by Owner. In the event Owner receives a request for disclosure pursuant to subpoena or other means, Owner shall provide notice of such request to Contractor within twenty-four (24) hours of receipt of the request, subpoena or demand, and shall not disclose such records without order.

§14.5.2 If Drawings are revised after the Drawings referenced in the Contract, the Owner shall have the Architect re-date all revised sheets and clearly identify all changes by bubble and delta number or other means acceptable to the Construction Manager and Owner. The Owner and Construction Manager acknowledge that it is difficult to determine and implement changes that are not so identified. Regardless if the Contract is amended to incorporate revised Drawings, the Guaranteed Maximum Price and Contract Time are subject to additional equitable adjustments for the cost and time impacts if implementing any changes not so identified.

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 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 (as amended)

.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:

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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 (as amended) 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.

OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
(Printed name and title)	Rob Dodd, EVP of Operations *(Printed name and title)*

NabModel Version 03.05.2021

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Additions and Deletions Report for

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PAGE 1

AGREEMENT made as of the Fifteenth day of February in the year Two Thousand Twenty-Two

...

(Name, ~~legal status,~~ address, and other information)

City of Bentonville
305 S.W. A Street
Bentonville, AR 72712

...

(Name, ~~legal status,~~ address, and other information)

Nabholz Construction Corporation, dba/
Nabholz Construction Services
3301 North Second Street / P.O. Box 277
Rogers, AR 72757-0277

...

Phillips Park Sports Complex
City of Bentonville

...

(Name, ~~legal status,~~ address, and other information)

Crafton Tull
1450 E Zion Road #9
Fayetteville, AR 72703

PAGE 2

Re-development of the existing Phillips Park.

...

Construction of facilities and related site development associated with the Bentonville Phillips Park Sports Complex.

...

$11-$14 million dollars.

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PAGE 3

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, upon request of the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, as may be amended by the parties, 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.

...

Wade Tomlinson
City of Bentonville
305 S.W. A Street
Bentonville, AR 72712
Email: **wtomlinson@bentonvillear.com**
Phone: (479)271-3392, office (479)644-3358, cell

PAGE 4

Barry Williams
Crafton Tull
1450 E Zion Road #9
Fayetteville, AR 72703
Email: barry.williams@craftontull.com
Phone: (479)636-4838, office

...

Kent Doughty, Senior Project Manager
Nabholz Construction Services
3301 North 2nd Street
Rogers, AR 72757
Email: **kent.doughty@nabholz.com**
Phone: (479)659-7893, office (479)631-6591, cell

PAGE 5

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially ~~change~~ 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.

...

§ 2.1.1 Construction Manager shall exercise the degree of care, skill and diligence in the performance of the Construction Manager's Work, to assure its Work is performed in a good and workmanlike manner, consistent with construction industry standards for similar projects and circumstances in the same geographic area (hereinafter the "Construction Manager's Standard of Care"). The Construction Manager shall be responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Construction Manager's Work under this Agreement, including all coordination of the duties of all trades, and shall furnish efficient business administration and supervision of the Work.

Construction Manager's Standard of Care specifically excludes any design or design-related responsibilities, and any action taken by Construction Manager under this Agreement does not and shall not be construed to approve, represent or warrant the adequacy and suitability of the plans and specifications for the purpose for which they are provided.

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§ 2.1.2 To the extent the Owner requests that the Construction Manager provide services within its Standard of Care, such as value analysis and/or constructability suggestions or comments with respect to the Drawings and Specifications, Owner acknowledges that such services are advisory only and not professional design services. The Owner shall refer all suggestions and comments to the Architect or other design professionals for review and evaluation prior to Owner's acceptance thereof. The Owner further acknowledges that the Construction Manager is not responsible for adequacy of the drawings and specifications or for identifying errors or omissions that may exist therein. The Owner shall cause the Architect to revise the Drawings and Specifications to reflect all value analysis and constructability suggestions and comments accepted by the Owner without delay or disruption to the timely and orderly progress of the work. The contract sum and contract time may be adjusted upon the Contractor's review and pricing of the revised Drawings and Specifications.

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.~~ interests and the Construction Manager's Standard of Care. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. Nothing herein shall negate Construction Manager's right to equitable adjustments in the Contract Time or Contract Sum in accordance with the Contract Documents.
PAGE 6

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for ~~Construction,~~ Construction (as amended), 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.~~ Law; Article 15, Claims and Disputes. The term "Contractor" as used in A201–2017 (as amended) 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,~~ A201–2017 (as amended), which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 (as amended), shall mean the Construction Manager.

...

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~~ A201-2017(as amended) 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.

...

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~~ provided by the Construction ~~Manager.~~ Manager.. The Construction ~~Manager, however,~~ Manager does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

...

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§ 3.1.3.2 The 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 shall consult with the Construction Manager in establishing building information modeling and digital data protocols for the ~~Project, using AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit,~~ Project to establish the protocols for the development, use, transmission, and exchange of digital data.

...

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: completion of various elements of the Architect's work, submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each ~~Subcontractor;~~ Subcontractor (or appropriate breakdown of the Work); ordering and delivery of products, including those that must be ordered in advance of ~~construction;~~ construction (if such products are known by or communicated to the Construction Manager) and the occupancy requirements of the Owner.

PAGE 7

§ 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,~~ 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 in an effort to reconcile the cost estimates.

...

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

...

§ 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.~~[Intentionally Omitted]

...

~~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~~

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~~coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.~~[Intentionally Omitted]

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~~ When the Drawings and Specifications have been completed, the Construction Manager will solicit trade contractors for competitive bids in relevant trade categories. The Construction Manager shall endeavor to acquire at least three bids in each trade category. Upon completion of the bidding cycle, the Construction Manager shall propose a Guaranteed Maximum Price ("GMP"), and submit it for the Owner's and Architect's review, and ~~the~~ Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the ~~Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.~~Project Contingency as described in Section 3.2.4, the Construction Manager's Fee as described in Section 6.1.2, and General Conditions.

§ 3.2.2 The Owner and Construction Manager acknowledge that the Construction Manager will/has developed the Guaranteed Maximum Price based upon completed Contract Documents.

In the event that the Owner and Construction Manager agree that the Construction Manager will develop a Guaranteed Maximum Price before the completion of the Contract Documents, in that such Drawings and Specifications do not contain all details and requirements of the Work, the Guaranteed Maximum Price will be based on certain assumptions by the Construction Manager. To the extent that the Contract Documents are anticipated to require further development, the ~~Guaranteed Maximum Price includes the costs attributable to~~ Construction Manager will include an allowance to be identified in the GMP Amendment for 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.~~or any condition which was not reasonably anticipated by the Construction Manager's assumptions regarding the completion of the design, all of which, if required shall be incorporated by Change Order for additional cost and/or time as required. If the Contract Documents or final Drawings and Specifications require performance of the Work in any manner different from such assumptions, or contain changes in the scope of the Work to be performed by the Construction Manager, the Construction Manager shall as soon as practicable notify the Owner thereof and of the Construction Manager's estimate of the resulting increase or decrease in the Guaranteed Maximum Price. At such time as the Owner and the Construction Manager have agreed upon the effect of such difference and/or changes in the scope of the Work, a Change Order shall be issued substituting the finished Contract Documents for those described in this Agreement and the Guaranteed Maximum Price and Contract Time shall be adjusted as agreed by the parties. .

...

.6 The Date of Commencement of the Work shall be within ten (10) days of receipt of 1) Owner's Notice to Proceed, 2) the issuance of all applicable permits, and 3) Proof of adequate financing for the Work by the Owner and/or Owner's lender (in a form suitable to the Construction Manager shall include its), whichever is later.

§ 3.2.4 ~~In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.~~The GMP shall contain a mutually agreeable and separately identified contingency (the "Project Contingency") for the sole use by the Construction Manager. The Project Contingency is not allocated to any particular item of the cost of the Work and is established for the Cost of the Work incurred by the Construction Manager, including mitigation of weather impact, losses, expenses or damages not covered by insurance or bonds, low estimates or deviations from the estimated cost and overly aggressive scheduling, supply chain delays or shortage of properly skilled workforce. It is understood by the Parties that this contingency is not to be allocated to costs due to errors and omissions in the Contract Documents or to remedy, correct or resolve any inconsistencies, ambiguities, errors or omissions contained within the Architect's work product on which the Construction Manager's Guaranteed Maximum Price was based. The Owner retains the right to approve the use of the Project Contingency however the Owner deems appropriate,

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including changes in scope or to resolve inconsistencies in the Contract Documents, in consultation with the Architect and Construction Manager.
PAGE 9

§ 3.2.7 ~~The~~ Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, with the exception of reimbursable costs associated with Preconstruction Services, 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.~~Work, except as the Owner may specifically authorize in writing.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract ~~Documents.~~Documents, provided the Architect clouds all changes to the Drawings and Specifications on which the Guaranteed Maximum Price was based.

§ 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,~~ enacted at the time the Guaranteed Maximum Price Amendment is executed.

...

§ 3.3.1.1 For purposes of Section 8.1.2 of ~~A201–2017,~~ A201–2017 (as amended), 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~~ acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs first. Prior to acceptance of the Guaranteed Maximum Price proposal, the Construction Phase shall commence only 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.
PAGE 10

§ 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.~~A201–2017 (as amended).

...

§ 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 (as amended) Section 2.2.
PAGE 11

The Owner shall ~~identify a representative authorized to act on behalf of the Owner with respect to the Project.~~ designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. 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,~~ A201–2017 (as amended), the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

...

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§ 5.1.1 For the Construction Manager's Preconstruction Phase ~~services described in Sections 3.1 and 3.2,~~ services, 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.)*~~
The fee for preconstruction services shall be a lump sum equal to one-quarter of one percent (0.25%) of the Cost of Work, not to exceed Thirty-Five Thousand Dollars ($35,000.00). Any miscellaneous costs associated with the delivery of preconstruction services (printing, advertising, travel, etc.) shall be invoiced at direct cost of the item without mark-up or profit for the Construction Manager. Preconstruction Services will be invoiced on a pro-rata monthly basis for the term of the preconstruction services as identified in Article 5.1.2.

...

Compensation for Preconstruction Phase Services shall be equitably adjusted if such services extend beyond (24) months from the date of this Agreement or if the originally contemplated scope of services is significantly modified.

~~**Individual or Position** **Rate**~~

PAGE 12

§ 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.~~[Intentionally Omitted]

...

§ 5.2.1 Unless otherwise agreed, payments for services ~~shall be made monthly in proportion to services performed.~~will be in accordance with 5.1.1.

§ 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.)*~~

~~%~~ sixty (60) days after the payment is due shall bear interest at the highest rate allowed by law until paid.

...

Construction Manager shall receive a Fee of five-point two five percent (5.25%) of the Guaranteed Maximum Price (GMP).

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

Construction Manager's Fee shall be adjusted for changes in the Work by zero percent (0%) for deductive changes and five-point two five percent (5.25%) for additive changes.

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

[Intentionally Omitted]

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed One Hundred percent (100 %) of the standard rental rate paid at the place of the Project.

...

§ 6.2.1 [Intentionally Omitted]

...

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

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of ~~A201–2017,~~ A201–2017 (as amended), 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 (as amended) 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.
PAGE 13

§ 7.1 ~~Costs to Be Reimbursed~~Costs to Be Included in the Guaranteed Maximum Price

...

§ 7.1.1.1 The sum for General Conditions will be billed as a lump sum and paid in monthly installments commencing with the next calendar month following the date of commencement of construction of the Project and concluding on the date of completion of the Work. Payments will be pro-rated for part of a calendar month at the commencement of construction and the calendar month in which Final Completion occurs.

§ 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.~~[Intentionally Omitted]

...

§ 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~~ or at off-site locations or 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.~~Salaries and burden of the Construction Manager's supervisory, project/operations management, executive, safety and administrative personnel when engaged in execution of the Work, whether at the site, at the Construction Manager's principal office or offices other than the site office. These person costs will be charged on an hourly basis and will be included in an agreed upon General Conditions costs.

§ 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.)*~~

[Intentionally Omitted]

§ 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.~~[Intentionally Omitted]

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§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, collectively referred to as "Labor Burden", provided that such costs are based on wages and salaries included in the Cost of the Work ~~under Sections 7.2.1 through 7.2.3.~~as described herein.

§ 7.2.4.1 The Contract Sum is based upon the Project not being subject to State and Federal Prevailing Wage Law. In the event that this Project becomes subject to State or Federal Prevailing Wage Law, the Contract Sum will be adjusted accordingly.

PAGE 14

§ 7.5.2 Rental charges for temporary facilities, machinery, ~~equipment,~~ equipment and hand tools not ~~customarily~~ owned by ~~construction workers that~~ the construction workers, which 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.~~whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Equipment owned by the Construction manager shall be rented at a rate not to exceed the standard rental rate in the geographical area in which the project is located.

§ 7.5.3 Costs of removal of debris and/or costs associated with diverting waste to a waste recycling center from the site of the Work and its proper and legal disposal.

...

§ 7.6.1 ~~Premiums for that portion of insurance and bonds required by the Contract Documents~~ That portion of insurance including deductibles and bond premiums that can be directly attributed to this ~~Contract.~~Contract and expenses for Subcontractor and Supplier Surety for Contractor's Subcontractor Supplier Default Insurance (SDI) or Payment and Performance Bonds (Surety Bond). At the Construction Manager's option, a combination of the above may be used. Application of SDI or surety bond shall be at the sole discretion of the Construction Manager.

The cost of the Construction Manager's insurance program. Rates shall be subject to adjustment on the first day of each calendar year if required by the Construction Manager.

Builders Risk Insurance maintained by the Construction Manager to insure the components of the Project while under construction.

PAGE 15

§ 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 (as amended) or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

...

§ 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~~ knew 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.~~ A201–2017 (as amended). 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, data lines, telephone service, electronic equipment, and software, directly related to the Work and located at the ~~site, with the Owner's prior approval.~~site.

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...

§ 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.~~Work.

...

§ 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.~~A201–2017 (as amended).

...

§ 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 (as amended) 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.

PAGE 16

§ 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.~~[Intentionally Omitted]

§ 7.8.2 ~~If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.~~[Intentionally Omitted]

...

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

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

~~.9 Costs for services incurred during the Preconstruction Phase.~~

...

§ 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 Construction Manager and Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the ~~Architect,~~ 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.

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PAGE 17

§ 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.~~ Agreement. 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.

...

~~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.~~ § 10.1 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 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.

§ 10.2 The Contractor shall not be obligated to provide any services, information or documentation relating to its Work to auditors working on a contingency fee basis (auditor's fees calculated as a percentage of the client's net recovery), nor shall any reimbursement obligation otherwise required by the Contract Documents be applicable to Contractor when an auditor is hired by Owner on a contingency fee basis.

...

§ 11.1.3 Provided ~~that~~ an Application for Payment is received by the Architect not later than the 1st day of ~~a~~ the month, the Owner shall make payment ~~of the amount certified~~ to the Construction Manager not later than the 14th day of the **same** month. If an Application for Payment is received by the Architect after the application date fixed above, payment ~~of the amount certified~~ shall be made by the Owner not later than ~~( ) days after the Architect receives the Application for Payment.~~
~~(Federal, state or local laws may require payment within a certain period of time.)~~14 days after the Architect received the Application for Payment. Owner and Construction Manager agree that the terms outlined in 5.2.2 shall apply to this Article 11.1.3. An Application for Payment shall be deemed certified 5 business days after submittal unless the Owner or Architect objects to all or part of the Application for Payment within 5 business days of submittal.

§ 11.1.4 ~~With~~ If required by the Owner, 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~~ a detailed cost transaction report generated from the Construction Manager's accounting system, and upon request by the Owner or Architect, shall provide any other evidence reasonably required by the Owner or Architect to demonstrate that ~~payments~~ cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager, less (2) that portion of those payments attributable to the Construction Manager's Fee, plus (3) 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.~~Payment.

PAGE 18

§ 11.1.5.2 Owner acknowledges that the Guaranteed Maximum Price applies in the aggregate to all categories and line items of the Cost of the Work. The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not

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constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

...

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

...

.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;~~A201–2017 (as amended);

.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;~~[Intentionally Omitted];

.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;~~A201–2017 (as amended);

...

Five percent (5.0%)
PAGE 19

§ 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.~~A201–2017 (as amended).

...

§ 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.~~Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than five percent (5%).

...

§ 11.1.13 The receipt by Construction Manager of a partial payment of any amount due to Construction Manager endorsed as payment in full will be deemed to be a part payment only, and any endorsements or statements on a check or other form of commercial paper, or any other document accompanying the payment, shall not be deemed an accord and/or satisfaction, notwithstanding such endorsements.

...

.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;~~A201–2017 (as amended);

...

§ 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.~~A201–2017 (as amended). The time periods stated in this Section

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11.2.2 supersede those stated in Article 9 of AIA Document ~~A201–2017.~~ A201–2017 (as amended). 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.~~ A201–2017 (as amended). A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

PAGE 20

~~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.~~Amounts unpaid sixty (60) days after payment is due shall bear interest at the highest rate allowed by law until paid.

~~(Insert rate of interest agreed upon, if any.)~~

~~—%~~

...

§ 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.~~ A201–2017 (as amended). 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.~~resolution.

§ 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.~~[Intentionally Omitted]

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

...

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document ~~A201–2017,~~ A201–2017 (as amended), the method of binding dispute resolution shall be as follows:

...

[ ] Arbitration pursuant to Article 15 of AIA Document A201–2017 (as amended)

[X] Litigation in a court of competent jurisdiction

PAGE 21

§ 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

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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.~~A201–2017 (as amended).

...

§ 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.~~ Work. 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.

...

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document ~~A201–2017.~~A201–2017 (as amended).
PAGE 22

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

...

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

§ 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 with the consent of Construction Manager and that is not otherwise included in the Cost of the ~~Work under Section 13.2.2.1.1.~~ Work.. 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.

...

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

...

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

...

§ 14.1 Terms in this Agreement shall have the same meaning as those in ~~A201–2017.~~ A201–2017 (as amended). Where reference is made in this Agreement to a provision of AIA Document A201–2017 (as amended) or another

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Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

...

§ 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,~~ A201–2017 (as amended), 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 Owner shall provide Construction Manager with advance written notice of such assignment. The Construction Manager shall execute all consents reasonably required to facilitate the ~~assignment.~~assignment and acceptable to Construction Manager.
PAGE 23

§ 14.3.1.1 Commercial General Liability with policy limits ~~of not less than ( ) for each occurrence and ( )~~ Two million dollars ($ 2,000,000.00) for each occurrence and two million dollars ($ 2,000,000.00) 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 two million dollars ($ 2,000,000.00) 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 ( ) each accident, ( ) each employee, and ( ) policy limit.~~of one million dollars ($ 1,000,000.00) each accident for bodily injury, one million dollars ($ 1,000,000.00) each employee for bodily injury by disease, and one million dollars ($ 1,000,000.00) policy limit for bodily injury by disease.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of ~~not less than ( ) per claim and ( )~~ two million dollars ($ 2,000,000.00) per claim and two million dollars ($ 2,000,000.00) in the aggregate.

...

§ 14.3.2.1 The Construction Manager shall provide bonds ~~as set forth~~ if required in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents. Bonds may be obtained through the Construction Manager's usual source and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document ~~A201–2017,~~ A201–2017 (as amended), 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:
PAGE 24

§ 14.5.1 Owner acknowledges that Contractor is an independent contractor and the Owner has no ownership or control over Contractor, a private entity. Contractor has not agreed to act as a custodian of public records for the Owner subject to the provisions of the Arkansas Freedom of Information Act, Ark. Code Ann. §25-19-101, *et seq.* Owner further acknowledges and agrees that certain documents and information provided to Owner pursuant to the terms and conditions of this agreement may place Contractor and Owner at a competitive disadvantage if the information is disclosed by Owner. In the event Owner receives a request for disclosure pursuant to subpoena or other means, Owner

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shall provide notice of such request to Contractor within twenty-four (24) hours of receipt of the request, subpoena or demand, and shall not disclose such records without order.

§14.5.2 If Drawings are revised after the Drawings referenced in the Contract, the Owner shall have the Architect re-date all revised sheets and clearly identify all changes by bubble and delta number or other means acceptable to the Construction Manager and Owner. The Owner and Construction Manager acknowledge that it is difficult to determine and implement changes that are not so identified. Regardless if the Contract is amended to incorporate revised Drawings, the Guaranteed Maximum Price and Contract Time are subject to additional equitable adjustments for the cost and time impacts if implementing any changes not so identified.

...

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

...

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

PAGE 25

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 (as amended) 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.)

...

_____ Rob Dodd, EVP of Operations

...

NabModel Version 03.05.2021

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_____

(Signed)

_____

(Title)

_____

(Dated)

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AIA® Document A201® – 2017

General Conditions of the Contract for Construction

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

Phillips Park Sports Complex
City of Bentonville

THE OWNER:
(Name, legal status and address)

City of Bentonville
305 S.W. A Street
Bentonville, AR 72712

THE ARCHITECT:
(Name, legal status and address)

Crafton Tull
1450 E Zion Road #9
Fayetteville, AR 72703

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

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

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

TABLE OF ARTICLES

1 GENERAL PROVISIONS

2 OWNER

3 CONTRACTOR

4 ARCHITECT

5 SUBCONTRACTORS

6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

7 CHANGES IN THE WORK

8 TIME

9 PAYMENTS AND COMPLETION

10 PROTECTION OF PERSONS AND PROPERTY

11 INSURANCE AND BONDS

12 UNCOVERING AND CORRECTION OF WORK

13 MISCELLANEOUS PROVISIONS

Init.
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14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES

16 RENOVATIONS OR ADDITIONS TO AN EXISTING STRUCTURE AND TEMPORARY UTILITIES

Init.

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INDEX

(Topics and numbers in bold are Section headings.)

Acceptance of Nonconforming Work
9.6.6, 9.9.3, **12.3**
Acceptance of Work
9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3
Access to Work
3.16, 6.2.1, 12.1
Accident Prevention
10
Acts and Omissions
3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.3.2, 14.1, 15.1.2, 15.2
Addenda
1.1.1
Additional Costs, Claims for
3.7.4, 3.7.5, 10.3.2, 15.1.5
Additional Inspections and Testing
9.4.2, 9.8.3, 12.2.1, **13.4**
Additional Time, Claims for
3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.6**
Administration of the Contract
3.1.3, **4.2**, 9.4, 9.5
Advertisement or Invitation to Bid
1.1.1
Aesthetic Effect
4.2.13
Allowances
3.8
Applications for Payment
4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.6.3, 9.7, 9.10
Approvals
2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10.1, 4.2.7, 9.3.2, 13.4.1
Arbitration
8.3.1, 15.3.2, **15.4**
ARCHITECT
4
Architect, Definition of
4.1.1
Architect, Extent of Authority
2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1
Architect, Limitations of Authority and Responsibility
2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2, 9.6.4, 15.1.4, 15.2
Architect's Additional Services and Expenses
2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4
Architect's Administration of the Contract
3.1.3, 3.7.4, 15.2, 9.4.1, 9.5
Architect's Approvals
2.5, 3.1.3, 3.5, 3.10.2, 4.2.7
Architect's Authority to Reject Work
3.5, 4.2.6, 12.1.2, 12.2.1
Architect's Copyright
1.1.7, 1.5
Architect's Decisions
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1, 13.4.2, 15.2
Architect's Inspections
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.4
Architect's Instructions
3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2
Architect's Interpretations
4.2.11, 4.2.12
Architect's Project Representative
4.2.10
Architect's Relationship with Contractor
1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2
Architect's Relationship with Subcontractors
1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3
Architect's Representations
9.4.2, 9.5.1, 9.10.1
Architect's Site Visits
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4
Asbestos
10.3.1
Attorneys' Fees
3.18.1, 9.6.8, 9.10.2, 10.3.3
Award of Separate Contracts
6.1.1, 6.1.2
Award of Subcontracts and Other Contracts for Portions of the Work
5.2
Basic Definitions
1.1
Bidding Requirements
1.1.1
Binding Dispute Resolution
8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1
Bonds, Lien
7.3.4.4, 9.6.8, 9.10.2, 9.10.3
Bonds, Performance, and Payment
7.3.4.4, 9.6.7, 9.10.3, **11.1.2**, 11.1.3, **11.5**
Building Information Models Use and Reliance
1.8
Building Permit
3.7.1
Capitalization
1.3
Certificate of Substantial Completion
9.8.3, 9.8.4, 9.8.5

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Extensions of Time
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2, 10.4, 14.3, 15.1.6, **15.2.5**
Failure of Payment
9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2
Faulty Work
(See Defective or Nonconforming Work)
Final Completion and Final Payment
4.2.1, 4.2.9, 9.8.2, **9.10**, 12.3, 14.2.4, 14.4.3
Financial Arrangements, Owner's
2.2.1, 13.2.2, 14.1.1.4
GENERAL PROVISIONS
1
Governing Law
13.1
Guarantees (See Warranty)
Hazardous Materials and Substances
10.2.4, **10.3**
Identification of Subcontractors and Suppliers
5.2.1
Indemnification
3.17, **3.18**, 9.6.8, 9.10.2, 10.3.3, 11.3
Information and Services Required of the Owner
2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5, 9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4
Initial Decision
15.2
Initial Decision Maker, Definition of
1.1.8
Initial Decision Maker, Decisions
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
Initial Decision Maker, Extent of Authority
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
Injury or Damage to Person or Property
10.2.8, 10.4
Inspections
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 12.2.1, 13.4
Instructions to Bidders
1.1.1
Instructions to the Contractor
3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2
Instruments of Service, Definition of
1.1.7
Insurance
6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5, **11**
Insurance, Notice of Cancellation or Expiration
11.1.4, 11.2.3
Insurance, Contractor's Liability
11.1
Insurance, Effective Date of
8.2.2, 14.4.2
Insurance, Owner's Liability
11.2
Insurance, Property
10.2.5, 11.2, 11.4, 11.5
Insurance, Stored Materials
9.3.2
INSURANCE AND BONDS
11
Insurance Companies, Consent to Partial Occupancy
9.9.1
Insured loss, Adjustment and Settlement of
11.5
Intent of the Contract Documents
1.2.1, 4.2.7, 4.2.12, 4.2.13
Interest
13.5
Interpretation
1.1.8, 1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1
Interpretations, Written
4.2.11, 4.2.12
Judgment on Final Award
15.4.2
Labor and Materials, Equipment
1.1.3, 1.1.6, **3.4**, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Labor Disputes
8.3.1
Laws and Regulations
1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8, 15.4
Liens
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8
Limitations, Statutes of
12.2.5, 15.1.2, 15.4.1.1
Limitations of Liability
3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6, 4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3, 11.3, 12.2.5, 13.3.1
Limitations of Time
2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15, 15.1.2, 15.1.3, 15.1.5
Materials, Hazardous
10.2.4, **10.3**
Materials, Labor, Equipment and
1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2
Means, Methods, Techniques, Sequences and Procedures of Construction
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2
Mechanic's Lien
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8
Mediation
8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1, 15.4.1.1
Minor Changes in the Work
1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, **7.4**

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MISCELLANEOUS PROVISIONS
13
Modifications, Definition of
1.1.1
Modifications to the Contract
1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2
Mutual Responsibility
6.2
Nonconforming Work, Acceptance of
9.6.6, 9.9.3, **12.3**
Nonconforming Work, Rejection and Correction of
2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2
Notice
1.6, 1.6.1, 1.6.2, 2.1.2, 2.2.2., 2.2.3, 2.2.4, 2.5, 3.2.4, 3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4, 8.2.2 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1, 13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5, 15.1.6, 15.4.1
Notice of Cancellation or Expiration of Insurance
11.1.4, 11.2.3
Notice of Claims
1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, **15.1.3**, 15.1.5, 15.1.6, 15.2.8, 15.3.2, 15.4.1
Notice of Testing and Inspections
13.4.1, 13.4.2
Observations, Contractor's
3.2, 3.7.4
Occupancy
2.3.1, 9.6.6, 9.8
Orders, Written
1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2, 14.3.1
OWNER
2
Owner, Definition of
2.1.1
Owner, Evidence of Financial Arrangements
2.2, 13.2.2, 14.1.1.4
Owner, Information and Services Required of the
2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4
Owner's Authority
1.5, 2.1.1, 2.3.32.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4, 15.2.7
Owner's Insurance
11.2
Owner's Relationship with Subcontractors
1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2
Owner's Right to Carry Out the Work
2.5, 14.2.2
Owner's Right to Clean Up
6.3
Owner's Right to Perform Construction and to Award Separate Contracts
6.1
Owner's Right to Stop the Work
2.4
Owner's Right to Suspend the Work
14.3
Owner's Right to Terminate the Contract
14.2, 14.4
Ownership and Use of Drawings, Specifications and Other Instruments of Service
1.1.1, 1.1.6, 1.1.7, **1.5**, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12, 5.3
Partial Occupancy or Use
9.6.6, **9.9**
Patching, Cutting and
3.14, 6.2.5
Patents
3.17
Payment, Applications for
4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3
Payment, Certificates for
4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4
Payment, Failure of
9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2
Payment, Final
4.2.1, 4.2.9, **9.10**, 12.3, 14.2.4, 14.4.3
Payment Bond, Performance Bond and
7.3.4.4, 9.6.7, 9.10.3, **11.1.2**
Payments, Progress
9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4
PAYMENTS AND COMPLETION
9
Payments to Subcontractors
5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2
PCB
10.3.1
Performance Bond and Payment Bond
7.3.4.4, 9.6.7, 9.10.3, **11.1.2**
Permits, Fees, Notices and Compliance with Laws
2.3.1, **3.7**, 3.13, 7.3.4.4, 10.2.2
PERSONS AND PROPERTY, PROTECTION OF
10
Polychlorinated Biphenyl
10.3.1
Product Data, Definition of
3.12.2
Product Data and Samples, Shop Drawings
3.11, **3.12**, 4.2.7
Progress and Completion
4.2.2, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.4
Progress Payments
9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

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Project, Definition of
1.1.4
Project Representatives
4.2.10
Property Insurance
10.2.5, **11.2**
Proposal Requirements
1.1.1
PROTECTION OF PERSONS AND PROPERTY
10
Regulations and Laws
1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8, 15.4
Rejection of Work
4.2.6, 12.2.1
Releases and Waivers of Liens
9.3.1, 9.10.2
Representations
3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1
Representatives
2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1
Responsibility for Those Performing the Work
3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10
Retainage
9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3
Review of Contract Documents and Field Conditions by Contractor
3.2, 3.12.7, 6.1.3
Review of Contractor's Submittals by Owner and Architect
3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2
Review of Shop Drawings, Product Data and Samples by Contractor
3.12
Rights and Remedies
1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2, 12.2.4, **13.3**, 14, 15.4
Royalties, Patents and Copyrights
3.17
Rules and Notices for Arbitration
15.4.1
Safety of Persons and Property
10.2, 10.4
Safety Precautions and Programs
3.3.1, 4.2.2, 4.2.7, 5.3, **10.1**, 10.2, 10.4
Samples, Definition of
3.12.3
Samples, Shop Drawings, Product Data and
3.11, **3.12**, 4.2.7
Samples at the Site, Documents and
3.11
Schedule of Values
9.2, 9.3.1
Schedules, Construction
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2
Separate Contracts and Contractors
1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2
Separate Contractors, Definition of
6.1.1
Shop Drawings, Definition of
3.12.1
Shop Drawings, Product Data and Samples
3.11, **3.12**, 4.2.7
Site, Use of
3.13, 6.1.1, 6.2.1
Site Inspections
3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4
Site Visits, Architect's
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4
Special Inspections and Testing
4.2.6, 12.2.1, 13.4
Specifications, Definition of
1.1.6
Specifications
1.1.1, **1.1.6**, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14
Statute of Limitations
15.1.2, 15.4.1.1
Stopping the Work
2.2.2, 2.4, 9.7, 10.3, 14.1
Stored Materials
6.2.1, 9.3.2, 10.2.1.2, 10.2.4
Subcontractor, Definition of
5.1.1
SUBCONTRACTORS
5
Subcontractors, Work by
1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7
Subcontractual Relations
5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1
Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3
Submittal Schedule
3.10.2, 3.12.5, 4.2.7
Subrogation, Waivers of
6.1.1, **11.3**
Substances, Hazardous
10.3
Substantial Completion
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 12.2, 15.1.2
Substantial Completion, Definition of
9.8.1
Substitution of Subcontractors
5.2.3, 5.2.4
Substitution of Architect
2.3.3
Substitutions of Materials
3.4.2, 3.5, 7.3.8
Sub-subcontractor, Definition of
5.1.2

Init.
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Subsurface Conditions
3.7.4
Successors and Assigns
13.2
Superintendent
3.9, 10.2.6
Supervision and Construction Procedures
1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4
Suppliers
1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5, 14.2.1
Surety
5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2, 15.2.7
Surety, Consent of
9.8.5, 9.10.2, 9.10.3
Surveys
1.1.7, 2.3.4
Suspension by the Owner for Convenience
14.3
Suspension of the Work
3.7.5, 5.4.2, 14.3
Suspension or Termination of the Contract
5.4.1.1, 14
Taxes
3.6, 3.8.2.1, 7.3.4.4
Termination by the Contractor
14.1, 15.1.7
Termination by the Owner for Cause
5.4.1.1, **14.2,** 15.1.7
Termination by the Owner for Convenience
14.4
Termination of the Architect
2.3.3
Termination of the Contractor Employment
14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT
14
Tests and Inspections
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 12.2.1, **13.4**
TIME
8
Time, Delays and Extensions of
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5
Time Limits
2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15.1.2, 15.1.3, 15.4
Time Limits on Claims
3.7.4, 10.2.8, 15.1.2, 15.1.3
Title to Work
9.3.2, 9.3.3
UNCOVERING AND CORRECTION OF WORK
12
Uncovering of Work
12.1
Unforeseen Conditions, Concealed or Unknown
3.7.4, 8.3.1, 10.3
Unit Prices
7.3.3.2, 9.1.2
Use of Documents
1.1.1, 1.5, 2.3.6, 3.12.6, 5.3
Use of Site
3.13, 6.1.1, 6.2.1
Values, Schedule of
9.2, 9.3.1
Waiver of Claims by the Architect
13.3.2
Waiver of Claims by the Contractor
9.10.5, 13.3.2, **15.1.7**
Waiver of Claims by the Owner
9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, **15.1.7**
Waiver of Consequential Damages
14.2.4, 15.1.7
Waiver of Liens
9.3, 9.10.2, 9.10.4
Waivers of Subrogation
6.1.1, **11.3**
Warranty
3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2, 15.1.2
Weather Delays
8.3, 15.1.6.2
Work, Definition of
1.1.3
Written Consent
1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3, 13.2, 13.3.2, 15.4.4.2
Written Interpretations
4.2.11, 4.2.12
Written Orders
1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically excluded in the Agreement, the Contract Documents include other documents such as the advertisement or invitation to bid, Instructions to Bidders, Contractors Bid Manual, schedules, sample forms, other information furnished by the Owner or Contractor in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

[Intentionally Omitted]

§ 1.2 Correlation and Intent of the Contract Documents

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

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

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

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

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

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

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

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

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

§ 1.7 Digital Data Use and Transmission

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model 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. Any agreement to such protocols shall be included in the

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Contract Documents as "BIM Addendum," or other agreed designation. The Owner shall cause an identical version of the BIM Addendum, if any, to be appended or incorporated into all written agreements between the Owner and any design professional performing obligations to be modeled.

§ 1.9 Order of Precedence

§ 1.9.1 In any case of the omissions or errors in figures, drawings or specifications, the Contractor shall immediately submit the matter to the Architect for clarification. The Architect's clarifications are final and binding on all parties, subject to an equitable adjustment in Contract Time or Price pursuant to Articles 7 and 8 or claims and disputes in accordance with Article 15.

§ 1.9.2 Where figures are not given, clarification from the Architect shall be requested. Drawings shall not be scaled.

§ 1.9.3 Any terms that have well-known technical or trade meanings, unless otherwise specifically defined in the Contract Documents, shall be interpreted in accordance with the well-known meanings.

§ 1.9.4 In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the following order:

a. Change order and written Modifications to this Agreement
b. this Agreement
c. drawings (large scale governing over small scale)
d. approved submittals
e. information furnished by the Owner
f. other documents listed in the Agreement (Among categories of documents having the same order of precedence, the term or provision that includes the most recent date shall control).

ARTICLE 2 OWNER

§ 2.1 General

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

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

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 The Owner shall, upon written request of Contractor, prior to commencement of the Work or any time thereafter, within 15 days of Contractor's request, provide reasonable evidence satisfactory to Contractor that financial arrangements have been made to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 *[Intentionally Omitted]*

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

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

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§ 2.3 Information and Services Required of the Owner

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

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

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

§ 2.3.4 The Owner shall, before the Schematic Design budgeting phase, furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. If, after establishing the Contract Sum, Owner provides such information to Contractor, and the information necessitates an increase in the Contract Sum or Time, the Owner shall provide for increase.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness and, in any event, within seven (7) days of Contractor's request, so as not to delay or hinder the progress of the Work. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with seven (7) days after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one hard copy and one electronic copy of the Contract Documents for purposes of bidding pursuant to Section 1.5.2. Prior to commencement of the Work, and to the extent available, Owner shall furnish the Contractor any electronic drawings (.dwg, .dxf, .ifc, .rvt. .nwd or others as appropriate) that will enable, but not require, Contractor to build an electronic model of the Project.

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a five-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, after such five (5) day period give the Contractor a second five Day notice to correct such deficiencies. If the Contractor, within such five (5) day period, after receipt of the second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

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ARTICLE 3 CONTRACTOR

§ 3.1 General

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

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

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor. The Contractor can rely on written instructions/directions/interpretations of the Architect as well as the Owner's testing firm in performing its Work.

§ 3.1.4 The Owner hereby agrees that Contractor shall not be liable or responsible in any manner whatsoever for any claims, damages, expenses, costs, errors or omissions arising out of the professional services performed by the Architect or other design professionals, whether through indemnity or otherwise. The Owner's sole recourse shall be against the Architect, or other design professionals performing such professional services, and any insurance procured by the Architect.

To the extent that the Owner requires, or the Contractor otherwise provides, any incidental services, construction consulting, or value engineering, the Owner acknowledges that such services are advisory and are not professional design services. The Owner shall, with due diligence, refer such questions, matters and inquiries to the design professionals, and the Contractor shall have no liability to the Owner or to the Architect or its consultants for such services required by the Owner and rendered hereunder.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully review the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions (if practical without destructive inspections) related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by Contractor. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional.

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

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions

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and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. Unless otherwise required by the Construction Documents, the Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures but Contractor shall not be held responsible for any loss or damage to the Work or adjacent property caused by the means methods, techniques, sequences, or procedures required by the Contract Documents. If the Contractor determines that such means, methods, techniques, sequences or procedures required by the Contract Documents may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. This provision shall in no way be construed as creating any rights or obligations to third parties.

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

§ 3.4 Labor and Materials

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

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or other written approval.

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

§ 3.5 Warranty

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

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

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§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are applicable and legally enacted when bids are received, or negotiations concluded.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

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

§ 3.7.2 Without assuming any design responsibilities, the Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall, upon discovery, notify the Architect in writing, and necessary changes shall be accomplished by appropriate Modifications. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

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

§ 3.7.5 If, in the course of the Work, the Contractor knowingly encounters and recognizes human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence or good faith belief of such existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

.1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts as well as the labor costs of performing the Work when made part of the allowance line item within the Schedule of Values;

.2 unless excluded in 3.8.2.1 above, Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

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.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness to avoid delay in the Work.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

(Paragraph deleted)

§ 3.9.2 *[Intentionally Omitted]*

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. Failure of the Owner to reply within 14 days of Contractor's notification to Owner of a proposed superintendent shall constitute notice of no reasonable objection.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised by Contractor at appropriate intervals in its discretion and without prior notice as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor shall prepare and keep current a schedule of submittals that is coordinated with the Contractor's construction schedule and which allows the Architect reasonable time to review submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect. When changes do not affect the Substantial Completion date, they may be made at Contractor's discretion.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Owner or, if directed, to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

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

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

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

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

The exception to this Article 3.12.8 is that the Contractor shall be relieved of responsibility for deviations from the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, if the Architect has specifically indicated such deviations from the Contract Documents on the approved submittals.

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon, and is not responsible for, the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria

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that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given design criteria in the Contract Documents.

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

§ 3.13 Use of Site

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

§ 3.14 Cutting and Patching

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

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

§ 3.15 Cleaning Up

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so upon seventy-two (72) hours advance written notice to Contractor, and the Owner shall be entitled to reimbursement of reasonable costs from the Contractor.

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. If an infringement of a copyright or patent is discovered by the Contractor, and that infringement or violation relates to copyright or patent rights within the Contract Documents, the Contractor shall promptly notify the Architect and the Owner and shall not be responsible for such infringement or violation(s).

§ 3.18 Indemnification

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

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or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

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

§ 3.18.3 The obligations of the Contractor shall not extend to the liability of the Architect, the Architect's consultants, and agents and employees of any of them, including but not limited to any liability arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications or (2) the giving of or the failure to give directions or instructions by the Architect, the Architect's consultants and agents and employees of any of them.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

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

§ 4.2 Administration of the Contract

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

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work.

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

§ 4.2.4 Communications

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

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

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§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

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

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor in writing of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness; however, delivery of such interpretation shall not be extended to cause the Contractor delay in the Work.

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

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

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness, and delivery of such interpretation shall not be extended to cause the Contractor delay in the Work or cause the Work to be performed out of sequence. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

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

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

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

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

§ 5.3 Subcontractual Relations

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

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

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation. To the extent the Owner chooses to perform construction or operations related to the Project, or to award separate contracts in connection with other portions of the Project or other construction or operations on the site, the Owner shall be required to secure a separate permit for that Work, if required by the authority having jurisdiction. Regardless, the Owner shall ensure that the Contractor is listed as an additional insured on the Separate Contractor's general liability and excess liability policy. Further, the Owner agrees to defend, indemnify and hold harmless the Contractor from any claims made against the Contractor resulting from damage to property (other than the Work) or injury to, or death of, persons in or about the Project caused by, arising out of or in connection with the construction, services, labor, materials, and equipment which have been performed, provided or supplied to the Project by the Owner or its Separate Contractor. If the Contractor claims that delay or additional cost is involved because of performance of construction or operations of Separate Contractors, of such action by the Owner or its Separate Contractors, the Contractor shall make such Claim as provided in Article 15.

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

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement and shall be granted any necessary extensions to the deadline for Substantial Completion necessitated by revisions to the Contractor's construction schedule caused by other work. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

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

§ 6.2 Mutual Responsibility

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of known discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractors.

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

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§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.
The Owner or its Separate Contractors shall promptly remedy damage that the Owner or its Separate Contractor cause to the Contractor's completed or partially completed construction.

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

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner, after notifying responsible party(s) by written notice and allowing the responsible party(s) to resolve this issue, may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

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

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

§ 7.2 Change Orders

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

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

§ 7.3 Construction Change Directives

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

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

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

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
.2 Unit prices stated in the Contract Documents or subsequently agreed upon;
.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
.4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing

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the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

.1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;

.2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and

.5 Costs of supervision and field office personnel directly attributable to the change.

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

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

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

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

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

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

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing and approved by the Owner. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time. Notwithstanding, in the event the Architect has issued multiple Additional Supplementary Instructions that, in the aggregate, result in the changes justifying an adjustment in Contract Sum or extension of the Contract Time, Contractor shall be entitled to submit a request for an equitable adjustment.

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ARTICLE 8 TIME

§ 8.1 Definitions

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

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement. Date of Commencement shall not be earlier than the date upon which all necessary permits are procured that would allow the Contractor to initiate and continue the Work and a written notice to proceed is received by the Contractor.

§ 8.1.3 The date of Substantial Completion is the date established under Section 9.8.

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

§ 8.2 Progress and Completion

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

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

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, epidemics, pandemic, or other designated health emergency, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Sum shall be adjusted and the Contract Time shall be extended by Change Order for such reasonable time, and amounts as arise out of or relate to such cause.

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

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

§ 9.2 Schedule of Values

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

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§ 9.3 Applications for Payment

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

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

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay. This provision does not prohibit Contractor from withholding payments to Subcontractors or suppliers pursuant to a provision or its agreements with such Subcontractors and suppliers providing for such withholding.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location provided that stored materials are properly insured. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

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

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

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§ 9.5 Decisions to Withhold Certification

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

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

However, in no event shall the Architect refuse to certify or shall the Owner withhold payment of an amount greater than that which is sufficient to pay the direct expenses the Owner reasonably expects to incur to correct any of the above reasons set forth by the Architect for withholding certification.

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

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

(Paragraph deleted)
§ 9.5.4 *[Intentionally Omitted]*

§ 9.6 Progress Payments

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

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

§ 9.6.3 *[Intentionally Omitted]*

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

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

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

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

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

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within fourteen days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received, or terminate the Contract. In the event the Work is stopped, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents. If the Contractor terminates the Contract, Owner shall pay Contractor for Work executed and for incurred costs related to materials, equipment, tools and construction equipment and machinery, including reasonable overhead, profit and damages.

§ 9.7.1 Upon execution of the Agreement, Contractor shall provide Owner with written payment instructions and all necessary forms required by Owner to effectuate payments to Contractor by wire transfer (the "Payment Information"). Contractor shall submit the initial Payment information to Owner by certified mail or hand delivery only. If Owner receives a request to change such Payment Information, Owner agrees that it will not modify or make change to this Payment Information without oral communication, followed by written confirmation, from Contractor's Controller. Owner shall make no changes to the Payment Information if it does not receive the oral and written confirmations as stated herein. If Owner makes any change to the Payment Information without first receiving the confirmations stated herein, it shall be solely responsible for any monies lost or stolen and not paid to Contractor as required under the terms of this Agreement.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. Substantial Completion will be achieved by Contractor when the last of the following occurs:

.1 custody and control of the Work (or designated portion of the Work) is provided to the Owner ; and

.2 inspections and approvals from government agencies required by the Work (or designated portion of the Work) have been completed and a certificate of occupancy, whether temporary or final, for the Work (or designated portion of the Work) has been issued;

If the Work (or designated portion of the Work) includes installation of items furnished by the Owner, completion of such installation will be considered punch list work and will not delay designation of Work as Substantially Complete.

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

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§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied or will be promptly made upon receipt of final payment from the Owner, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties as required by the Contract Documents, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner or by law. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all reasonable payments that the Owner has made in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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

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

- **.1** liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Contract Documents;
- **.3** terms of special warranties required by the Contract Documents; or
- **.4** audits performed by the Owner, if permitted by the Contract Documents, after final payment.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

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

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

§ 10.2.3 The Contractor and its Subcontractors shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and

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other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 negligently caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

§ 10.2.8 Injury or Damage to Person or Property

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

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 Without accepting any responsibility or liability for the remediation of hazardous materials that exist on or contiguous to the Project site as of the date of the Agreement, the Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable property damage, bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

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

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or

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death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances. Unless required by the Contract Documents, the Contractor shall not be required to perform without its consent any Work relating to a hazardous material or substance, provided that such Contractor consent shall not be unreasonably withheld.

§ 10.3.5 The Contractor shall reimburse the Owner for the reasonable and necessary cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to requirements of the Contract Documents or the Owner's fault or negligence.

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

§ 10.3.7 Unless required by the Contract Documents, the Contractor shall not be required to perform, without consent, any Work relating to mold, asbestos or polychlorinated biphenyl ("PCB"). The Contractor shall perform no work involving toxic, contaminant, contaminated or hazardous material of any type, which removal or responsibility to render harmless is the Owner's obligation.

§ 10.4 Emergencies

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity that Contract has reason to believe is a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§11.1.5 Contractor may use a traditional insurance process, or it can use a Controlled Contractor Insurance Program ("CCIP").

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§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. The cost of the Contractor-procured property insurance shall be charged to the Owner by a Change Order. When the failure to provide coverage has been cured or resolved by the Contractor or by the Owner, the Contract Sum and Contract Time shall be equitably adjusted. If the Owner does not provide written notice to the Contractor of the Owner's failure to procure the required property insurance with all of the coverages and in the amounts described in the Contract Documents, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain such insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto. In the event the Owner fails to procure coverage the required property insurance with all of the coverages and in the amounts described in the Contract Documents, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner with respect to damage to the Work, furnishings, fixtures, equipment, and materials intended to be incorporated into the permanent structure, and consequential damages stemming therefrom..

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide written notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

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

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

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

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

§11.5 Adjustment and Settlement of Insured Loss

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

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents or contains an acceptable minor change in the Work, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate to compensate Contractor for its actual costs of uncovering and replacing the Work, plus reasonable overhead and profit. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect for failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and the cost of uncovering and replacement shall be at the Contractor's expense. In the event Work is uncovered and determined as conforming to the Contract Documents the costs of recovering and replacement, including compensation for Contractor's service and expenses, shall be at the Owner's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such written notice promptly after discovery of the

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condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 2.5.

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

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

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

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

§ 12.2.5 *[Intentionally Omitted]*

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, with consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment. Contractor shall not be obligated to perform pursuant to the assignment unless or until Owner or Lender has paid Contractor for Work performed prior to the effective date of the assignment.

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public

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authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require, and Contractor may rely and act upon such test results, inspection reports, and approvals procured by the Owner.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

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

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

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

§ 13.5 Interest

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

- **.1** Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- **.2** An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- **.3** Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- **.4** The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.
- **.5** if the Owner suspends the Work for convenience in accordance with paragraph 14.3 herein; or
- **.6** if Owner is responsible for providing the property insurance coverage required in Exhibit A to the Agreement herein and Contractor becomes aware that Owner did not procure and maintain such coverage.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute

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in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 30 consecutive days or 60 cumulative days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- **.1** repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- **.2** fails to make an undisputed payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or Suppliers, provided such nonpayment is not due to the Owner's failure to pay Contractor for Work performed;
- **.3** repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- **.4** otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, fourteen days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- **.1** Exclude the Contractor from the site and take possession of all materials owned by the Owner;
- **.2** Accept assignment of subcontracts pursuant to Section 5.4; and
- **.3** Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor or its surety, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work along with all supporting documentation.

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

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

§ 14.3 Suspension by the Owner for Convenience

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

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

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

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§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, upon thirty (30) days written notice to the Contractor, terminate the Contract for the Owner's convenience and without cause.

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

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, materials procured, fabricated, partially fabricated or otherwise purchased for the project whether delivered or not yet delivered to the site and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents; however, the Owner shall send advance written notice to the Contractor before imposing any liquidated damages.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, will be initiated by written notice to the other party.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments for undisputed Work in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with Article 15.2. The Architect will issue Certificates for Payment pursuant to the agreement of the parties unless the parties are unable to reach an agreement, in which case the procedures set in Articles 15.3 and 15.4 shall apply.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

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§ 15.1.5.1 Where the price of material, equipment or energy increases significantly during the term of the Contract, through no fault of the Contractor, the Contract Sum shall be equitably adjusted by Change Order as provided in Section 7 of the General Conditions of the Contract. A significant price increase means a change in price from the date of Contract execution to the date of performance by an amount exceeding five percent (5%). Such price increases shall be documented by available vendor quotes, estimates, invoices, catalogs, receipts or other documentation. Provided however, this shall not include claims for additional costs which could have been avoided by the Contractor ordering materials, as allowed and authorized by Owner, before the price increase took effect when the Contractor should have reasonably known such price increases could be expected.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

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

§ 15.1.7 Waiver of Claims for Consequential Damages

(Paragraph deleted)

Neither Contractor nor Owner shall be liable to the other for any consequential losses or damages, whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, including but not limited to losses of use, profits, business, reputation or financing.

(Paragraph deleted)

§ 15.2 DIRECT DISCUSSIONS

§ 15.2 .1 If the Parties cannot reach resolution on a Claim or matter relating to or arising out of the Agreement, the Parties shall endeavor to reach resolution through good faith, face-to-face direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of the first discussions. If the Parties' representatives are not able to resolve such matter within five (5) business Days of the date of first discussion, the Parties' representative shall immediately inform senior executives of the Parties in writing that resolution was not achieved. Upon receipt of such notice, senior executives of the Parties shall meet within five (5) business days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) days from the date of first discussion, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected herein. Mediation shall be subject to direct discussions under this Section 15.2.1 as a condition precedent to binding dispute resolution.

(Paragraphs deleted)

§ 15.2.2 *[Intentionally Omitted]*

§ 15.2.3 *[Intentionally Omitted]*

§ 15.2.4 *[Intentionally Omitted]*

§ 15.2.5 *[Intentionally Omitted]*

§ 15.2.6 *[Intentionally Omitted]*

§ 15.2.6.1 *[Intentionally Omitted]*

§ 15.2.6.2 All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.

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§ 15.2.7 *[Intentionally Omitted]*

§ 15.2.8 *[Intentionally Omitted]*

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, may be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 If the parties' good faith direct discussions are unsuccessful in resolving any Claims, the parties may endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association, unless otherwise agreed by the parties, in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or arbitrator. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

(Paragraph deleted)

§ 15.3.3 *[Intentionally Omitted]*

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The parties may agree in writing to use an alternative organization and its rules. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. In no event shall the arbitrators be empowered to assess punitive damages, and any punitive damages assessed as part of an award shall not be enforceable under the Agreement.

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

§ 15.4.3.1 The Parties expressly agree that the Arbitration Rules are modified so that those cases falling under the regular track will result in an award no more than six (6) months from the date of the confirmation of appointment of the arbitrators. In all cases in which less than $1,000,000 in total is at issue, there shall be a sole arbitrator and the Parties shall each have three preemptory strikes in selection of the arbitrator, plus all strikes for cause that can be

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justified. In all cases in which $1,000,000 or more in total is at issue, there shall be three arbitrators and the Parties shall each have five preemptory strikes plus all strikes for cause that can be justified. The place of mediation and arbitration shall be the county and state in which the Work is performed. The Parties understand and agree that the arbitration award shall be binding upon, and shall include, any and all agents, employees, successors, and assigns of either party to this Contract. Neither party in any dispute arising out of or relating to the Agreement or its breach shall be entitled to recover from the other party attorney's fees, costs (including but not limited to expert witness fees) or expenses incurred in connection with such dispute or breach.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

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

ARTICLE 16 RENOVATIONS OR ADDITIONS TO AN EXISTING STRUCTURE AND TEMPORARY UTILITIES

§ 16.1 Investigation, Analysis, and Testing

§ 16.1.1 The Contractor has not investigated or determined the current conditions of the existing superstructure, building systems and the adequacy of utilities that may impact Contractor's performance of the Work. The cost of correcting any such deficiencies is not included within the GMP.

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PAGE 1

Phillips Park Sports Complex
City of Bentonville

...

City of Bentonville
305 S.W. A Street
Bentonville, AR 72712

...

Crafton Tull
1450 E Zion Road #9
Fayetteville, AR 72703

PAGE 2

15 CLAIMS AND DISPUTES

16 RENOVATIONS OR ADDITIONS TO AN EXISTING STRUCTURE AND TEMPORARY UTILITIES

PAGE 3

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, ~~9.5.4,~~ 9.6.3, 9.7, 9.10

...

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2, ~~9.5.4,~~ 9.6.4, 15.1.4, 15.2

PAGE 9

1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, ~~9.5.4,~~ 9.6, 9.10.5, 14.2.1

PAGE 10

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

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...

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

...

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

...

~~The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.~~*[Intentionally Omitted]*

...

§ 1.2.1 The ~~intent of the Contract Documents is to~~ Contract Documents shall include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by ~~all; performance~~ all. Performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.
PAGE 11

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

...

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

...

~~The parties shall agree upon protocols governing the transmission and use of~~ If the parties intend to transmit 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.~~form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

...

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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. Any agreement to such protocols shall be included in the Contract Documents as "BIM Addendum," or other agreed designation. The Owner shall cause an identical version of the BIM Addendum, if any, to be appended or incorporated into all written agreements between the Owner and any design professional performing obligations to be modeled.

~~**ARTICLE 2 OWNER**~~

§ 1.9 Order of Precedence

§ 1.9.1 In any case of the omissions or errors in figures, drawings or specifications, the Contractor shall immediately submit the matter to the Architect for clarification. The Architect's clarifications are final and binding on all parties, subject to an equitable adjustment in Contract Time or Price pursuant to Articles 7 and 8 or claims and disputes in accordance with Article 15.

§ 1.9.2 Where figures are not given, clarification from the Architect shall be requested. Drawings shall not be scaled.

§ 1.9.3 Any terms that have well-known technical or trade meanings, unless otherwise specifically defined in the Contract Documents, shall be interpreted in accordance with the well-known meanings.

§ 1.9.4 In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the following order:

a. Change order and written Modifications to this Agreement
b. this Agreement
c. drawings (large scale governing over small scale)
d. approved submittals
e. information furnished by the Owner
f. other documents listed in the Agreement (Among categories of documents having the same order of precedence, the term or provision that includes the most recent date shall control).

ARTICLE 2 OWNER

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

PAGE 12

§ 2.2.1 ~~Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements~~ The Owner shall, upon written request of Contractor, prior to commencement of the Work or any time thereafter, within 15 days of Contractor's request, provide reasonable evidence satisfactory to Contractor that financial arrangements have been made to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

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

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~~Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.~~*[Intentionally Omitted]*

PAGE 13

§ 2.3.4 The Owner ~~shall~~ shall, before the Schematic Design budgeting phase, furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. If, after establishing the Contract Sum, Owner provides such information to Contractor, and the information necessitates an increase in the Contract Sum or Time, the Owner shall provide for increase.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable ~~promptness.~~ promptness and, in any event, within seven (7) days of Contractor's request, so as not to delay or hinder the progress of the Work. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with ~~reasonable promptness~~ seven (7) days after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one hard copy and one electronic copy of the Contract Documents for purposes of ~~making reproductions pursuant to Section 1.5.2.~~bidding pursuant to Section 1.5.2. Prior to commencement of the Work, and to the extent available, Owner shall furnish the Contractor any electronic drawings (.dwg, .dxf, .ifc, .rvt. .nwd or others as appropriate) that will enable, but not require, Contractor to build an electronic model of the Project.

...

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten-day~~ five-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, after such five (5) day period give the Contractor a second five Day notice to correct such deficiencies. If the Contractor, within such five (5) day period, after receipt of the second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold ~~or nullify~~ a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

PAGE 14

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

...

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor. The Contractor can rely on written instructions/directions/interpretations of the Architect as well as the Owner's testing firm in performing its Work.

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§ 3.1.4 The Owner hereby agrees that Contractor shall not be liable or responsible in any manner whatsoever for any claims, damages, expenses, costs, errors or omissions arising out of the professional services performed by the Architect or other design professionals, whether through indemnity or otherwise. The Owner's sole recourse shall be against the Architect, or other design professionals performing such professional services, and any insurance procured by the Architect.

To the extent that the Owner requires, or the Contractor otherwise provides, any incidental services, construction consulting, or value engineering, the Owner acknowledges that such services are advisory and are not professional design services. The Owner shall, with due diligence, refer such questions, matters and inquiries to the design professionals, and the Contractor shall have no liability to the Owner or to the Architect or its consultants for such services required by the Owner and rendered hereunder.

...

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully ~~study and compare~~ review the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions (if practical without destructive inspections) related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by ~~or made known to the Contractor as a request for information in such form as the Architect may require.~~ Contractor. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design ~~professional, unless otherwise specifically provided in the Contract Documents.~~professional.

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

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of ~~Sections 3.2.2~~ Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

PAGE 15

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. ~~The~~ Unless otherwise required by the Construction Documents, the Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be ~~solely~~ responsible for the jobsite safety of such means, methods, techniques, sequences, or ~~procedures.~~ procedures but Contractor shall not be held responsible for any loss or damage to the Work or adjacent property caused by the means methods, techniques, sequences, or procedures required by the Contract Documents. If the Contractor determines that such means, methods, techniques, sequences or procedures required by the Contract Documents may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

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§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. This provision shall in no way be construed as creating any rights or obligations to third parties.

...

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or ~~Construction Change Directive.~~other written approval.

...

§ 3.5.1 The Contractor warrants to the Owner ~~and Architect~~ that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality ~~of the Work the Contract Documents require or permit. Work, materials,~~ or type required or permitted by the Contract Documents. Work, materials or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused ~~by~~ by construction by the Owner and by Separate Contractors, abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
PAGE 16

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

...

§ 3.7.2 ~~The~~ Without assuming any design responsibilities, the Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall, upon discovery, notify the Architect in writing, and necessary changes shall be accomplished by appropriate Modifications. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

...

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract ~~Documents~~ Document or (2) unknown physical conditions of an unusual ~~nature~~ nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are ~~disturbed~~ disturbed, if possible, and in no event later than ~~14~~ 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, ~~will recommend that an equitable adjustment be made~~ shall be entitled to equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner

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and ~~Contractor,~~ Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may ~~submit a Claim~~ proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor knowingly encounters and recognizes human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence or good faith belief of such existence of such remains or features may be made as provided in Article 15.

...

.1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade ~~discounts;~~discounts as well as the labor costs of performing the Work when made part of the allowance line item within the Schedule of Values;

.2 unless excluded in 3.8.2.1 above, Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

PAGE 17

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable ~~promptness.~~promptness to avoid delay in the Work.

...

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

~~**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.~~

§ 3.9.2 *[Intentionally Omitted]*

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner ~~or Architect~~ has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. Failure of the Owner to reply within 14 days of Contractor's notification to Owner of a proposed superintendent shall constitute notice of no reasonable objection.

...

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised by Contractor at appropriate intervals in its discretion and without prior notice as required by the conditions of the Work and Project.

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

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect. When changes do not affect the Substantial Completion date, they may be made at Contractor's discretion.

...

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Owner or, if directed, to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.
PAGE 18

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

...

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

The exception to this Article 3.12.8 is that the Contractor shall be relieved of responsibility for deviations from the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, if the Architect has specifically indicated such deviations from the Contract Documents on the approved submittals.

...

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely ~~upon~~ upon, and is not responsible for, the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria

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that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given ~~and the design concept expressed~~ design criteria in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form ~~specified~~ required by the ~~Architect.~~Contract Documents.
PAGE 19

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

...

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so upon seventy-two (72) hours advance written notice to Contractor, and the Owner shall be entitled to reimbursement of reasonable costs from the Contractor.

...

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

...

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, ~~Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses,~~ from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, ~~loss,~~ loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by ~~them,~~ them or anyone for whose acts they may be liable, ~~regardless of whether or not~~ except to the extent such claim, damage, ~~loss,~~ loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity ~~that~~ which would otherwise exist as to a party or person described in this ~~Section 3.18.~~Section 3.18.
PAGE 20

§ 3.18.3 The obligations of the Contractor shall not extend to the liability of the Architect, the Architect's consultants, and agents and employees of any of them, including but not limited to any liability arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications or (2) the giving of or the failure to give directions or instructions by the Architect, the Architect's consultants and agents and employees of any of them.

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...

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

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the ~~Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.~~ Work.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and Contractor (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. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge ~~of,~~ of and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

PAGE 21

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it ~~necessary or advisable,~~ necessary, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product ~~Data,~~ Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken ~~in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness~~ with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation ~~or performance~~ of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under ~~Sections 3.3, 3.5,~~ Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions ~~or~~ or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, ~~sequences,~~ sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

...

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§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor in writing of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable ~~promptness.~~promptness; however, delivery of such interpretation shall not be extended to cause the Contractor delay in the Work.

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

...

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable ~~promptness.~~ promptness, and delivery of such interpretation shall not be extended to cause the Contractor delay in the Work or cause the Work to be performed out of sequence. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

PAGE 22

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

...

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

...

By appropriate ~~written agreement,~~ agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract ~~Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect.~~ Documents. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such ~~rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner.~~ rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor

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shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

...

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and ~~Contractor;~~ Contractor in writing; and

PAGE 23

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

...

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation. To the extent the Owner chooses to perform construction or operations related to the Project, or to award separate contracts in connection with other portions of the Project or other construction or operations on the site, the Owner shall be required to secure a separate permit for that Work, if required by the authority having jurisdiction. Regardless, the Owner shall ensure that the Contractor is listed as an additional insured on the Separate Contractor's general liability and excess liability policy. Further, the Owner agrees to defend, indemnify and hold harmless the Contractor from any claims made against the Contractor resulting from damage to property (other than the Work) or injury to, or death of, persons in or about the Project caused by, arising out of or in connection with the construction, services, labor, materials, and equipment which have been performed, provided or supplied to the Project by the Owner or its Separate Contractor. If the Contractor claims that delay or additional cost is involved because of performance of construction or operations of Separate Contractors, of such action by the Owner or its Separate Contractors, the Contractor shall make such Claim as provided in Article 15.

...

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual ~~agreement.~~ agreement and shall be granted any necessary extensions to the deadline for Substantial Completion necessitated by revisions to the Contractor's construction schedule caused by other work. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

...

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of ~~apparent~~ known discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. ~~Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall~~

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~~constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work.~~ The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate ~~Contractor that are not apparent.~~Contractors.

§ 6.2.3 The Contractor shall reimburse the Owner for reasonable costs the Owner incurs that are payable to a Separate Contractor ~~because of the Contractor's delays, improperly timed activities~~ to the extent caused by Contractor's unexcusable delays or defective construction. The Owner shall be responsible to the Contractor for reasonable costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

PAGE 24

The Owner or its Separate Contractors shall promptly remedy damage that the Owner or its Separate Contractor cause to the Contractor's completed or partially completed construction.

...

If a dispute arises among the Contractor, Separate ~~Contractors,~~ Contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, ~~the Owner~~ the Owner, after notifying responsible party(s) by written notice and allowing the responsible party(s) to resolve this issue, may clean up and the Architect will allocate the cost among those responsible.

...

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

...

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

PAGE 25

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in ~~writing.~~ writing and approved by the Owner. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time. Notwithstanding, in the event the Architect has issued multiple Additional Supplementary Instructions that, in the aggregate, result in the changes justifying an adjustment in Contract Sum or extension of the Contract Time, Contractor shall be entitled to submit a request for an equitable adjustment.

~~**ARTICLE 8 TIME**~~
ARTICLE 8 TIME

PAGE 26

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement. Date of Commencement shall not be earlier than the date upon which all necessary permits are procured that would allow the Contractor to initiate and continue the Work and a written notice to proceed is received by the Contractor.

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

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...

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, epidemics, pandemic, or other designated health emergency, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract ~~Time shall be extended for such reasonable time as the Architect may determine.~~Sum shall be adjusted and the Contract Time shall be extended by Change Order for such reasonable time, and amounts as arise out of or relate to such cause.

PAGE 27

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

...

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay. This provision does not prohibit Contractor from withholding payments to Subcontractors or suppliers pursuant to a provision or its agreements with such Subcontractors and suppliers providing for such withholding.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location ~~agreed upon in writing.~~ provided that stored materials are properly insured. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, ~~storage,~~ storage and transportation to the ~~site,~~ site for such materials and equipment stored off the site.

PAGE 28

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

...

.2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor, provided such claims are not due to Owner's failure to pay Contractor;

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.3 failure of the Contractor to make payments ~~properly to Subcontractors or suppliers for~~ to Subcontractors in accordance with the terms of the applicable subcontracts, or for properly performed/delivered, labor, materials or equipment;

...

.7 repeated failure to carry out the Work in accordance with the Contract Documents.

However, in no event shall the Architect refuse to certify or shall the Owner withhold payment of an amount greater than that which is sufficient to pay the direct expenses the Owner reasonably expects to incur to correct any of the above reasons set forth by the Architect for withholding certification.

...

~~§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.~~

§ 9.5.4 *[Intentionally Omitted]*

...

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

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within ~~seven~~ fourteen days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.
PAGE 29

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within ~~seven~~ fourteen days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been ~~received. The~~ received, or terminate the Contract. In the event the Work is stopped, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents. If the Contractor terminates the Contract, Owner shall pay Contractor for Work executed and for incurred costs related to materials, equipment, tools and construction equipment and machinery, including reasonable overhead, profit and damages.

§ 9.7.1 Upon execution of the Agreement, Contractor shall provide Owner with written payment instructions and all necessary forms required by Owner to effectuate payments to Contractor by wire transfer (the "Payment Information"). Contractor shall submit the initial Payment information to Owner by certified mail or hand delivery only. If Owner receives a request to change such Payment Information, Owner agrees that it will not modify or make

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change to this Payment Information without oral communication, followed by written confirmation, from Contractor's Controller. Owner shall make no changes to the Payment Information if it does not receive the oral and written confirmations as stated herein. If Owner makes any change to the Payment Information without first receiving the confirmations stated herein, it shall be solely responsible for any monies lost or stolen and not paid to Contractor as required under the terms of this Agreement.

...

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. Substantial Completion will be achieved by Contractor when the last of the following occurs:

.1 custody and control of the Work (or designated portion of the Work) is provided to the Owner ; and

.2 inspections and approvals from government agencies required by the Work (or designated portion of the Work) have been completed and a certificate of occupancy, whether temporary or final, for the Work (or designated portion of the Work) has been issued;

If the Work (or designated portion of the Work) includes installation of items furnished by the Owner, completion of such installation will be considered punch list work and will not delay designation of Work as Substantially Complete.
PAGE 30

§ 9.8.4 When the Work or designated portion thereof is substantially ~~complete,~~ complete as defined in Section 9.8.1, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, property insurance, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. Unless otherwise agreed in writing, the Owner shall become responsible for building security, property insurance, and for payment of all utilities associated with the Work upon Substantial Completion.

...

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

...

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents. Owner shall indemnify, defend, and hold Contractor harmless from any and all damages, losses, claims and expenses, including attorneys' fees arising out of or related to such partial occupancy or use, including, but not limited to claims for property damage and bodily injury.

...

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§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. In no event shall the Architect unreasonably withhold the final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise ~~satisfied,~~ satisfied or will be promptly made upon receipt of final payment from the Owner, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor ~~warranties,~~ warranties as required by the Contract Documents, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the ~~Owner.~~ Owner or by law. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all ~~money~~ reasonable payments that the Owner ~~may be compelled to pay~~ has made in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.
PAGE 31

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

...

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

...

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

...

.3 other property at the ~~site or adjacent thereto,~~ site, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

...

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

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 negligently caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

PAGE 32

§ 10.3.1 ~~The~~ Without accepting any responsibility or liability for the remediation of hazardous materials that exist on or contiguous to the Project site as of the date of the Agreement, the Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable property damage, bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

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

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible ~~property (other than the Work itself),~~ property, except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances. Unless required by the Contract Documents, the Contractor shall not be required to perform without its consent any Work relating to a hazardous material or substance, provided that such Contractor consent shall not be unreasonably withheld.

§ 10.3.5 The Contractor shall reimburse the Owner for the reasonable and necessary cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently

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handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to requirements of the Contract Documents or the Owner's fault or negligence.

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

§ 10.3.7 Unless required by the Contract Documents, the Contractor shall not be required to perform, without consent, any Work relating to mold, asbestos or polychlorinated biphenyl ("PCB"). The Contractor shall perform no work involving toxic, contaminant, contaminated or hazardous material of any type, which removal or responsibility to render harmless is the Owner's obligation.

PAGE 33

§ 11.1.3 Upon the request of any person or entity ~~appearing to be~~ that Contract has reason to believe is a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

...

§11.1.5 Contractor may use a traditional insurance process, or it can use a Controlled Contractor Insurance Program ("CCIP").

PAGE 34

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the ~~Agreement or elsewhere~~ in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. The cost of the Contractor-procured property insurance shall be charged to the Owner by a Change Order. When the failure to provide coverage has been cured or ~~resolved,~~ resolved by the Contractor or by the Owner, the Contract Sum and Contract Time shall be equitably adjusted. If the Owner does not provide written notice to the Contractor of the Owner's failure to procure the required property insurance with all of the coverages and in the amounts described in the Contract Documents, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain such insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto. In the event the Owner fails to procure ~~coverage,~~ coverage the required property insurance with all of the coverages and in the amounts described in the Contract Documents, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the ~~Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.~~Owner with respect to damage to the Work, furnishings, fixtures, equipment, and materials intended to be incorporated into the permanent structure, and consequential damages stemming therefrom..

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide written notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

PAGE 35

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The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, ~~or~~ the inability to conduct normal operations, or delay in completion due to fire or other causes of loss. The Owner waives all rights of action against the ~~Contractor and Architect~~ Contractor, Subcontractors, Sub-subcontractors, Separate Contractors, and Architect and Architect's consultants for loss of use of the Owner's property, the inability to conduct normal operations, or delay in completion, due to fire or other hazards however caused.

...

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

...

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

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract ~~Documents,~~ Documents or contains an acceptable minor change in the Work, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be ~~appropriate.~~ appropriate to compensate Contractor for its actual costs of uncovering and replacing the Work, plus reasonable overhead and profit. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

...

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

...

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

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Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the ~~Owner or Architect,~~ Owner, the Owner may correct it in accordance with Section 2.5.
PAGE 36

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

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

...

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

...

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, ~~assigns,~~ assigns and legal representatives to covenants, ~~agreements,~~ agreements and obligations contained in the Contract Documents. ~~Except as provided in Section 13.2.2, neither~~ Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, ~~without~~ with consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment. Contractor shall not be obligated to perform pursuant to the assignment unless or until Owner or Lender has paid Contractor for Work performed prior to the effective date of the assignment.

...

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear ~~all related~~ costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so ~~require.~~require, and Contractor may rely and act upon such test results, inspection reports, and approvals procured by the Owner.
PAGE 37

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

...

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.4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.
.5 if the Owner suspends the Work for convenience in accordance with paragraph 14.3 herein; or
.6 if Owner is responsible for providing the property insurance coverage required in Exhibit A to the Agreement herein and Contractor becomes aware that Owner did not procure and maintain such coverage.

PAGE 38

§ 14.1.4 If the Work is stopped for a period of ~~60 consecutive~~ 30 consecutive days or 60 cumulative days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

...

.2 fails to make an undisputed payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or ~~suppliers;~~Suppliers, provided such nonpayment is not due to the Owner's failure to pay Contractor for Work performed;

...

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, ~~seven~~ fourteen days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all ~~materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;~~materials owned by the Owner;

...

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the ~~Contractor,~~ Contractor or its surety, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the ~~Work.~~Work along with all supporting documentation.

...

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

PAGE 39

§ 14.4.1 The Owner may, ~~at any time,~~ upon thirty (30) days written notice to the Contractor, terminate the Contract for the Owner's convenience and without cause.

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

...

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§ 14.4.3 In case of such termination for the Owner's convenience, the ~~Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.~~Contractor shall be entitled to receive payment for Work executed, materials procured, fabricated, partially fabricated or otherwise purchased for the project whether delivered or not yet delivered to the site and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

...

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract ~~Documents.~~Documents; however, the Owner shall send advance written notice to the Contractor before imposing any liquidated damages.

...

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, ~~shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.~~will be initiated by written notice to the other party.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by ~~notice to the other party. In such event, no decision by the Initial Decision Maker is required.~~written notice to the other party.

...

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments for undisputed Work in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with ~~the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15.~~ Article 15.2. The Architect will issue Certificates for Payment ~~in accordance with the decision of the Initial Decision Maker.~~pursuant to the agreement of the parties unless the parties are unable to reach an agreement, in which case the procedures set in Articles 15.3 and 15.4 shall apply.

PAGE 40

§ 15.1.5.1 Where the price of material, equipment or energy increases significantly during the term of the Contract, through no fault of the Contractor, the Contract Sum shall be equitably adjusted by Change Order as provided in Section 7 of the General Conditions of the Contract. A significant price increase means a change in price from the date of Contract execution to the date of performance by an amount exceeding five percent (5%). Such price increases shall be documented by available vendor quotes, estimates, invoices, catalogs, receipts or other documentation. Provided however, this shall not include claims for additional costs which could have been avoided by the Contractor ordering materials, as allowed and authorized by Owner, before the price increase took effect when the Contractor should have reasonably known such price increases could be expected.

...

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

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~~.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~Neither Contractor nor Owner shall be liable to the other for any consequential losses or damages, whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, including but not limited to losses of use, profits, business, reputation or financing.

~~.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.~~

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~

§ 15.2 DIRECT DISCUSSIONS

§ 15.2 ~~Initial Decision.~~**1** If the Parties cannot reach resolution on a Claim or matter relating to or arising out of the Agreement, the Parties shall endeavor to reach resolution through good faith, face-to-face direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of the first discussions. If the Parties' representatives are not able to resolve such matter within five (5) business Days of the date of first discussion, the Parties' representative shall immediately inform senior executives of the Parties in writing that resolution was not achieved. Upon receipt of such notice, senior executives of the Parties shall meet within five (5) business days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) days from the date of first discussion, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected herein. Mediation shall be subject to direct discussions under this Section 15.2.1 as a condition precedent to binding dispute resolution.

~~**§ 15.2.1** Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.~~

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

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

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

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

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~~the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.~~

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

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

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

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

§ 15.2.2 *[Intentionally Omitted]*

§ 15.2.3 *[Intentionally Omitted]*

§ 15.2.4 *[Intentionally Omitted]*

§ 15.2.5 *[Intentionally Omitted]*

§ 15.2.6 *[Intentionally Omitted]*

§ 15.2.6.1 *[Intentionally Omitted]*

§ 15.2.6.2 All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.

§ 15.2.7 *[Intentionally Omitted]*

§ 15.2.8 *[Intentionally Omitted]*

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, ~~shall~~ may be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 ~~The parties shall~~ If the parties' good faith direct discussions are unsuccessful in resolving any Claims, the parties may endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration ~~Association~~ Association, unless otherwise agreed by the parties, in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or ~~court order.~~ arbitrator. If an arbitration is stayed pursuant to this ~~Section 15.3.2,~~ Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

~~**§ 15.3.3** Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the~~

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~~other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.~~

§ 15.3.3 *[Intentionally Omitted]*

PAGE 41

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The parties may agree in writing to use an alternative organization and its rules. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

...

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. In no event shall the arbitrators be empowered to assess punitive damages, and any punitive damages assessed as part of an award shall not be enforceable under the Agreement.

...

§ 15.4.3.1 The Parties expressly agree that the Arbitration Rules are modified so that those cases falling under the regular track will result in an award no more than six (6) months from the date of the confirmation of appointment of the arbitrators. In all cases in which less than $1,000,000 in total is at issue, there shall be a sole arbitrator and the Parties shall each have three preemptory strikes in selection of the arbitrator, plus all strikes for cause that can be justified. In all cases in which $1,000,000 or more in total is at issue, there shall be three arbitrators and the Parties shall each have five preemptory strikes plus all strikes for cause that can be justified. The place of mediation and arbitration shall be the county and state in which the Work is performed. The Parties understand and agree that the arbitration award shall be binding upon, and shall include, any and all agents, employees, successors, and assigns of either party to this Contract. Neither party in any dispute arising out of or relating to the Agreement or its breach shall be entitled to recover from the other party attorney's fees, costs (including but not limited to expert witness fees) or expenses incurred in connection with such dispute or breach.

PAGE 42

ARTICLE 16 RENOVATIONS OR ADDITIONS TO AN EXISTING STRUCTURE AND TEMPORARY UTILITIES

§ 16.1 Investigation, Analysis, and Testing

§ 16.1.1 The Contractor has not investigated or determined the current conditions of the existing superstructure, building systems and the adequacy of utilities that may impact Contractor's performance of the Work. The cost of correcting any such deficiencies is not included within the GMP.

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I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:29:51 CT on 02/15/2022 under Order No. 6551960194 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

_____

(Signed)

_____

(Title)

_____

(Dated)

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RESOLUTION NO._____

A RESOLUTION ALLOWING THE MAYOR AND CITY CLERK TO ENTER INTO A CONTRACT, WITH NABHOLZ CONSTRUCTION CORPORATION, FOR CONSTRUCTION MANAGEMENT SERVICES ON THE PHILLIPS PARK SPORTS COMPLEX; AND FOR OTHER PURPOSES.

WHEREAS, Nabholz will collaborate with the project designer, Crafton Tull, to provide input in finalizing drawings, cost estimates, and associated project services related to Phillips Park Sports Complex;

WHEREAS, this contract is for a professional service and does not need to be competitively bid; and

WHEREAS, this project will be funded by the 2021 Bond and with an estimated cost of thirty-five thousand dollars ($35,000.00) plus reimbursable expenses.

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

Section 1: The Mayor and City Clerk are authorized to enter into a contract with Nabholz Construction Corporation for construction management services for the Phillips Park Sports Complex;

Section 2 - Severability Provision: If any part of this Resolution is held invalid, the remainder of this Resolution shall continue in effect as if such invalid portion never existed; and

Section 3: Repeal of Conflicting Provisions: All Ordinances, Resolutions, or Orders of the City Council, or parts of the same, in conflict with this Resolution are repealed to the extent of such conflict.

PASSED this _____ day of _____, 2022.

APPROVED:

_____
STEPHANIE ORMAN, Mayor

Attest:

_____
KIRBY ROMINES, City Clerk

Agenda Item Form

Date of City Council Meeting	**3/8/2022**
Department	**Parks and Recreation**
Submitted by	**Wade Tomlinson, Park Planner**
Phone	**(479) 271-3392**

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 amended agreement with Design Workshop to include design services for the Bentonville Green of the Quilt of Parks Project.

Estimated Cost	**$248,750**
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: Wade Tomlinson, Parks Planner

Thru: David Wright, Parks and Recreation Director

Date: March 8, 2022

Re: Contract amendment to Design Workshop for design services for the Bentonville Green.

The Bentonville Parks and Recreation Department is requesting City Council's approval to amend the contact with Design Workshop Inc. to include the Bentonville Green design services. Additionally funding for this service is part of the approved 2022 general fund budget.

In 2020, Design Workshop Inc. completed the Master Plan for the Quilt of Parks project. Design Workshop has started design services for aspects of the plan that include Lawrence Plaza, the A Street Promenade and the Dave Peel Park improvements.

Another step in further completing the Master Plan is to start design work on the open space between the City Hall and Parks and Recreation's Downtown Activity Center Building referenced as Bentonville Green, or the Activity Center Park, in the Master Plan.

In this phase Design Workshop will address schematic designs, design development, construction documents among other professional design services for Activity Center Park. This new park will provide connectivity to and from the public pedestrian corridor of the Ledger and adjacent civic uses providing a flexible open space for Bentonville visitors, citizens, and employees of local establishments.

The value of this amendment is $248,750.00.

If you have any questions regarding this item, please let me know. Please call me at 271-3392 or email wtomlinson@bentonvillear.com.

Attachments:
Amended Agreement with Design Workshop

Design Workshop, Inc.
Landscape Architecture
Planning
Urban Design

812 San Antonio Street
Suite 401
Austin, TX 78701
512-499-0222
512-499-0229 fax

Aspen
Austin
Chicago
Denver
Houston
Lake Tahoe
Los Angeles
Raleigh

designworkshop.com

January 31st, 2022

ACTIVITY CENTER PARK
Bentonville, AR

PROJECT DESCRIPTION

In 2020, Design Workshop completed the Master Plan for the Quilt of Parks project in Bentonville, AR. Following the Master Plan process, Design Workshop will prepare contract documents for Activity Center Park – as identified in the Master Plan booklet. This park will provide connectivity between a new office tower and adjacent civic uses providing a flexible open space for Bentonville visitors and everyday employees of local establishments. Design Workshop provided a draft opinion of probable cost estimates for Activity Center Park on May 11th, 2020. The opinion of probable cost estimate is roughly $2,500,000.

The scope of work will follow our standard linear design and documentation process. This includes Project Start-Up, Schematic Design, Design Development, Construction Documentation, Bidding and Negotiation, Site Permitting (as part of the CD process). This scope of services does not include construction observation for Activity Center Park

SCOPE OF SERVICES

The following narrative describes a comprehensive list of services required to prepare Contract Documents for the Activity Center as identified in the Quilt of Parks Master Plan. Efficiently organizing the work will be essential to completing the project in a timely fashion. While the following narrative is organized in a linear manner, many of the sub-tasks may proceed in a parallel or concurrent fashion.

The scope of work to be performed by Design Workshop in connection with this agreement is as follows:

TASK ONE: PROJECT START-UP

The general objective for this phase of the work is to develop a thorough understanding of the work that has been completed to date, become familiar with the site and develop a preliminary understanding of the development program.

The specific tasks to be completed are as follows:

1. Review pertinent codes, current entitlements and conditions of approval which may impact the site development concepts.

2. Meet with the client and consultant team to review/develop site specific project goals, design criteria and site program as part of a strategic kick-off meeting. This meeting will take place in Bentonville unless requested to be virtual by client due to COVID-19.

3. Define the roles and responsibilities of the project team, including the consultants retained by

the client.

4. Obtain understanding of target site improvement budget with the client.

5. Review the geotechnical report and topographic survey. Both should be provided by client prior to starting schematic design.

6. Visit the site to become familiar with the site conditions such as soils, slopes, views and context surrounding the site. Field-verify survey information, including the limits of existing improvements.

7. Prepare a detailed project schedule/work plan.

The following products will be prepared/delivered:

1. Statement of understanding of client's budget to which project will be designed.

2. Meeting notes and written documentation of specific research topics.

3. Project schedule/work plan.

TASK TWO: SCHEMATIC DESIGN

The general objective for this phase of the work is to prepare design studies and develop an initial understanding of landscape construction costs. Based on the Client approved Conceptual Design Plan and conceptual level opinion of probable construction cost, Design Workshop will prepare a Schematic Design Plan and necessary documentation for each park.

The specific tasks to be completed are as follows:

1. Preliminary plan review with municipal staff, e.g. Planning and Public Works.

2. Research site improvement materials and plant palettes.

3. Prepare updated design content for a 50% Schematic Design presentation and a 100% Schematic Design presentation to the client and key stakeholders. Content will include refinement of previously proposed conceptual plans, enlargement plans, updated graphic sections, diagrams, and a presentation.

4. Prepare an overall site plan that clearly illustrates the site development concept, key relationships, planting concepts, site circulation and the relative disposition of the program on the site.

    a. Cover page with general project information;
    b. Overall site plan;
    c. Preliminary site civil and utility infrastructure plan;
    d. Preliminary storm water plan;

e. Materials plan;
f. Preliminary landscape plan including tree species and ground zones;
g. Preliminary grading plan;
h. Preliminary architectural drawings for key site features such as bathroom and pavilion;
i. Key representative Site Sections.

5. Illustrate schematic site grading and drainage concepts for all areas outside building(s) including land contouring, landscape berms, swales, walls and drainage in hardscape areas.

6. Prepare a lighting design strategy and develop a schematic landscape lighting scheme for all major landscape areas on the property.

7. Collect soil samples and provide memo to identify soil conditions.

8. Provide technical narrative chart to indicate potential furnishing and material selections at a schematic level.

9. Conduct internal Schematic Design Quality Control Reviews for aesthetic and technical content.

10. Based on the Schematic Design plan, prepare an opinion of the range of probable costs. This range is an opinion only and will need to be verified by a retained cost estimation specialist or by a contractor in the bidding and negotiation process.

11. Attend up to eight (8) bi-weekly client meetings during Schematic Design duration.

The following products will be prepared/delivered:

1. 50% Schematic Design Presentation and accompanying graphics.

2. 100% Schematic Design Presentation and accompanying graphics.

3. Schematic Design Documents.

4. Wayfinding and Educational Sign Graphics Memo.

5. Irrigation System Evaluation.

6. Schematic level opinion of probable site/landscape construction cost.

Note: One (1) full size printed schematic design set will be provided to Client. All additional products will be provided digitally. It is assumed that the drawing set will be at 24”x36” to meet City of Bentonville Permitting Standards.

The following meetings are anticipated:

1. Up to eight (8) bi-weekly conference calls with Client during Schematic Design. (assumed these will take place as part of quilt of parks conference calls)
2. Internal design team meetings as required.
3. 50% Schematic Design presentation to the client in Bentonville or virtually.
4. 100% Schematic Design presentation to the client and key stakeholders in Bentonville or virtually.

TASK THREE: DESIGN DEVELOPMENT

Upon approval by the client of the schematic design, this phase will consist of documents and scope listed below. The general objective for this phase of the work is to further develop the design character and detail of the proposed design. The level of technical information for this phase will be for coordination, review, and cost estimating purposes only and will not provide the additional specific level of information for construction documentation and bidding.

The specific tasks to be completed are as follows:

1. Prepare updated design content for a 50% Design Development presentation. Content will include refinement of previously proposed conceptual plans, enlargement plans, updated graphic sections, diagrams, and a presentation.

2. Prepare site demolition plans illustrating existing hardscape and landscape areas that will be demolished or preserved. Develop site erosion control plans illustrating areas to receive erosion protection. Develop tree protection plans illustrating existing trees and other plant materials to be protected during construction.

3. Develop tree protection plans illustrating existing trees and other plant materials to be protected during construction.

4. Prepare plans, cross sections and elevations for pedestrian and special vehicular pavements, entries, site furnishings and other site elements that are a part of the proposed landscape development and not a part of building structures.

5. Develop site grading and drainage for all areas including contouring, retaining structures, swales, flow lines and drainage devices. Indicate alignments, elevations, dimensions, materials and details for retaining or freestanding walls, steps, ramps, etc.

6. Prepare planting plans for all landscape areas to illustrate planting composition, plant species, locations and sizes of major planting features. Special attention will be given to ensure that views, solar orientation and erosion control are accommodated in the solution.

7. Prepare preliminary Irrigation Plan illustrating overall irrigation intent.

8. Prepare a preliminary landscape lighting scheme for all major landscape areas on the property.

9. Prepare signage and wayfinding plans with proposed location of features and supporting elevations. Signage elements will be coordinated with size requirements of subject matter, but specific subject matter and graphics will be finalized during the construction submittal process.

10. Prepare site electrical plans showing the basic layout elements required to power various site elements will be developed, with close attention to structures or elements that sit above grade.

11. Prepare site civil and utility infrastructure plans that outline underground systems and offsite connections needed to provide a comprehensive system, with close attention to structures and elements that sit above grade.

12. Prepare site structural drawings for all key structural components.

13. Prepare architectural drawings for key architectural features such as pavilions or restrooms.

14. Review materials and technical systems with potential fabricators and contractors.

15. Select site development materials and prepare design development details and enlargements.

16. Review Design Development plans with municipal staff.

17. Conduct internal Design Reviews.

18. Conduct internal Design Development Quality Control Reviews for aesthetic and technical content.

19. Based on the Design Development plan, prepare an opinion of the range of probable costs. This range is an opinion only and will need to be verified by a retained cost estimation specialist or by a contractor in the bidding and negotiation process.

20. Prepare outline technical specifications for all project components within the scope of this proposal.

21. Collect outline front-end specifications (div 00 and div 01) from the City of Bentonville standards. Note: Design Workshop services do not include preparing Division 00 or 01 Specifications as part of its services. Client shall include Division 01 Specifications adequate for the Project as part of its agreement with its contractor and shall provide Design Workshop with a copy of the Division 00 and Division 01 Specifications.

The following products will be prepared/delivered.

1. Demolition Plan(s).

2. Tree Protection Plan(s)

3. Materials Plan(s)

4. Grading and Drainage Plan(s)
5. Erosion Control Plan(s)
6. Planting Plan(s)
7. Soils Plan(s)
8. Up to four (4) Composite Sections/Site Cross Sections/Elevations at (1"=10') scale showing the landscape intent.
9. Preliminary Irrigation Plan(s)
10. Preliminary Water Feature drawings
11. Site Electrical Plan(s)
12. Site Civil and Utility Infrastructure Plan(s)
13. Architectural Plan(s)
14. Design Development details and reference sections.
15. Design Development level opinion of probable construction cost.
16. Draft technical specifications. NOTE: Design Workshop services do not include preparing Division 00 or 01 Specifications as part of its services. Client shall include Division 01 Specifications adequate for the Project as part of its agreement with its contractor and shall provide Design Workshop with a copy of the Division 01 Specifications.

Note: One (1) full size printed design development set will be provided to Client. It is assumed that all Design Development plan drawings will be at 1" =10' and on a 24"x36" plan set based on City of Bentonville Permitting requirements:

The following meetings are anticipated:

1. Up to eight (8) bi-weekly conference calls with Client during Design Development (assumed these will take place as part of quilt of parks conference calls)
2. Internal design team meetings as required.
3. 50% Design Development presentation to the client (up to four hours).

TASK FOUR: CONSTRUCTION DOCUMENTS

The general objective for this phase of the work is to prepare final documentation drawings that incorporate the most current information regarding construction practices. Based on the Client approved Design Development Plan and Design Development level opinion of probable construction cost, Design Workshop will prepare Construction Documents.

If any contractor, governmental authority, building department or any other third-party requests or requires that changes be made to the Construction Documents prepared by Design Workshop, then Client shall notify Design Workshop of the same before any such changes are made. In the event Client, Client's contractors or subcontractors, or anyone for whom the Client is legally liable makes or permits to be made any changes to any documents prepared by Design Workshop or its consultants without obtaining Design Workshop's written consent, or in the event of termination of this Agreement consistent with the terms herein, Client shall assume full responsibility for the results of and any damages caused by such changes. Therefore, Client agrees to waive any claim against Design Workshop and to release Design Workshop from any liability arising directly or indirectly from such changes, not consented to by Design Workshop. In addition, Client agrees to the fullest extent permitted by law, to indemnify and hold harmless Design Workshop, including Design Workshop's consultants, from any damages, liabilities or costs, including reasonable attorneys' fees and costs of defense arising from such changes.

Unless required solely as a result of Design Workshop's failure to follow the applicable laws in place at the time when the 50% Construction Documents and Permit Sets were originally prepared, any changes to the design requested or required to be made after Design Workshop's completion of the set of 50% Construction Documents and Permit documents shall be an Additional Service and shall be performed on a time and materials basis.

In the event Client uses Design Workshop's work product without retaining Design Workshop to either finalize the Construction Documents or to perform construction observation services, Client releases Design Workshop and Design Workshop's consultant(s) from all claims and causes of action arising from such uses. Client, to the fullest extent permitted by law, further agrees to indemnify and hold harmless Design Workshop and its consultants from all costs and expenses, including the cost of defense and attorneys' fees, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from such use of the documents by Client.

The specific tasks to be completed are as follows:

1. Prepare working drawings and specifications to reasonably conform to applicable codes and regulations of governmental bodies having jurisdiction over the work at the time the work is prepared. Includes one (1) printed set to client for review. Provide submittals to the client at 50% documentation for a final review of drawings and 100% as an "issue for construction" for bidding purposes.

2. Provide full manual/specification book needed for bidding. It is assumed that the Division One and general condition specifications meeting City standards and requirements will be provided by the City. Bidders are assumed to provide their own quantity estimates.

3. Conduct technical work sessions with municipal staff.

4. Coordinate interdisciplinary Construction Document reviews between the consultants.

5. Review materials and technical systems with potential fabricators and contractors.

6. Conduct internal Construction Document Quality Control Reviews for aesthetic and technical content and revise plans per reviews.

7. Prepare an opinion of probable cost estimate at 50% and 100% Construction Documents

The following products will be prepared/delivered as part of the Bid Documents:

1. 50% Contract Documents
2. 100% Issue for Construction Contract Documents
3. Cover Sheet, Drawing Index, Location Map
4. General Notes
5. Demolition Plan(s)
6. Tree Protection Plan(s)
7. Layout (Horizontal Control) Plans locating vehicular and pedestrian pavements, landscape walls, site furnishings and other site elements.
8. Materials Plans scale showing types of vehicular and pedestrian pavement, landscape walls, site furnishings and other site elements.
9. Grading and Drainage Plan(s) indicating vertical control and drainage for the site.
10. Water Quality Plans and details as necessary.
11. Erosion Control Plan(s)
12. Water feature drawings showing all play water feature detail elements in coordination with consultant team.
13. Planting Plans showing tree, shrub, vine and groundcover locations and a complete plant material schedule.
14. Irrigation Plans scale showing identification, location, and sizing of irrigation systems and their component parts.
15. Site Electrical Plans showing type, location, and mounting details for landscape site lighting fixtures.
16. Site Civil and Utility Infrastructure Plans showing underground systems and offsite connections needed to provide a comprehensive system.
17. Architectural drawings as appropriate to capture site structures.
18. MEP drawings as appropriate to coordinate with architectural drawings.
19. Details and reference sections of the above-described landscape materials with information required for construction, installation and finishing of landscape components of the project.
20. Construction Document level Opinion of Probable Construction Cost.

21. Technical specifications (for improvements and/or site features described by the above listed drawings) in standard CSI format. Note: General Conditions, Special Requirements, Division 00 and Division 01 Specifications shall be provided by Client.

Note: One (1) full size printed construction documentation set will be provided to Client. It is assumed that all plan drawings will be at 1" =10' and on a 24"x36" plan set based on City of Bentonville Permitting requirements:

The following meetings are anticipated:

1. Up to four (4) conference calls with Client during Construction Documentation. (assumed these will take place as part of quilt of parks conference calls)
2. Internal design team meetings as required.
3. 50% Construction Documentation page flip with the client (up to four hours).

TASK FIVE. BIDDING AND NEGOTIATION

The general objective for this phase of the work is to obtain and review bids and assist Client in the selection of a preferred general contractor, including, as necessary, assisting the contractor in developing a clear understanding of the project for purposes of preparing construction bids. This work shall occur in the period after the completion of Design Development and prior to awarding a construction contract. Should Value Engineering or incorporation of addenda and other modifications be required after completion of the 50% Construction Documents/Permit Set and or 100% Issue for Construction/Bid Set, Design Workshop will complete necessary changes (on a Time and Material (T&M) Basis, with a stipulated cap), agreed upon by the Client, prior to commencing our work.

Client shall include in its agreement with the contractor a warranty on behalf of the contractor that its work will conform to the requirements of the plans and specifications prepared by Design Workshop and any other applicable contract documents. Client shall also include in its agreement with the contractor a requirement that the contractor not deviate from or change Design Workshop's design without prior written approval from Design Workshop. Client shall provide Design Workshop with a complete copy of the executed agreement between Client and the contractor, including all exhibits, specifications and addenda.

The specific tasks to be completed are as follows:

1. Issue Bid Documents/Permit Set created in Task Five.

2. Participate in one (1) Pre-Bid conference or Pre-Bid meeting with prospective bidders for work designed by Design Workshop or in conjunction with the work of other consultants. Meeting will take place in Bentonville and include a site walk.

3. Prepare addenda to the Bid Documents, as clarification is required.

4. Review bids for completion and ensure there are no major errors or omissions.

5. Review substitutions and alternatives as requested by the bidders.

6. Attend up to two meetings with the selected bidders on items designed by Design Workshop to review bids and facilitate understanding of the project scope. Meetings will be virtual.

TASK SIX: SITE PERMITTING

Our team will work with the City staff and Bentonville Parks and Recreation Department as it relates to the requirements of City of Bentonville development protocol. Drawings, reporting, and standard forms will need to be completed and submitted for review and approval prior to construction. As changes occur during the design and construction process, updates to permits may be required.

The specific tasks to be completed are as follows:

1. Schedule and attend LSD conceptual and pre-application review meetings;
2. Submit 50% Construction Drawings as prepared during Construction Documents to the City of Bentonville in accordance with Large Scale Development approval process outlined in the City's subdivision code of ordinances. This includes the preparation of the following additional information beyond the construction drawings prepared in Construction Documents:
    a. Stamped Drainage Report and associated calculations;
    b. Preparation of the Large Scale Development Application and associated documentation for submittal;
    c. Additional drawings required by the City that are not included in the Construction Drawings.
3. Attend the Planning Commission Technical Review meeting;
4. Revise and edit the drawings and specifications as required based on comments received by the City of Bentonville from the Planning Commission Technical Review meeting;
5. Submit revised drawings and specifications to the City of Bentonville Planning Commission;
6. Attend the Planning Commission Meeting;
7. Assist the Client in preparation of the building permit application; and
8. Submit the Construction Drawings and specifications for the proposed water and sewer system improvements along with design calculations to the Arkansas Department of Health (ADH) for review and approval.

CONDITIONS AND EXCLUSIONS

Client shall provide the following information or services as required for performance of its services. Design Workshop assumes no responsibility for the accuracy of such information or services provided

by Client and shall not be liable for errors or omissions therein. Should Design Workshop be required to provide services in obtaining or coordinating compilation of this information, such services shall be billed as Additional Services. It is assumed that if services are required, client will provide them.

The following are excluded from the scope of services:

1. Construction Observation for the Activity Center Park
2. Topographic field surveys of the property which include but are not limited to the property lines, easements, utilities, structures, buildings, one (1) foot contours intervals, etc.
3. Geotechnical Report
4. Traffic Study
5. Phase 1 Environmental Studies
6. Wetland and Archeological Studies
7. A copy of soils/geology reports.
8. All deliverables are assumed to be issued digitally unless otherwise noted.

PROJECT TEAM

Design Workshop typically organizes projects in a team format with key responsibilities divided between the Principal-in-Charge and Project Manager (other roles may be added as required.) The key team members for your project are listed below:

Principal-in-Charge – Conners Ladner

Conners will serve as Principal-in-Charge of the team and will have primary responsibility for the overall content and quality of the services performed by Design Workshop and our consultant team.

Project Manager – Scott Miller

Scott will serve as the Project Manager for the team and will also be responsible for leading the planning and design efforts associated with the work. His responsibilities will include the coordination of Design Workshop's in-house design team as well as regular communication and coordination with the client and all of Design Workshop's sub-consultants.

Quality Control – Jamie Fogle

Jamie is a Technical Principal at Design Workshop. He will serve the team by providing quality control reviews at key milestone deliverable dates. Jamie will also provide detailing feedback to the team throughout the design process.

Project Designer – Beau Burris

Beau will serve as Project Designer for the team. Beau will be responsible for design, detailing, and documentation. Beau will be available to the client to answer and respond to questions to help the process move along as efficiently as possible.

SCHEDULE

Design Workshop will begin upon receipt of a retainer and a signed copy of this proposal from an authorized owner's representative. Currently, the official start date is unclear but the following schedule outlines documentation.

Task One	Project Start-up	2 Weeks
Task Two	Schematic Design	3-4 Months
Task Three	Design Development	3-4 Months
Task Four	Construction Documents	3-4 months
Task Five	Bidding and Negotiation	1 Month
Task Six	Site Permitting	TBD

FEES AND EXPENSES

1. Basic services (includes Reimbursable expenses). Compensation to Design Workshop for the services described herein and in accordance with the conditions of this agreement shall be for a lump sum fee of $233,750. When compensation is on a lump sum, Design Workshop's fee shall be equitably adjusted if the scope of the work is increased by change order(s) or the cost or price of construction is increased by at least 10% of the budget. Such equitable adjustment shall be based on the percentage increase in the cost or price of construction.

The estimated fees are as follows:

Task One	Project Start-up	$8,250
Task Two	Schematic Design	$55,000
Task Three	Design Development	$68,750
Task Four	Construction Documents	$74,250
Task Five	Bidding and Negotiation	$13,750
Task Six	Site Permitting	$13,750
Reimbursable Expenses		$15,000 (T&M)
Total Professional Fees		$248,750

2. REIMBURSABLE EXPENSES
   Reimbursable Expenses are in addition to compensation for Basic Services. Reimbursable expenses incurred by Design Workshop and consultants directly related to the project such as, but not limited to, travel, photography, telephone charges, video conference charges. Reimbursable cap will be $15,000.

3. ADDITIONAL SERVICES

Services in addition to those described above are to be compensated on a Time and Materials basis per Design Workshop's current published rate schedule. Additional services will include (but are not limited to) redesign of previously approved work, major revisions to program and/or expansion of scope of services. Whenever practical, changes, additions, or modifications to the scope of services shall be authorized by written change request; however, the absence of such a written change order shall not act as a bar to payment of fees due Design Workshop, provided the change was in fact approved and ordered by the Client.

PAYMENT TERMS

1. This is a lump sum contract and will be billed monthly as a percentage completed for each phase of the work.

2. Invoices will be mailed from Design Workshop's office by the 10th of each month. Invoices are payable within 30 days of the date of billing. Invoicing shall be specific to each major task and will describe the completed portion of the services.

3. Extensive itemized breakdowns of hourly activities or provision of detailed backup for reimbursed expenses for accounting purposes are not a normal procedure; however, at the Client's request, Design Workshop will provide this service at an hourly rate of $65 (sixty-five dollars) per hour.

ACCEPTANCE

1. This Agreement is entered into between Design Workshop, Inc. and owner or reputed owner of the property to be benefited by Design Workshop's services.

2. If this contract meets with your approval, please sign below and return one (1) copy for our file.

3. If this agreement is not accepted within two (2) months from the date of receipt, the offer to perform the described services may be withdrawn and Design Workshop may renegotiate this proposal.

4. The Client agrees that they have read and understood the Contract Provisions attached hereto and incorporated herein by reference.

DESIGN WORKSHOP, INC.

By: [redacted] Date: 01.24.22

Title: Conners Ladner, PLA
Principal

APPROVED BY CLIENT:

By: _____ Date: _____

Title: _____

NOTES:

1. Attached invoicing questionnaire and Attachment A Contract Provisions.

RESOLUTION NO._____

A RESOLUTION ALLOWING THE MAYOR AND CITY CLERK TO ENTER INTO A CONTRACT AMENDMENT, WITH DESIGN WORKSHOP INC., FOR DESIGN SERVICES FOR THE BENTONVILLE GREEN; AND FOR OTHER PURPOSES.

WHEREAS, the Bentonville Parks and Recreation Department requests to approval to amend the contract with Design Workshop, Inc., to include design services for the Bentonville Green;

WHEREAS, Design Workshop, Inc. completed the Master Plan for the Quilt of Parks project and adding design services for the Bentonville Green is a continuation of that plan; and

WHEREAS, the cost of this contract amendment is two hundred forty-eight thousand seven hundred fifty dollars ($248,750.00).

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

Section 1: The Mayor and City Clerk are authorized to enter into a contract amendment with Design Workshop, Inc. to include design services for the Bentonville Green;

Section 2 - Severability Provision: If any part of this Resolution is held invalid, the remainder of this Resolution shall continue in effect as if such invalid portion never existed; and

Section 3: Repeal of Conflicting Provisions: All Ordinances, Resolutions, or Orders of the City Council, or parts of the same, in conflict with this Resolution are repealed to the extent of such conflict.

PASSED this _____ day of _____, 2022.

APPROVED:

_____
STEPHANIE ORMAN, Mayor

Attest:

_____
KIRBY ROMINES, City Clerk

Agenda Item Form

Date of City Council Meeting	**3/8/2022**
Department	**Finance**
Submitted by	**Jake Harper**
Phone	**(479) 271-6781**

Item Type: (*Check Applicable Item Type)*

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

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

A public hearing regarding issuance of combined electric, water and sewer system revenue bonds for the purpose of financing storm recovery costs and refunding outstanding revenue bonds.

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

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

Agenda Item Form

Date of City Council Meeting	**3/8/2022**
Department	**Finance**
Submitted by	**Jake Harper**
Phone	**(479) 271-6781**

Item Type: (*Check Applicable Item Type)*

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

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

An ordinance authorizing the issuance of combined electric, water and sewer system revenue bonds for the purpose of financing storm recovery costs and refunding outstanding revenue bonds; providing for the payment orf the principal and interest on the bonds; prescribing matters relating thereto; and declaring an emergency.

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

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

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ISSUANCE OF COMBINED ELECTRIC, WATER AND SEWER SYSTEM REVENUE BONDS FOR THE PURPOSE OF FINANCING STORM RECOVERY COSTS AND REFUNDING OUTSTANDING REVENUE BONDS; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL AND INTEREST ON THE BONDS; PRESCRIBING MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Bentonville, Arkansas (the "City") owns a combined utility system consisting of electric, water and sewer facilities as a single, integrated municipal undertaking (the "System"); and

WHEREAS, the City purchases power under a contract with Southwestern Electric Power Company (the "Power Purchase Contract"); and

WHEREAS, as a result of a major storm in February 2021 (the "Storm"), the City incurred an extraordinary power purchase charge of approximately $20,436,936.18 under the Power Purchase Contract; and

WHEREAS, after thorough review of the extraordinary power purchase charge and in order to avoid any additional interest and penalties, the City has paid from System reserves the sum of approximately $16,550,000 to Southwestern Electric Power Company ("Storm Recovery Costs"); and

WHEREAS, upon the request by the City to the Arkansas Public Service Commission (the "PSC"), the PSC entered an order on February 8, 2022 declaring that the Storm was an emergency storm; and

WHEREAS, the City Council has determined to reimburse System reserves for approximately $8,250,000 of Storm Recovery Costs from the proceeds of combined electric, water and sewer system revenue bonds; and

WHEREAS, the City has taken reasonable steps to mitigate the financial impact of bonds on the customers of the System by pursuing recovery of costs incurred during the Storm that were unnecessary or unreasonable; and

WHEREAS, there has been no grant funding or assistance available to reduce the amount of Storm Recovery Costs paid by the City; and

WHEREAS, in order to achieve debt service savings, the City Council has determined that it is in the best interest of the City to refund its Combined Electric, Water and Sewer System Revenue Bond, Series 2000 (the "Series 2000 Bond"), its Combined Electric,

Water and Sewer System Revenue Bond, Series 2006A (the "Series 2006A Bond") and its Combined Electric, Water and Sewer System Revenue Bonds, Series 2006B (the "Series 2006B Bonds"); and

WHEREAS, the City can finance the refunding of the Series 2006B Bonds and Storm Recovery Costs by the issuance of a Combined Electric, Water and Sewer System Refunding and Storm Recovery Revenue Bond, Taxable Series 2022A in the principal amount of $8,820,000 (the "Series 2022A Bond"); and

WHEREAS, the City can finance the refunding of the Series 2000 Bond and the Series 2006A Bond by the issuance of a Combined Electric, Water and Sewer System Refunding and Storm Recovery Revenue Bond, Series 2022B in the principal amount of $3,435,000 (the "Series 2022B Bond"); and

WHEREAS, the Series 2022A Bond and the Series 2022B Bond (collectively, the "Bonds") will be equally and ratably secured by a lien on revenues of the System; and

WHEREAS, with the advice and assistance of Stephens Inc., as Municipal Advisor (the "Municipal Advisor"), and Raymond James & Associates, Inc. and Crews & Associates, Inc., as Placement Agents (the "Placement Agents"), the City has made arrangements with U. S. Bank National Association (the "Lender") to purchase the Bonds as evidence of loans from the Lender pursuant to a Letter of Offer and Representation (the "Letter of Offer"); and

WHEREAS, the following documents have been prepared in connection with the issuance of the Bonds and have been reviewed by the City and Friday, Eldredge & Clark, LLP, Bond Counsel ("Bond Counsel"): (a) a Loan Agreement between the City and the Lender (the "Loan Agreement") providing for the loans and the reimbursement and other payment obligations of the City in connection therewith, and (b) the Letter of Offer; and

WHEREAS, the City is authorized under Title 14, Chapter 164, Subchapter 4, Title 14, Chapter 234, Subchapter 2, Title 14, Chapter 203 and Title 14, Chapter 235, Subchapter 2 of the Arkansas Code of 1987 Annotated (the "Authorizing Legislation"), to issue the Bonds;

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

Section 1. The refunding of the Series 2000 Bond, the Series 2006A Bond and the Series 2006B Bonds (the "Refunding") is hereby authorized. The Mayor and other officials of the City are hereby authorized to take, or cause to be taken, all action necessary to accomplish the Refunding and to execute all required contracts. The Series 2000 Bond and the Series 2006A Bond shall be called for redemption on the date the Bonds are issued or the earliest practical date thereafter. The Series 2006B Bonds shall be called for redemption on or about April 19, 2022.

Section 2. All moneys in the bond funds for the Series 2000 Bond, the Series 2006A Bond and the Series 2006B Bonds (the "Bonds Refunded") and the debt service reserve established for the Series 2006B Bonds are hereby appropriated and shall be used as necessary for the accomplishment of the Refunding, with any balance to be deposited into the bond fund established under this Ordinance.

Section 3. The sale of the Bonds to the Lender at a price of par pursuant to the Letter of Offer, to evidence the loans from the Lender, subject to the terms and provisions hereafter in this Ordinance set forth in detail be, and is hereby approved, and the Bonds are hereby sold to the Lender. The Mayor is hereby authorized to execute and deliver the Letter of Offer. The Letter of Offer is hereby approved in substantially the form submitted to this meeting, with such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of such approval.

Section 4. The Mayor and the City Clerk are hereby authorized and directed to execute and deliver the Loan Agreement. The Loan Agreement is hereby approved in substantially the form submitted to this meeting, with such changes as shall be approved by the Mayor and City Clerk, their execution to constitute conclusive evidence of such approval.

Section 5. The Mayor and other officers of the City in accordance with their offices, are authorized and directed to take such action and execute such writings and agreements as may be necessary to carry out the purposes of this Ordinance, including the issuance of the Bonds and the acceptance of the Lender's offer to purchase the Bonds on terms not inconsistent with the provisions of this Ordinance.

Section 6. Under the authority of the Constitution and laws of the State of Arkansas (the "State"), including particularly the Authorizing Legislation, the Series 2022A Bond is hereby authorized and ordered issued in the principal amount of $8,820,000, the proceeds of the sale of which are necessary to provide financing of Storm Recovery Costs, to accomplish the refunding the Series 2006B Bonds, and to pay expenses of issuing the Series 2022A Bond.

The Series 2022A Bond shall bear interest at the rate of 2.44% per annum based upon a 360 day year of twelve thirty (30) day months and actual number of days elapsed (the "2022A Interest Rate"). The Series 2022A Bond shall be dated the date of delivery to the Lender. Interest on the Series 2022A Bond shall be payable on each April 15 and October 15, commencing October 15, 2022. The Series 2022A Bond shall mature on October 15, 2028. Principal installments of the Series 2022A Bond shall be payable on October 15 of each year as follows:

Series 2022A Bond

Year (October 15)	Principal Amount
2022	$1,140,000
2023	1,270,000
2024	1,305,000
2025	1,335,000
2026	1,225,000
2027	1,255,000
2028	1,290,000

Upon the occurrence of a Payment Default (as defined in Section 22 hereof), the Series 2022A Bond shall, during the pendency of such Payment Default, bear interest at the 2022A Interest Rate plus 4%.

Section 7. Under the authority of the Constitution and laws of the State, including particularly the Authorizing Legislation, the Series 2022B Bond is hereby authorized and ordered issued in the principal amount of $3,435,000, the proceeds of the sale of which are necessary to accomplish the refunding of the Series 2000 Bond and the Series 2006A Bond, and to pay expenses of issuing the Series 2022B Bond.

The Series 2022B Bond shall bear interest at the rate of 2.01% per annum based upon a 360 day year of twelve thirty (30) day months and actual number of days elapsed (the "2022B Interest Rate"). The Series 2022B Bond shall be dated the date of delivery to the Lender. Interest on the Series 2022B Bond shall be payable on each April 15 and October 15, commencing October 15, 2022. The Series 2022B Bond shall mature on October 15, 2028. Principal installments of the Series 2022B Bond shall be payable on October 15 of each year as follows:

Series 2022B Bond

Year (October 15)	Principal Amount
2022	$415,000
2023	645,000
2024	455,000
2025	465,000
2026	475,000
2027	485,000
2028	495,000

Upon the occurrence of a Payment Default (as defined in Section 22 hereof), the Series 2022B Bond shall, during the pendency of such Payment Default, bear interest at the 2022B Interest Rate plus 4%.

Section 8. The Bonds will be registered as to both principal and interest, payable to the Lender, or registered assigns, as set forth hereinafter in the bond form.

Payment of principal and interest shall be by check or draft mailed to the Lender or registered assigns (collectively, the "Owners") at its address shown on the bond registration books of the City which shall be maintained by the City Clerk as Bond Registrar, without presentation or surrender of the Bonds (except upon final payment) and such payments shall discharge the obligation of the City to the extent thereof. The City Clerk shall keep, or cause to be kept, a payment record and make proper notations thereon of all payments of principal and interest.

Payment of principal and interest shall be in any coin or currency of the United States of America which, as at the time of payment, shall be legal tender for the payment of debts due the United States of America. When the principal of and interest on the Bonds have been fully paid, they shall be canceled and delivered to the City Clerk.

Section 9. The Bonds shall be executed on behalf of the City by the Mayor and City Clerk and shall have impressed thereon the seal of the City. The Bonds are not general obligations of the City but are special obligations, the principal of and interest on which are secured by a pledge of and are payable from revenues derived from the System ("Revenues"). The Bonds and interest thereon shall not constitute an indebtedness of the City within any constitutional or statutory limitation.

Section 10. The Bonds shall be in substantially the following form with appropriate variations between series and the Mayor and City Clerk are hereby authorized and directed to make all the recitals contained therein:

(form of bond)

UNITED STATES OF AMERICA
STATE OF ARKANSAS
COUNTY OF BENTON
CITY OF BENTONVILLE
COMBINED ELECTRIC, WATER AND SEWER
REFUNDING AND STORM RECOVERY
REVENUE BOND
[TAXABLE SERIES 2022A][SERIES 2022B]

$_____

KNOW ALL MEN BY THESE PRESENTS:

That the City of Bentonville, Benton County, Arkansas (the "City"), for value received, hereby acknowledges itself to owe and promises to pay to U. S. Bank National Association, or registered assigns (the "Owner"), solely from the special fund as hereinafter set forth, the principal sum of

_____ THOUSAND DOLLARS

and to pay interest on the unpaid balance of said principal amount at the rate of __% per annum. Principal and interest on this Bond shall be due and payable on April 15 and October 15 of each year, commencing October 15, 2022. Interest shall accrue on the basis of a 360 day year of twelve thirty (30) day months and actual number of days elapsed. Principal of this Bond shall be paid in installments with the final installment due October 15, 2028. The principal installments shall be paid on October 15 in the years and in the amounts as follows:

Year (October 15)	Principal Amount

Upon the occurrence of a Payment Default (as defined in Section 22 Authorizing Ordinance (as defined below)), This Bond shall, during the pendency of such Payment Default, bear interest at the rate set forth above plus 4%.

The principal of and interest on this Bond are payable in lawful money of the United States of America at the address of the Owner as shown on the bond registration books of the City maintained by the City Clerk, as bond registrar. Payments shall be applied first to interest and the balance to principal.

This Bond is issued for the purpose of financing [storm recovery costs and costs of refunding bonds payable from the City's combined electric, water and sewer system (the "System")] [costs of refunding bonds payable from revenues of the City's combined electric, water and sewer system (the "System")], and paying costs of authorizing and issuing this Bond, and is issued pursuant to and in full compliance with the Constitution and laws of the State of Arkansas (the "State"), including particularly Title 14, Chapter 235, Subchapter 2, Title 14, Chapter 234, Subchapter 2, Title 14, Chapter 203 and Title 14, Chapter 164, Subchapter 4 of the Arkansas Code of 1987 Annotated, and pursuant to Ordinance No. _____ of the City, duly adopted on the _____ day of _____, 2022 (the "Authorizing Ordinance"). Reference is hereby made to the Authorizing Ordinance for the details of the nature and extent of the security and of the rights and obligations of the City and the Owner of this Bond. The City is also issuing its Combined Electric, Water and Sewer System Refunding and Storm Recovery Revenue Bond, Series 2022_ in the principal amount of $_____ under the Authorizing Ordinance (the "Series 2022_ Bond"). This Bond and the Series 2022_ Bond shall rank on a parity of security under the Authorizing Ordinance.

This Bond may be assigned but only as a whole and after notice in writing from the then current Owner hereof to the City Clerk, as bond registrar. Such notice shall not be effective until it is received by the City. Such notice shall contain the name and address of the assignee and the place at which payment of the principal of and interest on this Bond is to be made. Every assignee shall take this Bond subject to all payments and prepayments of principal and interest prior to such assignment. Subject to the provisions hereof respecting assignment of this Bond, nothing contained in this Bond shall affect or impair the negotiability of this Bond and, this Bond shall have all the qualities of a negotiable instrument under the law merchant and the Uniform Commercial Code of the State of Arkansas.

Principal of this Bond may be redeemed in whole or prepaid in part, on any business day, at the option of the City, at a redemption or prepayment price equal to the principal amount being redeemed or prepaid plus accrued interest to the redemption or prepayment date. Any partial prepayment of the principal of this Bond shall be applied to the inverse order of principal installments due.

The City shall provide the Owner with written notice of redemption or prepayment at least ten (10) business days before the redemption or prepayment date.

This Bond does not constitute an indebtedness of the City within any constitutional or statutory limitation or provision, and the taxing power of the City is not pledged to the payment of the principal of or interest on this Bond. This Bond is a special obligation payable solely from the revenues derived from the operation of the System ("Revenues"). A sufficient amount of Revenues to pay principal and interest on this Bond and the Series 2022_ Bond has been duly set aside and pledged as a special fund for that purpose, identified as the "2022 Bond Fund," in the Authorizing Ordinance. This Bond is issued with the intent that the laws of the State shall govern its construction.

[SERIES 2022B BOND - THE CITY HEREBY DESIGNATES THIS BOND AS A "QUALIFIED TAX-EXEMPT OBLIGATION" UNDER SECTION 265(b) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED.]

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required by the Constitution and statutes of the State to exist, happen and be performed precedent to and in the issuance of this Bond do exist, have happened and have been performed in regular and due time, form and manner as required by law; that this Bond does not exceed any constitutional or statutory limitation of indebtedness; and that provision has been made for the payment of the principal of and interest on this Bond, as provided in the Authorizing Ordinance.

IN WITNESS WHEREOF, the City of Bentonville, Arkansas has caused this Bond to be executed in its name by its Mayor and City Clerk, thereunto duly authorized, and its corporate seal to be affixed, all as of the _____ day of _____, 2022.

CITY OF BENTONVILLE, ARKANSAS

ATTEST: By _____
Mayor

_____
City Clerk

(SEAL)

Section 11. The City covenants that the rates for services of the System currently produce and shall, if and when necessary from time to time, be increased in such manner as will produce Net Revenues equal to at least 125% of annual debt service on all outstanding bonds to which Revenues are pledged ("System Bonds") for the then current fiscal year. "Net Revenues" are gross Revenues less the expenses of operation and maintenance of the System, including all expense items properly attributable to the operation and maintenance of the System under generally accepted government accounting standards applicable to municipal electric, water and sewer facilities other than depreciation, interest and amortization of deferred bond discount expenses.

Section 12. The City covenants that it will continuously operate the System as a revenue-producing undertaking in compliance with all federal, state and local laws. The City further covenants that it will not sell or lease the same, or any substantial portion thereof, without the prior written approval of the Owners of the Bonds; provided, however, that nothing herein shall be construed to prohibit the City from making such dispositions of properties of the System and such replacements and substitutions for properties of the System as shall be necessary or incidental to the efficient operation of the System as a revenue-producing undertaking. The City further agrees not to mortgage or encumber the System except to secure bonds as permitted by this Ordinance.

Section 13. The City reserves the right to issue additional bonds to finance or pay the cost of constructing any future extensions, betterments or improvements to the System, to refund System Bonds or to finance any other System purpose, but the City shall not authorize or issue any such additional bonds senior to the pledge of Revenues in favor of the Bonds. The City may issue additional bonds ranking on a parity with the Bonds if there has been procured and filed with the City Clerk and the Owners a statement by an independent certified public accountant not in the regular employ of the City (the "Accountant") reciting, based upon necessary investigation, that the Net Revenues (as defined in Section 11 hereof) of the System for the fiscal year immediately preceding the fiscal year in which it is proposed to issue such additional bonds shall equal not less than 125% of the maximum annual principal and interest requirements on all the then outstanding System Bonds and the additional bonds then proposed

to be issued. In making the computation set forth above, the City, and the Accountant on behalf of the City, may, based upon the opinion or report of a registered professional engineer not in the regular employ of the City, treat any increase in rates for the System enacted subsequent to the first day of such preceding fiscal year as having been in effect throughout such fiscal year and may include in the gross Revenues for such fiscal year the amount that would have been received, based on such opinion or report, had the increase been in effect throughout such fiscal year.

Section 14. All Revenues shall be paid into a special fund heretofore created and designated "Revenue Fund" (the "Revenue Fund"). Moneys in the Revenue Fund are hereby pledged and shall be applied to the payment of the reasonable and necessary expenses of operation and maintenance of the System, to the payment of the principal of and interest on the Bonds and other System Bonds, to the maintenance of any debt service reserves at the required levels, and to the providing of a depreciation fund and otherwise as described herein in the order of priority hereinafter set forth.

Section 15. There shall next be paid from the Revenue Fund into a fund heretofore created and designated "Operation and Maintenance Fund" (the "Operation and Maintenance Fund"), on the first business day of each month, an amount sufficient to pay the reasonable and necessary monthly expenses of operation, repair and maintenance of the System for such month and from which disbursements shall be made only for those purposes. Fixed annual charges such as insurance premiums and the cost of major repair and maintenance expenses may be computed and set up on an annual basis, and one-twelfth (1/12) of the amount thereof may be paid into the Operation and Maintenance Fund each month.

If in any month for any reason there shall be a failure to transfer and pay the required amount into the Operation and Maintenance Fund, the amount of the deficiency shall be added to the amount otherwise required to be transferred and paid into the fund the next succeeding month. If any surplus shall be accumulated in the Operation and Maintenance Fund over and above the amount which shall be necessary to defray the costs of operation and maintenance of the System during the remainder of the then current fiscal year and the next ensuing fiscal year, such surplus may be transferred to the Depreciation Fund.

Section 16. (a) After making the monthly deposits into the Operation and Maintenance Fund, there shall be transferred from the Revenue Fund into a special fund hereby created and designated the "2022 Bond Fund" (the "Bond Fund"), before the 15th of May 2022 and before the 15th day of each month thereafter until the Bonds with interest thereon have been paid in full or provision made for such payment, a sum equal to 1/6 of the next installment of interest due on the Bonds and 1/12 of the next installment of principal due on the Bonds; provided, however, the payments into the Bond Fund representing principal of the Bonds through October 2022 shall be increased to 1/6 of the principal of the Bonds due October 15, 2022. The City shall receive a credit against monthly deposits into the Bond Fund from all interest earnings on moneys in the Bond Fund and for transfers into the Bond Fund directed by Section 2 hereof.

(b) If Revenues are insufficient to make the required payment before the 15th day of the month into the Bond Fund, then the amount of any such deficiency in the payment made shall be added to the amount otherwise required to be paid into the Bond Fund on the 15th day of the next month.

(c) It shall be the duty of the City to cause to be withdrawn from the Bond Fund and paid to the Owners of the Bonds on each day principal and interest on the Bonds is due an amount equal to the principal and interest then due. No withdrawal of funds from the Bond Fund shall be made for any other purpose except as otherwise authorized in this Ordinance.

(d) The Bonds shall be specifically secured by a pledge of all Revenues required to be placed into the Bond Fund. This pledge in favor of the Bonds is hereby irrevocably made according to the terms of this Ordinance, and the City and its officers and employees shall execute, perform and carry out the terms thereof in strict conformity with the provisions of this Ordinance.

Section 17. After making the monthly payments into the Operation and Maintenance Fund and the Bond Fund, there shall be paid from the Revenue Fund into a fund heretofore created and designated "Depreciation Fund" (the "Depreciation Fund") on the first business day of each month while any of the Bonds are outstanding, a sum equal to 2% of all Revenues received during the preceding month. Moneys in the Depreciation Fund shall be used solely for the purpose of paying the cost of major repairs or replacements, extraordinary repairs and new construction and additions. The City need not make the monthly deposit into the Depreciation Fund so long as there is at least $250,000 on deposit therein.

If in any fiscal year a surplus shall be accumulated in the Depreciation Fund over and above the amount which shall be necessary to defray the cost of the probable replacements during the current fiscal year and the next ensuing fiscal year, such surplus may be transferred to the Bond Fund.

Section 18. On the last day of each month, the balance remaining in the Revenue Fund, and after setting aside an amount necessary to make the required payments into the Operation and Maintenance Fund, the Bond Fund, the and the Depreciation Fund in the next succeeding month, there shall be paid into the general fund of the City, (a) as a municipal utility franchise fee, an amount not to exceed eight percent (8%) of the gross electric revenues of the System for the prior fiscal year, plus five percent (5%) of the gross water revenues of the System for the prior fiscal year, plus five percent (5%) of the gross sewer revenues of the System for the prior fiscal year; plus (b) at the option of the City, as a payment in lieu of taxes, a payment equal to the amount of ad valorem taxes that would be due on properties of the System if the System were privately owned; provided, however, that the sum of items (a) and (b) shall not exceed the amount of Net System Revenues for the prior fiscal year. "Net System Revenues" shall mean for this Section gross Revenues less all required deposits into the Operation and Maintenance Fund, the Bond Fund and the Depreciation Fund.

Section 19. Any surplus in the Revenue Fund after making all disbursements and providing for all funds described above shall be used for the payment of any amounts owed the insurers of the System Bonds and may be used, at the option of the City, for any lawful municipal purpose authorized by the City.

Section 20. (a) The City covenants that it shall not take any action or suffer or permit any action to be taken or condition to exist which causes or may cause the interest payable on the Series 2022B Bond to be included in gross income for federal income tax purposes. Without limiting the generality of the foregoing, the City covenants that the proceeds of the Series 2022B Bond and moneys that are deposited in the funds identified herein will not be used directly or indirectly in such manner as to cause the Series 2022B Bond to be treated as an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code").

(b) The City shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 2022B Bond is used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Series 2022B Bond during the term thereof is, under the terms of the Series 2022B Bond or any underlying arrangement, directly or indirectly secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the City, in respect of property or borrowed moneys used or to be used for a Private Business Use; and (ii) that, in the event that both (A) in excess of 5% of the Net Proceeds of the Series 2022B Bond are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Series 2022B Bond during the term thereof is, under the terms of the Series 2022B Bond or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the City, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Series 2022B Bond used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the facilities financed by the Series 2000 Bond and the Series 2006A Bond.

The City shall assure that not in excess of 5% of the Net Proceeds of the Series 2022B Bond are used, directly or indirectly, to make or finance a loan to persons other than state or local governmental units.

As used in this subsection (b) "Private Business Use" means use directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and use as a member of the general public.

(c) The City covenants that it will take no action which would cause the Series 2022B Bond to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

(d) The City covenants that it will submit to the Secretary of the Treasury of the United States a statement concerning the Series 2022B Bond which contains the information required by Section 149(e) of the Code within the time required by such Section.

(e) The Series 2022B Bond is hereby designated as a "qualified tax-exempt obligation" within the meaning of the Code. The City represents that the aggregate principal amount of its qualified tax-exempt obligations (excluding "private activity bonds" within the meaning of Section 141 of the Code which are not "qualified 501(c)(3) bonds" within the meaning of Section 145 of the Code), including those of its subordinate entities, issued in calendar year 2022 are not expected to exceed $10,000,000.

(g) The City covenants that it will, in compliance with the requirements of Section 148(f) of the Code, pay with moneys in the Bond Fund to the United States Government in accordance with the requirements of Section 148(f) of the Code, from time to time, an amount equal to the sum of (1) the excess of (A) the amount earned on all Non-purpose Investments (as therein defined) attributable to the Series 2022B Bond, other than investments attributable to such excess, over (B) the amount which would have been earned if such Non-purpose Investments attributable to the Series 2022B Bond were invested at a rate equal to the Yield (as defined in the Code) on the Series 2022B Bond, plus (2) any income attributable to the excess described in (1), subject to the exceptions set forth in Section 148 of the Code. The City further covenants that in order to assure compliance with its covenants herein, it will employ a qualified consultant to advise the City in making the determination required to comply with this Section. Anything herein to the contrary notwithstanding, this provision may be modified or rescinded if in the opinion of Bond Counsel such modification or rescission will not affect the tax-exempt status of the Series 2022B Bond for federal income tax purposes.

(h) The City will retain all documents and records pertaining to the Series 2022B Bond and the facilities financed by the Series 2000 Bond and the Series 2006A Bond for the life of the Series 2022B Bond plus an additional three years.

Section 21. The principal of the Bonds shall be prepayable prior to maturity as provided in the bond form in Section 10 hereof.

Section 22. It is covenanted and agreed by the City with the Owners of the Bonds that it will faithfully and punctually perform all duties with reference to the System required by the Constitution and laws of the State and by this Ordinance, including, without limitation, the making and collecting of reasonable and sufficient rates lawfully established for services rendered by the System, segregating Revenues and applying them to the respective funds maintained pursuant to this Ordinance.

The City covenants and agrees that the Owners of the Bonds shall have the protection of all the provisions of the Authorizing Legislation, and that the City will diligently proceed to enforce those provisions to the end of the Owners of the Bonds realizing fully upon their security. And, if the City shall fail to proceed within 30 days (or 10 days with respect to a Payment Default (as defined below)) after written request shall have been filed by one or both of the Owners of the Bonds, the Owners may proceed to enforce all such provisions.

If there be any default in the payment of the principal of or interest on the Bonds, or if the City defaults in any Bond Fund requirement or in the performance of any of the other covenants contained in this Ordinance, or if the City has made a material misrepresentation to the Lender in connection with the Bonds that results in pecuniary damages to the Lender, the Owners of the Bonds may, by proper suit, compel the performance of the duties of the officials of the City under the laws of the State. In the case of a default in the payment of the principal of and interest on the Bonds ("Payment Default"), one or both of the Owners of the Bonds may apply in a proper action to a court of competent jurisdiction for the appointment of a receiver to administer the System on behalf of the City and the Owners of the Bonds with power to charge and collect (or by mandatory injunction or otherwise to cause to be charged and collected) rates sufficient to provide for the payment of the expenses of operation, repair and maintenance and to pay the Bonds and interest outstanding and to apply Revenues in conformity with this Ordinance. When all Payment Defaults have been cured, the custody and operation of the System shall revert to the City. No remedy herein conferred upon or reserved to the Owners of the Bonds is intended to be exclusive of any other remedy or remedies herein provided or provided by law, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or given by law. No delay or omission of the Owners of the Bonds to exercise any right or power accrued upon any default shall impair any such right or power or shall be construed to be a waiver of any default or an acquiescence therein; and every power and remedy given by this Ordinance to the Owners of the Bonds may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon. Any costs of enforcement of the Bonds or of any provision of this Ordinance, including reasonable attorney's fees, shall be paid by the City.

Section 23. (a) When the Bonds have been executed and sealed as herein provided, they shall be delivered to the Lender upon payment of the par amount of the Bonds. The sale proceeds of the Series 2022B Bond shall be deposited into an account of the City hereby created and designated the "2022B Refunding Fund" (the "2022B Refunding Fund"). Moneys in the 2022B Refunding Fund and investment earnings thereon shall be used to redeem in full the Series 2000 Bond and the Series 2006A Bond and the expenses of issuing the Series 2022B Bond. Payment of expenses shall be by check which shall briefly specify the purpose of the expenditure. If moneys remain in the 2022B Refunding Fund after all expenses are paid, such moneys shall be transferred to the Bond Fund and used as a credit against the next required monthly deposit into the Bond Fund.

(b) The sale proceeds of the Series 2022A Bond shall be deposited into an account of the City hereby created and designated the "2022A Refunding and Storm Recovery Fund" (the "2022A Refunding and Storm Recovery Fund"). Moneys in the 2022A Refunding and Storm Recovery Fund and investment earnings thereon shall be used to reimburse the System reserves in the amount of $8,250,000 for Storm Recovery costs. The moneys in the 2022A Refunding and Storm Recovery Fund shall next be used to transfer up to $436,757 to the trustee for the Series 2006B Bonds for the purpose of redeeming the Series 2006B Bonds. The balance of the moneys in the 2022A Refunding and Storm Recovery Fund shall be used to pay

the expenses of issuing the Series 2022A Bond. Payment of expenses shall be by check which shall briefly specify the purpose of the expenditure. If moneys remain in the 2022A Refunding and Storm Recovery Fund after all expenses are paid, such moneys shall be transferred to the Bond Fund and used as a credit against the next required monthly deposit into the Bond Fund.

Section 24. The Treasurer of the City shall be custodian of the Revenues. Each employee of the City handling Revenues shall give bond for the faithful discharge of his or her duties in such amount as approved by the City Council. All Revenues shall at all times be accounted for separately and distinctly from other moneys of the City and shall be used and applied only as provided herein. The various funds established or identified in this Ordinance shall each be maintained in a bank or trust company selected by the City that is a member of the Federal Deposit Insurance Corporation.

Section 25. The terms of this Ordinance shall constitute a contract between the City and the Owners of the Bonds and no variation or change in the undertaking herein set forth shall be made while the Bonds are outstanding unless consented to in writing by the Owners of the Bonds, which consent shall not be unreasonably withheld.

Section 26. The City agrees that will keep proper records, books and accounts relating to the operation of the System, which shall be kept separate from all other records and accounts of the City, in which complete and correct entries shall be made of all transactions relating to the operation of the System in accordance with generally accepted government accounting standards. Such books and the financial records and property relating to the operation of the System shall be available for inspection by the Owners of the Bonds at reasonable times and under reasonable circumstances. The City shall permit (after having received reasonable advance written notice from an Owner of the Bonds), any employees, agents or other representatives of the Owners of the Bonds and any attorneys, accountants or other agents or representatives designated by the Owner to discuss the affairs, finances and accounts thereof with the officers, employees or agents of the City, all at such reasonable business times as the Owner deems necessary or advisable to protect its interests; provided, however, that the foregoing shall not require the City to divulge confidential information. The City agrees to have these records audited by an Accountant at least once each year and to furnish a copy of the audit report to the Owners of the Bonds not later than 180 days after the end of each fiscal year while the Bonds is outstanding. In the event the City fails or refuses to furnish or cause such reports to be furnished with respect to the System, any Owner of the Bonds may have the reports made, and the cost thereof shall be charged against the Operation and Maintenance Fund.

Section 27. The City covenants and agrees that it will maintain the System in good condition and operate it in an efficient manner and at reasonable cost. While the Bonds are outstanding, the City agrees that to the extent comparable protection is not otherwise provided to the satisfaction of the Owners of the Bonds, it will insure, and at all times keep insured, in the amount of the full insurable value thereof, in a responsible insurance company or companies selected by the City and authorized and qualified under the laws of the State to assume the risk thereof, properties of the System, to the extent that such properties would be covered by insurance by private companies engaged in similar types of businesses, against loss or damage thereto from fire and other perils included in extended coverage insurance in effect in the State.

The insurance policies are to carry a clause making them payable to the Owners of the Bonds as their interest may appear, and satisfactory evidence of said insurance shall be filed with the Owners of the Bonds. In the event of loss, the proceeds of such insurance shall be applied solely toward the reconstruction, replacement or repair of the System, and in such event the City will, with reasonable promptness, cause to be commenced and completed the reconstruction, replacement and repair work. If such proceeds are more than sufficient for such purposes, the balance remaining shall be deposited to the credit of the Revenue Fund and if such proceeds shall be insufficient for such purposes the deficiency shall be supplied first from moneys in the Depreciation Fund and second from moneys in the Operation and Maintenance Fund and third from surplus moneys in the Revenue Fund. Nothing shall be construed as requiring the City to expend any moneys for operation and maintenance of the System or for premiums on its insurance which are derived from sources other than the operation of the System, but nothing shall be construed as preventing the City from doing so.

Section 28. The Bonds are hereby further secured by a statutory mortgage lien upon the electric and water facilities of the System which exists pursuant to the provisions of the Authorizing Legislation and applicable decisions of the Supreme Court of the State of Arkansas, including City of Harrison v. Braswell, 209 Ark. 1094, 194 S.W.2nd 12 (1946), in favor of the Owners of the Bonds, and the electric and water facilities of the System are hereby mortgaged to the Owners of the Bonds as security for the payment of the principal and interest on the Bonds and as security for the performance of all other obligations of the City hereunder. The electric and water facilities of the System shall be subject to such statutory mortgage lien until payment in full of the principal of and interest on the Bonds.

Section 29. In the event the office of Mayor and City Clerk shall be abolished, or any two or more of such offices shall be merged or consolidated, or in the event the duties of a particular office shall be transferred to another office or officer, or in the event of a vacancy in any such office by reason of death, resignation, removal from office or otherwise, or in the event any such officer shall become incapable of performing the duties of his office by reason of sickness, absence from the City or otherwise, all powers conferred and all obligations and duties imposed upon such office or officer shall be performed by the office or officer succeeding to the principal functions thereof, or by the office or officer upon whom such powers, obligations and duties shall be imposed by law.

Section 30. The City shall pay from proceeds of the Bonds the costs and expenses of the Lender incurred in connection with its purchase of the Bonds, including the Lender's legal fees, in an amount not to exceed $6,000.

Section 31. The engagement of the Municipal Advisor, the Placement Agents and Bond Counsel and the payment of their fees and expenses from proceeds of the Bonds are hereby confirmed, ratified and approved.

Section 32. Notice of the adoption of this Ordinance shall be posted at Bentonville Public Library, Bentonville City Hall, Bentonville Community Center, Bentonville Municipal Works Facility and Bentonville Police Department, being five of the most public places in the City.

Section 33. The provisions of this Ordinance are hereby declared to be separable, and if any provision shall for any reason be held illegal or invalid, it shall not affect the validity of the remainder of this Ordinance.

Section 34. All ordinances and resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 35. It is hereby ascertained and declared that the Refunding must be accomplished as soon as possible in order to take advantage of low interest rates. It is, therefore, declared that an emergency exists and this Ordinance being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in force from and after its passage.

ADOPTED: _____, 2022.

APPROVED:

ATTEST: _____
Mayor

_____
City Clerk

(SEAL)

CERTIFICATE

The undersigned, City Clerk of the City of Bentonville, Arkansas (the "City"), hereby certifies that the foregoing pages are a true and perfect copy of Ordinance No. _____, adopted at a regular session of the City Council of the City, held at the regular meeting place in the City at 6:00 o'clock p.m., on the 8th day of March, 2022, and that the Ordinance is of record in Ordinance Record Book No. _____, Page _____, now in my possession.

GIVEN under my hand and seal on this _____ day of _____, 2022.

_____
City Clerk

(SEAL)

LETTER OF OFFER AND REPRESENTATION

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

Stephens Inc.
111 Center Street, Suite 1720
Little Rock, AR 72201

Re: City of Bentonville, Arkansas Combined Electric, Water and Sewer System Refunding and Storm Recovery Revenue Bond, Taxable Series 2022A

City of Bentonville, Arkansas Combined Electric, Water and Sewer System Refunding and Storm Recovery Revenue Bond, Series 2022B

Ladies and Gentlemen:

The undersigned offers to purchase (i) a City of Bentonville, Arkansas Combined Electric, Water and Sewer System Refunding and Storm Recovery Revenue Bond, Taxable Series 2022A, in the principal amount of $8,820,000 (the "Series 2022A Taxable Bond"), from the City of Bentonville, Arkansas (the "Borrower") at a price of 100% on the dollar and (ii) a City of Bentonville, Arkansas Combined Electric, Water and Sewer System Refunding and Storm Recovery Revenue Bond, Series 2022B, in the principal amount of $3,435,000 (the "Series 2022B Bond" and collectively with the Series 2022A Taxable Bond, the "Bonds"), from the Borrower at a price of 100% on the dollar. The Series 2022A Taxable Bond shall be dated the date of delivery, shall bear interest at the rate of 2.44% and shall mature on October 15, 2028. The Series 2022B Bond shall be dated the date of delivery, shall bear interest at the rate of 2.01% and shall mature October 15, 2028.

The Bonds shall be as described in, and this offer is subject to the terms of, an ordinance authorizing the issuance of the Bonds to be adopted by the City Council of the Borrower (the "Bond Ordinance"), pursuant to which the Borrower has pledged to the undersigned, as security for payment of the principal of and interest on the Bonds, revenues of the Borrower's combined electric, water and sewer system (the "Pledged Revenues"). The Borrower shall have the right to issue additional bonds on a parity with the pledge of Pledged Revenues in favor of the Bonds pursuant to the terms of the Bond Ordinance.

The Series 2022A Taxable Bond shall bear interest at the rate of 2.44% per annum calculated based on a 360 day year and twelve 30 day months and actual number of days elapsed. Interest on the Series 2022A Taxable Bond shall be paid April 15 and October 15 of each year, commencing October 15, 2022. Principal shall be paid on October 15, 2022 and on each October 15 thereafter with the final installment due October 15, 2028, as set forth in Exhibit A attached hereto.

The Series 2022B Bond shall bear interest at the rate of 2.01% per annum calculated based on a 360 day year and twelve 30 day months and actual number of days elapsed. Interest on the Series 2022B Bond shall be paid on April 15 and October 15 of each year, commencing October

15, 2022. Principal shall be paid on October 15, 2022 and on each October 15 thereafter with the final installment due October 15, 2028, as set forth in Exhibit A attached hereto.

The Bonds shall be subject to optional redemption or prepayment prior to maturity on any business day, subject to 10 business days' notice to the undersigned.

Interest on the Series 2022A Taxable Bond shall not be excludable from gross income of the purchaser for federal income tax purposes. Interest on the Series 2022B Bond shall be excludable from gross income of the purchaser for federal income tax purposes, and the Series 2022B Bond will be a "qualified tax-exempt obligation" for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended. At the closing, Friday, Eldredge & Clark, LLP ("Bond Counsel") will provide an approving bond counsel opinion, in customary form and substance.

The closing shall occur on or about April 14, 2022, or at the request of the Borrower, at such earlier or later date agreed to by the undersigned. At the closing, the undersigned shall deliver the purchase price for each Bond in immediately available funds. This offer shall expire if not accepted by March 31, 2022.

The undersigned represents to you as follows:

1. We have sufficient knowledge and experience in business and financial matters to enable us to evaluate the Bonds, the credit of the Borrower and the bond terms and we will make our own independent credit analysis and decision to purchase the Bonds based upon an independent examination and evaluation of the transaction and the information deemed appropriate, without reliance on others, including the municipal advisor or its affiliates, its directors, officers, employees, attorneys or agents.

2. We acknowledge that no underlying credit rating has been sought or obtained with respect to the Bonds.

3. We acknowledge that no official statement has been prepared for the Bonds, the Bonds will not be rated, and the Borrower will not be entering into a continuing disclosure agreement to provide ongoing disclosure with respect to the Bonds pursuant to SEC Rule 15c2-12. We have been offered copies of or full access to all documents relating to the Bonds and all records, reports, financial statements and other information concerning the Borrower and pertinent to the source of payment for the Bonds as deemed material by us, which we have requested and to which we would attach significance in making the decision to purchase the Bonds without reliance upon others.

4. We confirm that we have regularly bought and sold obligations similar to the Bonds for our own account and have the knowledge and experience in financial and business matters sufficient to enable us to evaluate the merits and risks of purchasing the Bonds.

5. We are purchasing the Bonds for our own account or for our loan portfolio and are not purchasing the Bonds for resale or other disposition and not with a view to the sale, redistribution or other disposition thereof in the ordinary course of business in a transaction not amounting to a public offering as contemplated by Section 4(2) of the Securities Act of 1933, as amended (the "1933 Act"). Although our present intention is to hold the Bonds to maturity or early redemption, we reserve the right, subject to paragraph 6 below, to sell participation interests in or otherwise dispose of the Bonds in the future as we choose. In reaching the conclusion that

we desire to acquire the Bonds, we have carefully evaluated all risks associated with this purchase and acknowledge that we are able to bear the economic risk of this purchase. We are (i) an "accredited investor" within the meaning of Section 501(a)(1)-(8) of Regulation D under the 1933 Act or (ii) a "Qualified Institutional Buyer" within the meaning of Rule 144A under the 1933 Act with respect to the Bond to be purchased by us.

6. We acknowledge that (1) the Bonds will not be registered under the 1933 Act or any applicable state securities law and (2) the Bonds may not be transferred unless, in the opinion of counsel to the purchaser, such transfer will not cause a violation of the 1933 Act, or any applicable state securities law. We agree that we will not sell, transfer, assign, or otherwise dispose of the Bonds or such ownership interests therein (1) unless (a) we obtain from the purchaser and deliver to Borrower an agreement similar in form and substance to this agreement, or (b) we obtain from the purchaser and deliver to the Borrower a written acknowledgement that such purchaser is a "qualified institutional buyer" as defined in Rule 144A promulgated under the 1933 Act, and (2) except in compliance with the applicable provisions of the 1933 Act, the Securities Exchange Act of 1934, as amended (the "1934 Act"), any rules and regulations promulgated under either the 1933 Act or the 1934 Act, and the applicable securities laws of any other jurisdiction, and in connection therewith, we agree that we shall furnish to any purchaser of the Bonds all information required by applicable law.

7. The Bonds will be purchased by us under the following conditions: (i) the Bonds will not be assigned a separate rating by any municipal securities rating agency, (ii) the Bonds are not being registered or otherwise qualified for sale under the "Blue Sky" laws; (iii) we will hold each Bond as one single debt instrument, (iv) the Bonds will not be assigned a CUSIP number by Standard & Poor's CUSIP Service, (v) no official statement or other similar offering document will be required or delivered in connection with the private placement of the Bonds, (vi) the Bonds will not close through the Depository Trust Company or any similar repository and will not be in book entry form, and (vii) the obligations represented by the Bonds will be classified as separate privately placed loans.

8. We acknowledge that the Bonds do not constitute a debt or loan of the State of Arkansas or any political subdivision thereof. The Bonds represent a pledge of Pledged Revenues of the Borrower as more specifically set forth in the second paragraph of this letter and in the Bond Ordinance. The security for payment of the Bonds is more particularly described in the Bonds and the Bond Ordinance.

9. We understand that the Borrower and the municipal advisor, and their respective counsel and Bond Counsel will rely upon the accuracy and truthfulness of the representations and warranties contained herein and hereby consent to such reliance.

10. The undersigned purchaser and its representatives are not registered municipal advisors and do not provide advice to municipal entities or obligated persons with respect to municipal financial products or the issuance of municipal securities (including regarding the structure, timing, terms and similar matters concerning municipal financial products or municipal securities issuances) or engage in the solicitation of municipal entities or obligated persons for the provision by non-affiliated persons of municipal advisory services and/or investment advisory services. With respect to this Letter of Offer and Representation and any other information, materials or communications provided by the undersigned purchaser: (a) the purchaser and its representatives are not recommending an action to any municipal entity or obligated person; (b) the purchaser and its representatives are not acting as an advisor to any municipal entity or obligated person and do not owe a fiduciary duty pursuant to Section 15B of the 1934 Act to any municipal entity or obligated person with respect to this Letter of Offer and Representation,

information, materials or communications; (c) the purchaser and its representatives are acting for their own interests; and (d) the Borrower has been informed that the Borrower should discuss this Letter of Offer and Representation and any such other information, materials or communications with any and all internal and external advisors and experts that the Borrower, respectively, deems appropriate before acting on this Letter of Offer and Representation or any such other information, materials or communications.

11. The signatory of this Letter of Offer and Representation is a duly authorized officer of U. S. Bank National Association with the authority to sign this Letter on behalf of purchaser, and this Letter has been duly authorized, executed and delivered.

Dated: March 8, 2022

Sincerely,

U. S. BANK NATIONAL ASSOCIATION

By _____

_____
(Title)

ACCEPTED this ____ day of March, 2022.

CITY OF BENTONVILLE, ARKANSAS

_____
Mayor

EXHIBIT A

DEBT SERVICE SCHEDULES

City of Bentonville, Arkansas Combined Electric, Water and Sewer System Refunding and Storm Recovery Revenue Bond, Taxable Series 2022A

Date	Principal	Coupon	Interest	Total P+I	Fiscal Total
04/14/2022	-	-	-	-	-
10/15/2022	1,140,000.00	2.440%	108,201.80	1,248,201.80	-
12/31/2022	-	-	-	-	1,248,201.80
04/15/2023	-	-	93,696.00	93,696.00	-
10/15/2023	1,270,000.00	2.440%	93,696.00	1,363,696.00	-
12/31/2023	-	-	-	-	1,457,392.00
04/15/2024	-	-	78,202.00	78,202.00	-
10/15/2024	1,305,000.00	2.440%	78,202.00	1,383,202.00	-
12/31/2024	-	-	-	-	1,461,404.00
04/15/2025	-	-	62,281.00	62,281.00	-
10/15/2025	1,335,000.00	2.440%	62,281.00	1,397,281.00	-
12/31/2025	-	-	-	-	1,459,562.00
04/15/2026	-	-	45,994.00	45,994.00	-
10/15/2026	1,225,000.00	2.440%	45,994.00	1,270,994.00	-
12/31/2026	-	-	-	-	1,316,988.00
04/15/2027	-	-	31,049.00	31,049.00	-
10/15/2027	1,255,000.00	2.440%	31,049.00	1,286,049.00	-
12/31/2027	-	-	-	-	1,317,098.00
04/15/2028	-	-	15,738.00	15,738.00	-
10/15/2028	1,290,000.00	2.440%	15,738.00	1,305,738.00	-
12/31/2028	-	-	-	-	1,321,476.00
Total	**$8,820,000.00**	**-**	**$762,121.80**	**$9,582,121.80**	**-**

City of Bentonville, Arkansas Combined Electric, Water and Sewer System Refunding and Storm Recovery Revenue Bond, Series 2022B

Date	Principal	Coupon	Interest	Total P+I	Fiscal Total
04/14/2022	-	-	-	-	-
10/15/2022	415,000.00	2.010%	34,713.53	449,713.53	-
12/31/2022	-	-	-	-	449,713.53
04/15/2023	-	-	30,351.00	30,351.00	-
10/15/2023	645,000.00	2.010%	30,351.00	675,351.00	-
12/31/2023	-	-	-	-	705,702.00
04/15/2024	-	-	23,868.75	23,868.75	-
10/15/2024	455,000.00	2.010%	23,868.75	478,868.75	-
12/31/2024	-	-	-	-	502,737.50
04/15/2025	-	-	19,296.00	19,296.00	-
10/15/2025	465,000.00	2.010%	19,296.00	484,296.00	-
12/31/2025	-	-	-	-	503,592.00
04/15/2026	-	-	14,622.75	14,622.75	-
10/15/2026	475,000.00	2.010%	14,622.75	489,622.75	-
12/31/2026	-	-	-	-	504,245.50
04/15/2027	-	-	9,849.00	9,849.00	-
10/15/2027	485,000.00	2.010%	9,849.00	494,849.00	-
12/31/2027	-	-	-	-	504,698.00
04/15/2028	-	-	4,974.75	4,974.75	-
10/15/2028	495,000.00	2.010%	4,974.75	499,974.75	-
12/31/2028	-	-	-	-	504,949.50
Total	**$3,435,000.00**	**-**	**$240,638.03**	**$3,675,638.03**	**-**

LOAN AGREEMENT

U. S. Bank National Association ("Lender") and the City of Bentonville, Arkansas ("Borrower") are entering into this Loan Agreement ("Agreement") as of April 14, 2022, upon the terms and conditions described below for the purpose of the Lender making two loans to the Borrower as follows: (i) a loan in the principal amount of $8,820,000 as evidenced by the Borrower's Combined Electric, Water and Sewer System Refunding and Storm Recovery Revenue Bond, Taxable Series 2022A (the "Series 2022A Taxable Bond") and (ii) a loan in the principal amount of $3,435,000 as evidenced by the Borrower's Combined Electric, Water and Sewer System Refunding and Storm Recovery Revenue Bond, Series 2022B (the "Series 2022B Bond").

1. Definitions

For purposes of this Agreement, the following capitalized terms shall have the following meanings, unless the context clearly requires otherwise:

"Bonds" means collectively, the Series 2022A Taxable Bond and the Series 2022B Bond.

"Borrower's Certificate" means the certificate, in form and content satisfactory to the Lender, to be delivered by the Borrower upon delivery of the Bonds.

"Business Day" means any day of the week other than a Saturday, Sunday, or a day on which the Lender is not open for normal business transactions.

"Closing" means the date of the execution and delivery of the Bonds.

"Code" means the Internal Revenue Code of 1986, as amended, and as it exists on the dated date of this Agreement.

"Event of Default" means an event set forth in Section 22 of the Ordinance.

"Lender" means U.S. Bank National Association and its legal successors or assignees.

"Ordinance" means Ordinance No. _____, adopted on_____, 2022 by the City Council of the Borrower, authorizing the issuance of the Bonds.

"System" means the Borrower's combined electric, water and sewer system.

2. Terms

The Lender hereby agrees to lend $8,820,000 to the Borrower through the purchase of the Series 2022A Taxable Bond at a purchase price of par, subject to the terms and conditions contained in this Agreement and in the Ordinance.

The Lender hereby agrees to lend $3,435,000 to the Borrower through the purchase of the Series 2022B Bond at a purchase price of par, subject to the terms and conditions contained in this Agreement and in the Ordinance.

The Borrower agrees to repay the principal amount of the Bonds in accordance with the terms and at the interest rates set forth in Schedule A to this Agreement. The Bonds may be prepaid at the option of the Borrower prior to maturity on any business day, subject to 10 business days' notice to the Lender.

1. Security. The Bonds shall be equally and ratably secured by a lien on revenues derived from the System (the "Pledged Revenues"). The Borrower has reserved the right in the Ordinance to issue additional bonds on a parity with the Bonds. The Bonds and interest thereon shall not constitute an indebtedness of the Borrower within any constitutional or statutory limitation. The Bonds shall never give rise to a charge against the Borrower's general credit or taxing power and no funds derived from the Borrower's taxes are pledged to pay the Bonds. Nothing herein shall require the Borrower to pay the principal of and interest on the Bonds from sources other than the Pledged Revenues, but nothing herein shall prohibit the Borrower from doing so.

2. Closing. The Lender shall purchase the Bonds upon satisfaction of the conditions specified in Section 5 below.

3. Default and Remedies. If an Event of Default occurs, the Lender may exercise any remedy available to it pursuant to Section 22 of the Ordinance.

4. Fees, Costs and Expenses

(a) Fees and Costs. The Borrower shall pay the fees and costs of bond counsel, and any other expenses and costs which the Borrower incurs in connection with the execution and delivery of the Bonds.

(b) The Borrower shall reimburse the Lender up to a total of $500 for all out of pocket expenses, including setup fees for each Bond. The Borrower shall also reimburse the Lender up to $5,000 for fees of Lender's counsel.

(c) Costs of Enforcement. If a Payment Default occurs and is continuing, and the Lender incurs any expenses in connection with enforcing this Agreement or the Bonds or if the Borrower takes collection action under this Agreement or the Bonds, the Borrower shall pay to the Lender, on demand, the Lender's reasonable costs and reasonable attorneys' fees, whether at trial, on appeal or otherwise, including any allocated costs of in-house counsel, subject to a limit of $10,000.

5. Closing/Funding Conditions. The Lender may refuse to advance funds under this Agreement and the Bonds unless, on or prior to the date of Closing, the Lender shall have received:

(a) a certified copy of the Ordinance, a signed original of this Agreement, the Bonds, and the Borrower’s Certificate;

(b) an opinion of Bond Counsel that (i) the Ordinance, this Agreement, and the Bonds are valid and legally binding obligations of the Borrower, enforceable against the Borrower in accordance with their terms, (b) the interest payable on the Series 2022B Bond is excludable from gross income for federal income tax purposes under the Code and for State of Arkansas income tax purposes, and (c) the Series 2022B Bond is a "qualified tax-exempt obligation" under Section 265(b) of the Code;

(c) a copy of the audited financial statements of the System for the past three years that are available and its adopted budget for the current year; and

(d) such additional legal opinions, certificates, proceedings, instruments or other documents as the Lender, its counsel or the Borrower's counsel may reasonably request to evidence compliance by the Borrower with the legal requirements for execution and delivery of this Agreement and the Bonds and the due performance or satisfaction by the Borrower of all agreements then to be performed and all conditions then to be satisfied by the Borrower.

6. Notices. Any notices required to be given pursuant to this Agreement or the Bonds shall be given to the appropriate address shown on Schedule A hereto.

7. Assignment by Lender. The Lender may assign the Bonds, but only as a whole, after notice in writing from the Lender to the City Clerk, as more particularly set forth in the Bonds.

8. Miscellaneous.

(a) No official statement or other disclosure document has been prepared in connection with this Agreement and the Borrower has no obligation in connection with this Agreement to provide any disclosure regarding operating information or material events to the Municipal Securities Rulemaking Board or any dissemination agent. The Borrower is obligated to provide information to the Lender in connection with this Agreement only as specifically stated in this Agreement.

(b) The Borrower shall provide the Lender, or provide notification of such repository where the Lender may reasonably obtain, annual audited financial statements of the System within 30 days of receipt thereof.

(c) The Borrower shall provide the Lender a copy of the System's final budget upon request, which request shall in no case be prior to 45 days after the end of the prior fiscal year.

(d) The Borrower shall provide the Lender financial or other information as may be reasonably requested from time to time.

(e) The Borrower shall promptly notify the Lender of any material adverse events related to the Bonds.

(f) The Borrower shall promptly notify the Lender upon any Event of Default related to the Bonds.

(g) The Borrower shall provide all information required for the Lender to comply with the Patriot Act, upon request.

(h) If a payment default has occurred and is continuing, subject to any cure period, the Borrower shall, to the extent allowed by Arkansas law, reimburse the Lender for reasonable costs incurred for enforcement or collection of the Bonds, subject to a limit of $10,000.

(i) The Borrower and the Lender mutually agree to waive their rights to a jury trial.

(j) The Bonds shall be registered in the name of the Lender, and shall not be registered with the Depository Trust Company or any other securities depository.

(k) The Bonds shall not be:

(i) assigned a separate rating by any rating agency;

(ii) assigned a CUSIP number by Standard & Poor's CUSIP service; or

(iii) issued pursuant to any offering document or official statement.

(l) All representations, warranties and agreements contained in this Agreement shall survive the execution, delivery and payment of the Bonds. This Agreement, the Ordinance and the Bonds shall constitute a contract between the Borrower and the Lender.

(m) The Lender may at any time pledge or grant a security interest in all or any portion of its rights under the Bonds and this Agreement to secure obligations of the Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release the Lender from any of its obligations hereunder or substitute any such pledgee or assignee for Lender as party hereto.

(n) This Agreement shall be governed and interpreted in accordance with the laws of the State of Arkansas.

(o) If any part of this Agreement is not enforceable, the rest of the Agreement may be enforced. The Lender retains all rights, even if it makes a loan after default. If the Lender waives a default, it may enforce a later default. Any consent or waiver under this Agreement must be in writing.

9. Counterparts. This Agreement may be executed simultaneously in several counterparts, each of which shall be an original and all of which shall constitute one and the same agreement.

DATED as of this 14th day of April, 2022.

U. S. BANK NATIONAL ASSOCIATION

By: _____

CITY OF BENTONVILLE, ARKANSAS

ATTEST:

By: _____
Mayor

By: _____
City Clerk

(SEAL)

SCHEDULE A

Loan Amounts:	$8,820,000 (Series 2022A Taxable Bond) $3,435,000 (Series 2022B Bond)
Closing Date:	April 14, 2022
Borrower:	City of Bentonville, Arkansas 305 SW A Street Bentonville, Arkansas 72712 Attention: Mayor
Lender:	U. S. Bank National Association U. S. Bank Tower Cincinnati 425 Walnut St. Cincinnati, Ohio 45201
Principal Payment Dates:	October 15, 2022, and on each October 15 thereafter (Series 2022A Taxable Bond) October 15, 2022, and on each October 15 thereafter (Series 2022B Bond)
Interest Payment Dates:	October 15, 2022, and on each April 15 and October 15 thereafter (Series 2022A Taxable Bond) October 15, 2022, and on each April 15 and October 15 thereafter (Series 2022B Bond)
Maturity Dates:	October 15, 2028 (Series 2022A Taxable Bond) October 15, 2028 (Series 2022B Bond)
Interest Rates:	2.44% (Series 2022A Taxable Bond) 2.01% (Series 2022B Bond)
Prepayment:	The Bonds may be prepaid at the option of the Borrower prior to maturity on any business day, subject to 10 business days' notice to the Lender.
Rate Covenant:	125% of the annual debt service for all System Bonds (as defined in the Ordinance), for the then current fiscal year
Bond Counsel:	Friday, Eldredge & Clark, LLP 400 West Capitol Avenue, Suite 2000 Little Rock, Arkansas 72201
Bank Counsel:	David M. Field Chapman and Cutler LLP 111 West Monroe St. Chicago, Illinois 60603 Direct: 312-845-3792 Mobile: 312-363-9170 Fax: 312-516-1992

Municipal Advisor:	Stephens Inc. 111 Center Street, Suite 2300 Little Rock, Arkansas Attention: Public Finance
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