



**Revised Agenda:
Revised Items 5i(1), 5i(2), 5k,
7c, 7d, 7e, 7f, 9, 10, 13 & 16.**

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.

**Regular City Council Meeting
City Hall
Planning Commission Meeting Room**

**Tuesday, May 23, 2023 6:00 p.m.
305 S.W. “A” Street**

***If the public would like to attend virtually, please register at the following link by 4:00 p.m. on May 23, 2023:**

https://us02web.zoom.us/webinar/register/WN_QquuBgHUTPGol5j1BmNwqg

**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: May 9, 2023**

AGENDA

1. Recognition of artists selected for the Seasons of Bentonville commemorative Bentonville 150 calendar. **(Page 8)**
2. Proclamation presented to recognize “Emergency Medical Services Week” in Bentonville, Arkansas. **(Page 9)**

3. Proclamation presented to recognize “National Drug Court Month” in Bentonville, Arkansas. (Page 10)

4. ARPA Update.

5. Planning:

5a. **Ordinance accepting a Lot Split of Lots 10, 11, & 12, Block 16 of Demings 2nd Addition; creating new Lots 15 & 16 of Demings 2nd Addition to the City of Bentonville, Arkansas; and for other purposes. (Project Number: LS21-0061) 300/302/308/310 Northwest 5th Street.** (Pages 17-19)

The Planning Commission voted 5-0, recommending approval.

A lot split of Lots 10, 11, & 12, Block 16 of Demings 2nd Addition; creating new Lots 15 & 16 of Demings 2nd Addition. The Plat dedicates utility easements along the southern and eastern property lines and public right-of-way along NW 5th Street and NW B Street.

5b. **Ordinance accepting a Lot Split of Lots 35, 36, & 37 of Skyview Acres Subdivision; creating new Lots 53-58 of Skyview Acres Subdivision to the City of Bentonville, Arkansas; and for other purposes. (Project Number: LS22-0034) 1102/1104/1106 Lockheed Street.** (Pages 20-22)

The Planning Commission voted 5-0, recommending approval.

A lot split of Lots 35, 36, & 37 of Skyview Acres Subdivision; creating new Lots 53-58 of Skyview Acres Subdivision. The Plat dedicates public right-of-way along Lockheed Street.

5c. **Ordinance accepting a Lot Split of unplatted section land; creating new Lot 1 of MCDC 5430 Addition to the City of Bentonville, Arkansas; and for other purposes. (Project Number: LS23-0009) 201 South Walton Boulevard.** (Pages 23-25)

The Planning Commission voted 5-0, recommending approval.

A lot split of unplatted section land; creating new Lot 1 of MCDC 5430 Addition. The Plat dedicates utility easements along the western property line and public right-of-way along SW 2nd Street.

5d. **Ordinance accepting a Lot Split of sectional land; creating new Lots 1 & 2 of Mckissic Springs Addition to the City of Bentonville, Arkansas; and for other purposes. (Project Number: LS23-0019) South Vaughn Road and Motley Road.** (Pages 26-30)

The Planning Commission voted 5-0, recommending approval.

A lot split of of sectional land; creating new Lots 1 & 2 of Mckissic Springs Addition. The Plat dedicates various utility easements and adequate public right-of-way per the Master Street Plan.

- 5e. **Ordinance accepting a Lot Split of Lot 27 of Huffman's Addition; creating new Lots 29 & 30 of Huffman's Addition to the City of Bentonville, Arkansas; and for other purposes. (Project Number: LS23-0023) 205 Northwest D Street.**

(Pages 31-33)

The Planning Commission voted 5-0, recommending approval.

A lot split of of Lot 27 of Huffman's Addition; creating new Lots 29 & 30 of Huffman's Addition. The Plat dedicates additional utility easement the eastern property line.

- 5f. **Ordinance accepting a Lot Split of Replatted Lot 2 and Replatted Lot 3, Block 2 of W.A. Burks Addition; creating new Lots 35-39, Block 2 of W.A. Burks Addition to the City of Bentonville, Arkansas; and for other purposes. (Project Number: LS23-0024) 1004/1006 Northwest A Street.**

(Pages 34-36)

The Planning Commission voted 5-0 recommending approval.

A lot split of Replatted Lot 2 and Replatted Lot 3, Block 2 of W.A. Burks Addition; creating new Lots 35-39, Block 2 of W.A. Burks Addition. The Plat dedicates a utility easement along the western property line.

- 5g. **Ordinance accepting a Lot Split of Lot 1 Gateway North Subdivision; creating new Lots 2 and 3, of Gateway North Subdivision to the City of Bentonville, Arkansas; and for other purposes. (Project Number: LS23-0025) 4300 Southwest Rainbow Farm Road.**

(Pages 37-42)

The Planning Commission voted 5-0 recommending approval.

A lot split of existing Lot 1 of Gateway North Subdivision, creating new Lots 2 and 3 of Gateway North Subdivision. The plat dedicates various utility and drainage easements to serve the newly created lots. Per the Master Street Plan requirements right-of-way is adequate along Southwest Rainbow Farm Road. Additionally, there are several private access easements shown on the plat to be dedicated by separate documents that will serve the newly created lots and provide cross access between the lots.

- 5h. **Ordinance accepting a Lot Split of Lots 30-32 W.A. Burk's Addition; creating new Lots 33-38, Block 6, of W.A. Burk's Addition to the City of Bentonville, Arkansas; and for other purposes. (Project Number: LS23-0026) 1137-1151 Northeast Monroe Street.**

(Pages 43-45)

The Planning Commission voted 5-0 recommending approval.

A lot split of Lots 30-32, Block 6 of W.A. Burk's Addition, creating new Lots 33-38 Block 6 of W.A. Burk's Addition. The plat creates 6 lots that split 3 single-family attached structures into their respective units. No new dedications, variances, or waivers are associated with this plat.

- 5i(1). **Resolution amending the City of Bentonville Future Land Use Map for a specific area from Residential Estate to Low Density Residential; and**

for other purposes. (Project Number: RZ23-0028) 801 Southwest Elm Tree Road.

(Pages 46-50)

The Planning Commission voted 5-0 recommending approval.

The Future Land Use Plan depicts this property as Residential Estates (RE) and is surrounded by Agriculture, with a few Low-density residential to the south. Low-density residential areas include detached single-family residential properties with a typical density of 3-8 units per acre. While lot size and overall density may vary from one part of the city to another, these areas represent the predominant form of residential development in Bentonville. These areas may also include local amenities for residents, including neighborhood parks, places of worship, etc.

- 5i(2). **Ordinance changing real estate in the City of Bentonville, Arkansas, from its present zoning classification of A-1, Agricultural to R-1, Low Density Single Family Residential; and for other purposes. (Project Number: RZ23-0028) 801 Southwest Elm Tree Road.**

(Pages 46-52)

The Planning Commission voted 5-0, recommending approval.

This property is currently zoned A-1, Agricultural. It contains an existing single-family home with a detached garage. Adjacent zonings are all either A-1, Agricultural or R-1, Low-density Single Family Residential. The intent of the R-1 District is to serve low density developments in which housing is generally of the highest value and where strict separation of land uses is desired. Since R-1 Districts are separated from all commercial and industrial activity, access to connecting traffic arteries is essential.

The proposed zoning of R-1 is not consistent with the Future Land Use Plan but it is consistent with the uses of the surrounding zoning districts and compatible with surrounding development patterns in this area of the city, which lends support to the request. While the proposed zoning lines do not align with actual property lines, the applicant has submitted a lot split for the property that will establish the actual property lines of which the zoning lines will then follow.

- 5j. **Ordinance changing real estate in the City of Bentonville, Arkansas, from its present zoning classification of C-1, Neighborhood Commercial to C-2, General Commercial; and for other purposes. (Project Number: RZ23-0032) 1906 SW 14th Street.**

(Pages 53-57)

The Planning Commission voted 4-1, recommending approval.

This property is currently zoned C-1, Neighborhood Commercial. It contains an existing single-family home with a street facing garage. Adjacent zonings are all Commercial, apart from an undeveloped parcel to the north zoned A-1, Agriculture. Although no residential development is directly adjacent to the site in question, there is a large amount of single-family housing to the north that would serve to benefit from more accessible day to day services and retail options nearby.

The Future Land Use Plan depicts this property as Commercial (C) with one adjacent property designated as Residential Estate to the north, and all other adjacent properties sharing the Commercial Future Land Use designation. Commercial areas include uses that serve both nearby residents and those coming from other parts of the city or region. Appropriate uses in these areas include retail, restaurants, services, and offices. Vertical mixed-use developments are encouraged

but are not as high a priority as in mixed-use or downtown commercial areas. General commercial uses should balance access between pedestrians and vehicles, though the impacts of parking should be minimized through site design and landscaping. This property is located within Priority Area 2, Infill, as outlined in chapter 4 of the Bentonville Community Plan. Development in this area supports the development of vacant properties already served by infrastructure within the context of existing development.

The requested C-2 district represents the least restrictive of the commercial districts and is designed to serve the planning area and highway travelers. This district shall congregate on local arterial streets in such a manner as to minimize disruptions of through traffic and shall be interspersed within the corporate boundaries. The proposed zoning of C-2, General Commercial is consistent with the Future Land Use Plan as well as nearby development patterns along SW 14th Street.

- 5k. **Ordinance accepting a Lot Split of unplatted land; creating new Lots 1 and 2 of 8th and Elm Subdivision to the City of Bentonville, Arkansas; and for other purposes. (Project Number: LS23-0016) SW 8th Street and SW Elm Tree Road.**

(Pages 58-62)

The Planning Commission voted 5-0, recommending approval.

A lot split of an existing 15.03-acre lot into two lots; Lot 1 of 8th & Elm Tree Subdivision (0.51 acres) and Lot 2 of 8th & Elm Tree Subdivision (14.16 acres). The applicant has also made concurrent rezoning and future land use map amendment requests (RZ23-0028) for this property to be classified as Low-Density Residential future land use and rezoned from A-1, Agriculture to R-1, Low Density Single Family Residential.

The plat dedicates a 20-foot-wide private ingress/egress easement along the southern edge of Lot 1, in addition to dedicating 15,604.16 Sq. Ft. or 0.36 Acres of right of way along the east of Southwest Elm Tree Road for a total of 45 ft of right-of-way on the east side, as required per the Bentonville Master Street Plan.

6. An appeal by Ecological Design Group, representing Lucatoni, LLC, of Planning Commission approval of a Rezoning Request from R-1, Low-Density Single-Family Residential to DN-2, Downtown Medium-Density Residential for property located at 411 NW C Street. The applicant is appealing in order to request approval of their original rezoning request from R-1, Low-Density Single-Family Residential to DN-3, Downtown High-Density Residential.

(Pages 63-75)

7. Utility Board:

- 7a. Resolution for City Council approval of agreement with SPMR, LLC to replace our legacy manual meter reading system, with the next generation solution using Android cell phones and cloud storage. This item was approved by the Utility Board 5-0. No budget adjustment is needed.

(Pages 76-83)

- 7b. Ordinance waiving the requirements for competitive bidding and entering into an agreement with AECl to purchase 3 phase transformers for \$475,915.00 plus applicable taxes. Because of market volatility and lead times related to these products, it would be neither practical nor feasible to advertise for competitive bidding. Approved by Utility Board 5-0.

(Pages 84-87)

- 7c. Ordinance for City Council approval accepting a budget adjustment and waiving competitive bidding to purchase (4) replacement RAS pumps from Jack Tyler Engineering Inc, in the amount of \$98,506.20. Due to Jack Tyler Engineering, Inc. being the sole source distributor for Flygt in Arkansas, it is not practical or feasible to solicit competitive bidding. A budget adjustment is needed to appropriate unused budgeted funds from capital-vehicles to capital-machinery and equipment and utility fund reserves. Utility Board Approved 5-0.
(Pages 88-95)
- 7d. Ordinance for City Council approval to waive competitive bidding to purchase upgraded Mission RTUs from Bertrem Products, Inc. in the amount of \$142,173.16 and declare (63) Mission Communication RTU micro-processors (M110/M800) of the City's lift station alarm system as surplus. A budget adjustment was included in the previous item to appropriate the remaining unused budgeted funds from capital-vehicle to capital-machinery and equipment. Utility Board Approved 5-0.
(Pages 96-106)
- 7e. Resolution for City Council approval to enter into an agreement with Denali Water Solutions, LLC for the legal transportation and documented disposal of mechanically dewatered, Class B biosolids produced at the wastewater treatment plant, at a per unit price. Denali was the sole submission received. No Budget Adjustment is needed. Utility Board approved 5-0.
(Pages 107-111)
- 7f. Resolution to award Bid IFB-23-36 to Brenntag Mid-South for Praestol 279 FLX Cationic Water-Soluble Polymer, at a delivered per liquid pound price. This was the sole submission received. No Budget Adjustment is needed. Utility Board approved 5-0.
(Pages 112-115)
8. Ordinance approving a change to the pay plan to upgrade one Accounting Specialist II position to an Accountant position. There is no additional headcount or budget adjustment associated with this position.
(Pages 116-118)
9. Ordinance amending the 2023 Pay Plan and approving a budget adjustment in the amount of \$985,168.44 for the Bentonville Police Department pay adjustment. A budget adjustment is required for salary increases.
(Pages 119-125)
10. Resolution recognizing a budget adjustment in the amount of \$1,236.48 for a donation from the Rotary Club of Bentonville. Budget adjustment needed for recognizing revenue to expense account.
(Pages 126-128)
11. Resolution to declare the Bentonville Police Department's Computer Voice Stress Analyzer (CVSA) computer (Dell Latitude 5480; MFG YR 2017; S/N CKQ4GH2) as surplus and make it available as part of the offered trade-in program by NITV Federal Services. No budget adjustment is needed.
(Pages 129-133)
12. Resolution approving Budget Adjustment recognizing an insurance payment for a totaled police department vehicle from the Arkansas Municipal League (ARML) in the amount of \$27,425.00 and declaring the totaled vehicle as surplus property. A Budget Adjustment is needed to accept the insurance payment.
(Pages 134-136)
13. Resolution approving a budget adjustment in the amount of \$16,147.50 to recognize the final 3 officers that were eligible for the full-time Law Enforcement Officer Salary Stipend (Act 224 of 2022). These funds have been dispersed to the City of Bentonville by the Department of Finance and Administration on May 5,

2023 and consist of a \$5,000.00 payment and an additional \$382.50 per officer for Medicare and Social Security taxes. Note: each department within the State is responsible providing all documents to the Commission of Law Enforcement Standards and Training (CLEST) to verify officers meet eligibility requirements. This is not a budgeted item. **(Pages 137-140)**

14. Public hearing and ordinance vacating a Drainage Easement Vacation requested for Lot 18 of Rainbow Junction-Bentonville Subdivision (VAC23-0008). **(Pages 141-146)**
15. Public hearing and ordinance vacating a Utility Easement Vacation requested for Lot 3 of Cross Creek Subdivision Phase 2 (VAC23-0009). **(Pages 147-150)**
16. Resolution setting a Public Hearing for June 13, 2023 for a Right of Way Vacation requested for Lots 1 - 6, Block 9 of W.A. Burk's Addition (VAC23-0010). **(Pages 151-153)**
17. Resolution authorizing the Mayor and City Clerk to enter into a professional services agreement with Crossland Construction, in the amount of \$16,500.00, to provide preconstruction services for the development of the parks maintenance facility. No budget adjustment is needed. **(Pages 154-228)**
18. Resolution authorizing Mayor and City Clerk to enter into a professional services agreement with Flincto LLC, in the amount of \$35,000.00 plus reimbursable expenses, to provide preconstruction services for the development of the Adult Recreation Center. No budget adjustment is needed. **(Pages 229-309)**
19. Ordinance amending the 2023 Pay Plan and approving a Budget Adjustment by moving \$167,390.88 from account 105030-41110 Part Time Salaries to Full Time Salaries/Wages. This will create six new full time positions with monies from unused budgeted part time salaries. A budget adjustment is needed to appropriate the already budgeted funds. **(Pages 310-320)**
20. Resolution authorizing the Mayor to enter into a grant agreement with the Walton Family Foundation, in the amount of \$1,502,800.00, funding the design of the 8th Street Gateway Park Project and entering into an amended contract with Port for said design. A budget adjustment is needed to recognize grant funds. **(Pages 321-369)**
21. Bentonville Animal Services requests approval of a budget adjustment, in the amount of \$50,949.43, for Furniture, Fixtures and Equipment (FF&E) costs for the new Animal Services Adoption Center. Though this has been included in the overall project cost, the funds were never formally moved into the correct expense account. A budget adjustment is needed. **(Pages 370-373)**
22. Bentonville Animal Services requests approval of a Resolution for final closeout change order, deducting \$536.39 from the final contract and allowing for the project to be finalized and closed out. No budget adjustment is needed. **(Pages 374-378)**
23. Resolution authorizing the Mayor and City Clerk to enter into a Software Agreement with Heartland Business Systems for cyber security monitoring services including managed detection and response in the amount of \$163,235.61. This is a 2023 budgeted item. **(Pages 379-383)**



Agenda Item Form

Date of City Council Meeting	5/23/2023
Department	Planning
Submitted by	Shelli Kerr
Phone	(479)271-6822

Item Type: (Check Applicable Item Type)					
☐ Budget Adjustment	☐ Change Order	☒ Informational	☐ Ordinance	☐ Resolution	☐ Bid Award
Recommendation/Suggested Action (Enter recommendation in space below):					
Recognition of artists selected for the Seasons of Bentonville commemorative Bentonville 150 calendar.					

Estimated Cost	0
Is this Item Budgeted?	☐ Yes ☒ No
If no, please explain how item will be funded (briefly explain in space below) :	



PROCLAMATION

WHEREAS: Emergency Medical Services is a vital public service; and

WHEREAS: The members of emergency medical services teams are ready to provide lifesaving care to those in need 24 hours a day, seven days a week; and

WHEREAS: Access to quality emergency care dramatically improves the survival and recovery rate of those who experience sudden illness or injury; and

WHEREAS: The emergency medical services system consists of emergency physicians, emergency nurses, emergency medical technicians, paramedics, firefighters, first responders, educators, administrators and others; and

WHEREAS: The members of emergency medical services teams, whether career or volunteer, engage in thousands of hours of specialized training and continuing education to enhance their lifesaving skills, and

WHEREAS: It is appropriate to recognize the value and the accomplishments of emergency medical services providers by designating Emergency Medical Services Week.

NOW, THEREFORE, I Stephanie Orman, Mayor of the City of Bentonville do hereby proclaim the week of May 21-27, 2023 as “**Emergency Medical Services Week**” in the City of Bentonville, Arkansas. With the theme, “EMS: Rising to the Challenge”, I encourage the community to observe this week with appropriate programs, ceremonies and activities.

Given this 23rd day of May, 2023, in Bentonville, in the great State of Arkansas, in the United States of America.



[Redacted Signature]
Stephanie Orman, Mayor
City of Bentonville

PROCLAMATION

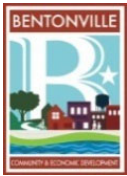
- WHEREAS:** 2023 marks the 34th anniversary of treatment courts; and
- WHEREAS:** There are now more than 4,000 treatment courts nationwide; and
- WHEREAS:** Treatment Courts are the cornerstone of justice reform sweeping the nation; and
- WHEREAS:** Treatment Courts have served over 1.5 million individuals; and
- WHEREAS:** Treatment Courts are now recognized as the most successful criminal justice intervention in our nation's history; and
- WHEREAS:** City of Bentonville is in the 12th year of our DWI Court program, having had 58 participants in the program and 28 graduates to date. The graduates represent 600+ hours of treatment; and
- WHEREAS:** Treatment Courts save an average of \$6,000 for every individual they serve; and
- WHEREAS:** Treatment Courts reduce crime and significantly improve substance use treatment outcomes at less expense than any other criminal justice strategy; and
- WHEREAS:** Treatment Courts improve education, employment, housing and financial stability, promote family reunification, reduce foster care placements and increase the rate of addicted mothers delivering babies who are fully drug free; and
- WHEREAS:** Treatment Courts facilitate community-wide partnerships, bringing together public safety and public health professionals in the fight against addiction and crime; and
- WHEREAS:** Treatment Courts demonstrate that when one person rises out of addiction and crime, we all rise.

NOW, THEREFORE, I Stephanie Orman, Mayor of the City of Bentonville do hereby proclaim the month of May, 2023, as "**National Drug Court Month**" in the City of Bentonville, Arkansas, in honor of the Treatment Courts, the team members and the participants who strive to address substance abuse and keep our City and citizens safe.

Given this 23rd day of May, 2023, in Bentonville, in the great State of Arkansas, in the United States of America.


Stephanie Orman, Mayor
City of Bentonville





City Council Agenda Items
For the City Council Meeting of May 23, 2023
From the May 16, 2023 Planning Commission Meeting

1. **Ordinance accepting a Lot Split of Lots 10, 11, & 12, Block 16 of Demings 2nd Addition; creating new Lots 15 & 16 of Demings 2nd Addition to the City of Bentonville, Arkansas; and for other purposes. (Project Number: LS21-0061) 300/302/308/310 Northwest 5th Street.**

The Planning Commission voted 5-0, recommending approval.

A lot split of Lots 10, 11, & 12, Block 16 of Demings 2nd Addition; creating new Lots 15 & 16 of Demings 2nd Addition. The Plat dedicates utility easements along the southern and eastern property lines and public right-of-way along NW 5th Street and NW B Street.

2. **Ordinance accepting a Lot Split of Lots 35, 36, & 37 of Skyview Acres Subdivision; creating new Lots 53-58 of Skyview Acres Subdivision to the City of Bentonville, Arkansas; and for other purposes. (Project Number: LS22-0034) 1102/1104/1106 Lockheed Street.**

The Planning Commission voted 5-0, recommending approval.

A lot split of Lots 35, 36, & 37 of Skyview Acres Subdivision; creating new Lots 53-58 of Skyview Acres Subdivision. The Plat dedicates public right-of-way along Lockheed Street.

3. **Ordinance accepting a Lot Split of unplatted section land; creating new Lot 1 of MCDC 5430 Addition to the City of Bentonville, Arkansas; and for other purposes. (Project Number: LS23-0009) 201 South Walton Boulevard.**

The Planning Commission voted 5-0, recommending approval.

A lot split of unplatted section land; creating new Lot 1 of MCDC 5430 Addition. The Plat dedicates utility easements along the western property line and public right-of-way along SW 2nd Street.

4. **Ordinance accepting a Lot Split of sectional land; creating new Lots 1 & 2 of Mckissic Springs Addition to the City of Bentonville, Arkansas; and for other purposes. (Project Number: LS23-0019) South Vaughn Road and Motley Road.**

The Planning Commission voted 5-0, recommending approval.

A lot split of of sectional land; creating new Lots 1 & 2 of Mckissic Springs Addition. The Plat dedicates various utility easements and adequate public right-of-way per the Master Street Plan.

5. **Ordinance accepting a Lot Split of Lot 27 of Huffman's Addition; creating new Lots 29 & 30 of Huffman's Addition to the City of Bentonville, Arkansas; and for other purposes. (Project Number: LS23-0023) 205 Northwest D Street.**

The Planning Commission voted 5-0, recommending approval.

A lot split of of Lot 27 of Huffman's Addition; creating new Lots 29 & 30 of Huffman's Addition. The Plat dedicates additional utility easement the eastern property line.

- 6. Ordinance accepting a Lot Split of Replatted Lot 2 and Replatted Lot 3, Block 2 of W.A. Burks Addition; creating new Lots 35-39, Block 2 of W.A. Burks Addition to the City of Bentonville, Arkansas; and for other purposes. (Project Number: LS23-0024) 1004/1006 Northwest A Street.**

The Planning Commission voted 5-0 recommending approval.

A lot split of Replatted Lot 2 and Replatted Lot 3, Block 2 of W.A. Burks Addition; creating new Lots 35-39, Block 2 of W.A. Burks Addition. The Plat dedicates a utility easement along the western property line.

- 7. Ordinance accepting a Lot Split of Lot 1 Gateway North Subdivision; creating new Lots 2 and 3, of Gateway North Subdivision to the City of Bentonville, Arkansas; and for other purposes. (Project Number: LS23-0025) 4300 Southwest Rainbow Farm Road.**

The Planning Commission voted 5-0 recommending approval.

A lot split of existing Lot 1 of Gateway North Subdivision, creating new Lots 2 and 3 of Gateway North Subdivision. The plat dedicates various utility and drainage easements to serve the newly created lots. Per the Master Street Plan requirements right-of-way is adequate along Southwest Rainbow Farm Road. Additionally, there are several private access easements shown on the plat to be dedicated by separate documents that will serve the newly created lots and provide cross access between the lots.

- 8. Ordinance accepting a Lot Split of Lots 30-32 W.A. Burk's Addition; creating new Lots 33-38, Block 6, of W.A. Burk's Addition to the City of Bentonville, Arkansas; and for other purposes. (Project Number: LS23-0026) 1137-1151 Northeast Monroe Street.**

The Planning Commission voted 5-0 recommending approval.

A lot split of Lots 30-32, Block 6 of W.A. Burk's Addition, creating new Lots 33-38 Block 6 of W.A. Burk's Addition. The plat creates 6 lots that split 3 single-family attached structures into their respective units. No new dedications, variances, or waivers are associated with this plat.

- 9a. Resolution amending the City of Bentonville Future Land Use Map for a specific area from Residential Estate to Low Density Residential; and for other purposes. (Project Number: RZ23-0028) 801 Southwest Elm Tree Road.**

The Planning Commission voted 5-0 recommending approval.

The Future Land Use Plan depicts this property as Residential Estates (RE) and is surrounded by Agriculture, with a few Low-density residential to the south. Low-density residential areas include detached single-family residential properties with a typical density of 3-8 units per acre. While lot size and overall density may vary from one part of the city to another, these areas represent the predominant form of residential development in Bentonville. These areas may also include local amenities for residents, including neighborhood parks, places of worship, etc.

- 9b. Ordinance changing real estate in the City of Bentonville, Arkansas, from its present zoning classification of A-1, Agricultural to R-1, Low Density Single Family Residential; and for other purposes. (Project Number: RZ23-0028) 801 Southwest Elm Tree Road.**

The Planning Commission voted 5-0, recommending approval.

This property is currently zoned A-1, Agricultural. It contains an existing single-family home with a detached garage. Adjacent zonings are all either A-1, Agricultural or R-1, Low-density Single Family Residential. The intent of the R-1 District is to serve low density developments in which housing is generally of the highest value and where strict separation of land uses is desired. Since R-1 Districts are separated from all commercial and industrial activity, access to connecting traffic arteries is essential.

The proposed zoning of R-1 is not consistent with the Future Land Use Plan but it is consistent with the uses of the surrounding zoning districts and compatible with surrounding development patterns in this area of the city, which lends support to the request. While the proposed zoning lines do not align with actual property lines, the applicant has submitted a lot split for the property that will establish the actual property lines of which the zoning lines will then follow.

- 10. Ordinance changing real estate in the City of Bentonville, Arkansas, from its present zoning classification of C-1, Neighborhood Commercial to C-2 General Commercial; and for other purposes. (Project Number: RZ23-0032) 1906 SW 14th Street.**

The Planning Commission voted 4-1, recommending approval.

This property is currently zoned C-1, Neighborhood Commercial. It contains an existing single-family home with a street facing garage. Adjacent zonings are all Commercial, apart from an undeveloped parcel to the north zoned A-1, Agriculture. Although no residential development is directly adjacent to the site in question, there is a large amount of single-family housing to the north that would serve to benefit from more accessible day to day services and retail options nearby.

The Future Land Use Plan depicts this property as Commercial (C) with one adjacent property designated as Residential Estate to the north, and all other adjacent properties sharing the Commercial Future Land Use designation. Commercial areas include uses that serve both nearby residents and those coming from other parts of the city or region. Appropriate uses in these areas include retail, restaurants, services, and offices. Vertical mixed-use developments are encouraged but are not as high a priority as in mixed-use or downtown commercial areas. General commercial uses should balance access between pedestrians and vehicles, though the impacts of parking should be minimized through site design and landscaping. This property is located within Priority Area 2, Infill, as outlined in chapter 4 of the Bentonville Community Plan. Development in this area supports the development of vacant properties already served by infrastructure within the context of existing development.

The requested C-2 district represents the least restrictive of the commercial districts and is designed to serve the planning area and highway travelers. This district shall congregate on local arterial streets in such a manner as to minimize disruptions of through traffic and shall be interspersed within the corporate boundaries. The proposed zoning of C-2, General Commercial is consistent with the Future Land Use Plan as well as nearby development patterns along SW 14th Street.

11. Ordinance accepting a Lot Split of unplatted land; creating new Lots 1 and 2 of 8th and Elm Subdivision to the City of Bentonville, Arkansas; and for other purposes. (Project Number: LS23-0016) SW 8th Street and SW Elm Tree Road.

The Planning Commission voted 5-0, recommending approval.

A lot split of an existing 15.03-acre lot into two lots; Lot 1 of 8th & Elm Tree Subdivision (0.51 acres) and Lot 2 of 8th & Elm Tree Subdivision (14.16 acres). The applicant has also made concurrent rezoning and future land use map amendment requests (RZ23-0028) for this property to be classified as Low-Density Residential future land use and rezoned from A-1, Agriculture to R-1, Low Density Single Family Residential.

The plat dedicates a 20-foot-wide private ingress/egress easement along the southern edge of Lot 1, in addition to dedicating 15,604.16 Sq. Ft. or 0.36 Acres of right of way along the east of Southwest Elm Tree Road for a total of 45 ft of right-of-way on the east side, as required per the Bentonville Master Street Plan.



Consent Agenda Items

For the Planning Commission meeting on May 16, 2023

Reviewer: Jon Stanley, Senior Planner, ASLA, APA

- ❖ The descriptions below shall serve as the staff report for each of the proposed consent agenda items.

1. Lot Split: Lots 15 and 16 of Demings 2nd Addition, NFD LLC, Northwest 5th Street and Northwest B Street, R-3, Medium-High Density Residential, LS21-0061

A lot split of parts of Lots 10, 11, & 12 of Demings 2nd Addition, creating new Lots 15 and 16 of Demings 2nd Addition. The plat dedicates right-of-way along the 5th Street side to meet Master Street Plan requirements, as well as utility easements along both the 5th and B sides. No variances or waivers are associated with this plat.

2. Lot Split: Lots 53 and 58 of Skyview Acres Subdivision, Chen & Ehret Real Holdings, LLC, 1102, 1104 and 1106 Lockheed Street, R-2 Medium Density Two Family and Townhome, LS22-0034

A lot split of Lots 35, 36 and 37 of Skyview Acres Subdivision creating new Lots 53-58 of Skyview Acres Subdivision. The plat dedicates right-of-way per the requirements of the Master Street Plan. No variances or waivers are associated with this plat.

3. Lot Split: Lot 1 of MCDC 5430 Addition, McDonalds Corp #5430, 201 South Walton Boulevard, C-2, General Commercial, LS23-0009

A lot split of previously unplatted land, creating new Lot 1 of MCDC 5430 Addition. The plat dedicates right-of-way along the Southwest 2nd Street side to meet Master Street Plan requirements, as well as a 20' utility easement along South Walton Road. No variances or waivers are associated with this plat.

4. Lot Split: Lots 1 & 2 of McKissic Springs Subdivision, Buffington BW LLC, Southwest Vaughn Road, R-1, Low-Density Single Family Residential, LS23-0019

A lot split of previously unplatted land, creating new Lots 1 and 2 of McKissic Springs Subdivision. The plat dedicates right-of-way along the West, North, and East sides to meet Master Street Plan requirements, as well as utility easements along Vaughn Road and Access and Drainage Easements through the flood plain area. No variances or waivers are associated with this plat.

5. Lot Split: Lots 29 & 30 of Huffman's Addition, Freeman, Steven M & Julie P Trustees, 205 Northwest D Street, DN-1, Downtown Low Density Residential, LS23-0023

A lot split of Lot 27 of Huffman's Addition, creating new Lots 29 & 30 of Huffman's Addition. The plat dedicates right-of-way per the Master Street Plan as well as a utility easement along Northwest D. Both lots will have platted alley access. No variances or waivers are associated with this plat.

6. Lot Split: Lots 35 - 39, Block 2 of W.A. Burks Addition, Haney Enterprises LLC, 1004 and 1006 Northwest A Street, DN-2, Downtown Medium Density Residential, LS23-0024

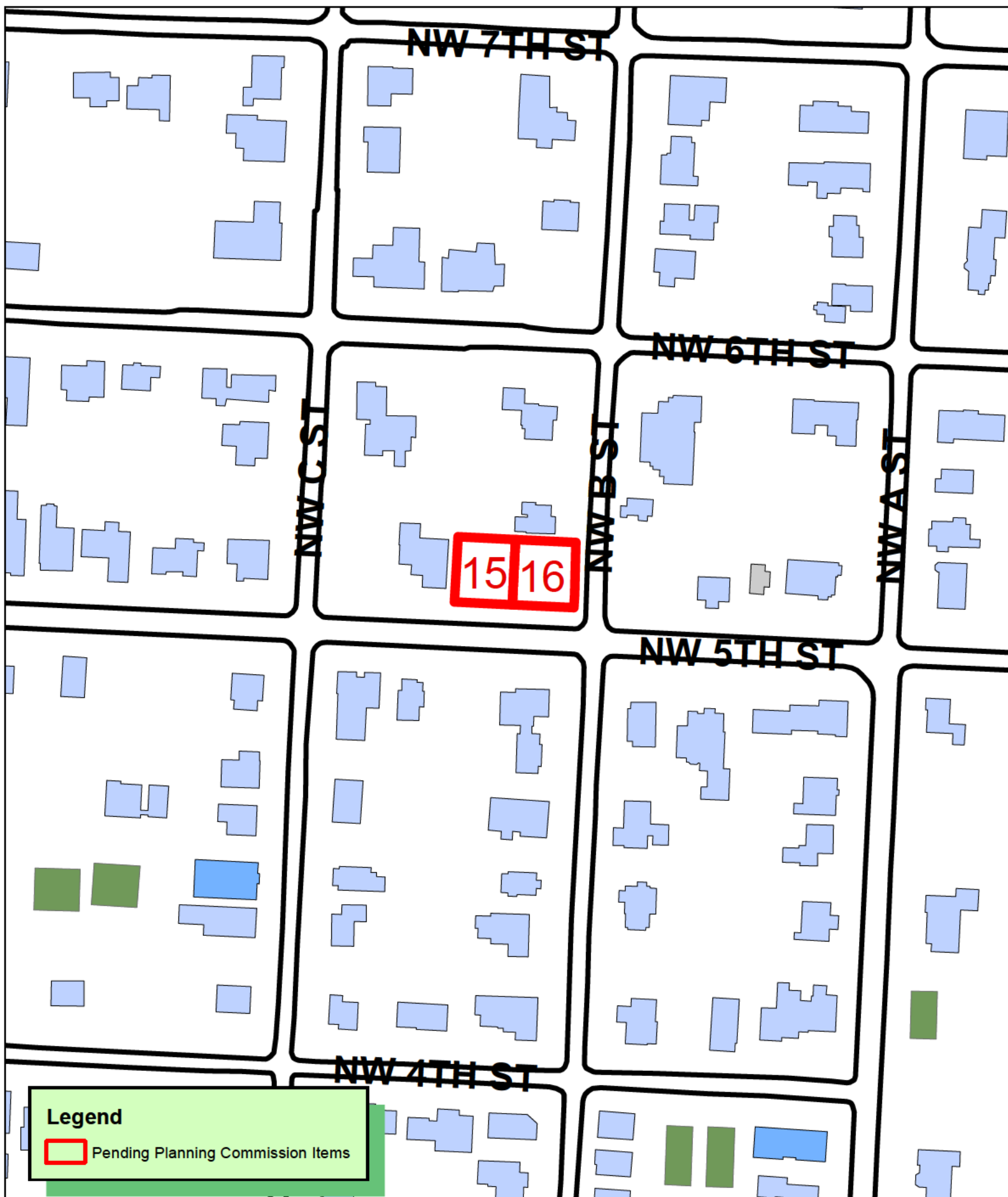
A lot split of existing Lots 1 & 2, Block 2 of W.A. Burks Addition, creating new Lots 35-39, Block 2 of W.A. Burks Addition. The plat dedicates a utility easement to serve the newly created lots. Per the Master Street Plan requirements right-of-way is adequate along NW A Street. All lots shall be rear entry and loaded from the alley to the east and or north. No lot shall have direct access to NW A Street since it is designated as a collector street on the Maser Street Plan.

7. Lot Split: Lots 2 and 3 of Gateway North Subdivision, Crossmar Industrial North 100 LLC, 4300 Southwest Rainbow Farm Road, I-1, Light Industrial, LS23-0025

A lot split of existing Lot 1 of Gateway North Subdivision, creating new Lots 2 and 3 of Gateway North Subdivision. The plat dedicates various utility and drainage easements to serve the newly created lots. Per the Master Street Plan requirements right-of-way is adequate along Southwest Rainbow Farm Road. Additionally, there are several private access easements shown on the plat to be dedicated by separate documents that will serve the newly created lots and provide cross access between the lots.

8. Lot Split: Lots 33-38 Block 6 of W.A. Burk's Addition, V3 Construction & Development LLC, 1137-1151 Northeast Monroe Street, DN-2, Downtown Medium Density Residential, LS23-0026

A lot split of Lots 30-32, Block 6 of W.A. Burk's Addition, creating new Lots 33-38 Block 6 of W.A. Burk's Addition. The plat creates 6 lots that split 3 single-family attached structures into their respective units. No new dedications, variances, or waivers are associated with this plat.



NW 7TH ST

NW 6TH ST

NW 5TH ST

NW 4TH ST

NW C ST

NW B ST

NW A ST

15 16

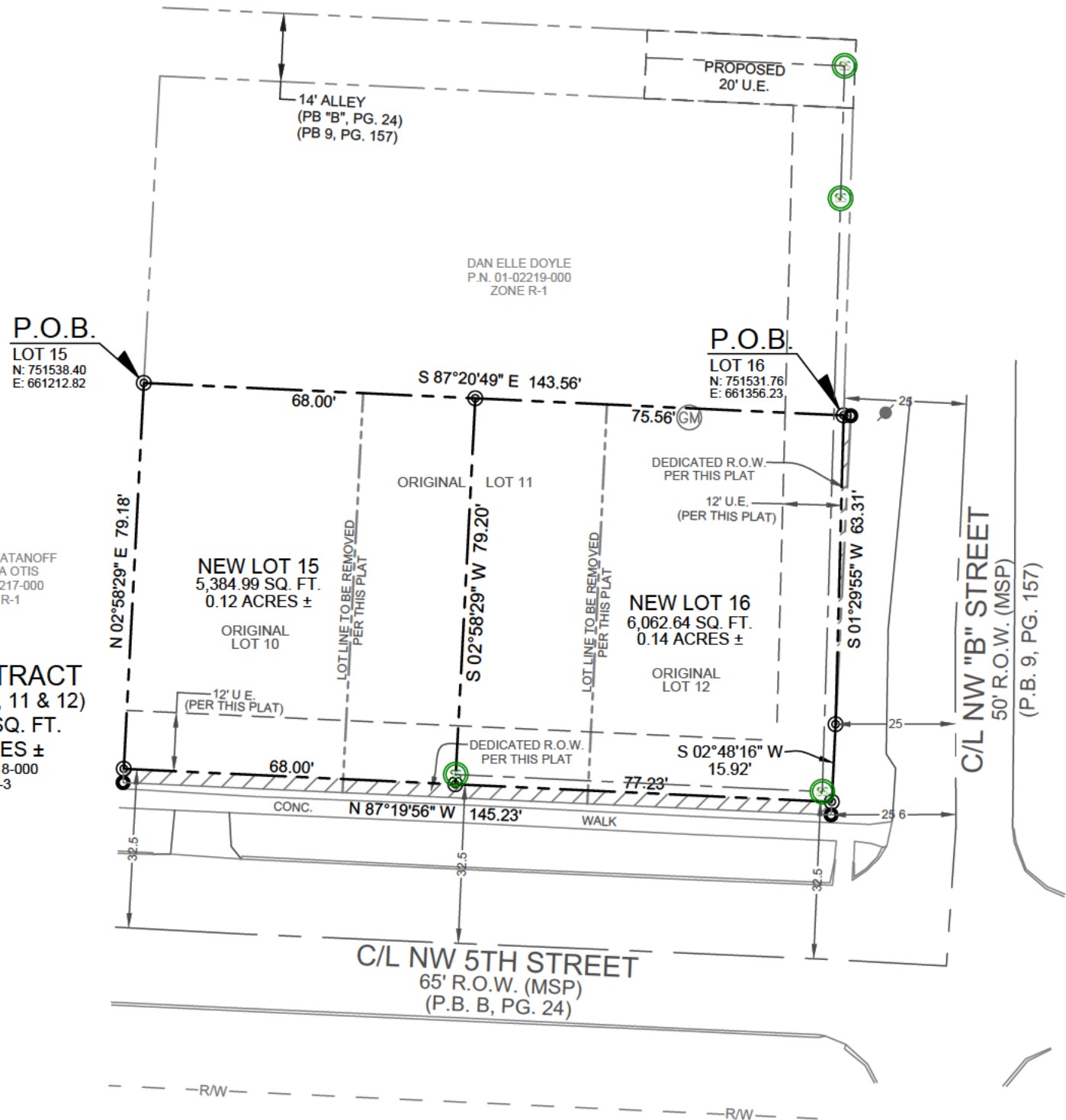
Legend
 Pending Planning Commission Items



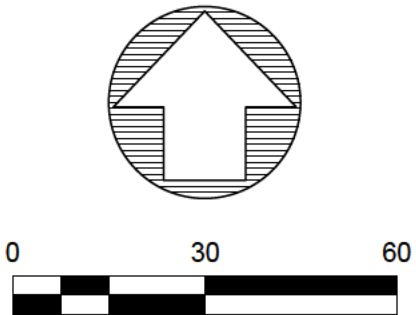
1 inch = 148 feet

LS21-0061
LOT SPLIT
DEMINGS 2ND ADDITION
LOTS 10-12 BLOCK 16 CREATING LOTS 15-16
17





- NOTES:
- EXCEPT AS SPECIFICALLY STATED OR SHOWN ON THIS PLAT, THIS SURVEY DOES NOT PURPORT TO REFLECT ANY OF THE FOLLOWING WHICH MAY BE APPLICABLE TO THE SUBJECT REAL ESTATE: EASEMENTS, OTHER THAN POSSIBLE EASEMENTS WHICH WERE VISIBLE AT THE TIME OF MAKING OF THIS SURVEY; BUILDING SETBACK LINES; RESTRICTIVE COVENANTS; SUBDIVISION RESTRICTIONS; ZONING OR OTHER LAND-USE REGULATIONS, AND ANY OTHER FACTS WHICH AN ACCURATE AND CURRENT TITLE COMMITMENT MAY DISCLOSE.
 - BASIS OF BEARINGS: ARKANSAS STATE PLANE COORDINATE SYSTEM, NORTH ZONE.
 - DEED REFERENCE: WARRANTY DEED BOOK L2021, PAGE 70361.
 - DECLARATION IS MADE TO ORIGINAL PURCHASER OF THE SURVEY. IT IS NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS.
 - THIS SURVEY IS VALID ONLY IF THE DRAWING INCLUDES THE SEAL AND SIGNATURE OF THE SURVEYOR.
 - SETBACKS SHALL BE PER THE CURRENT ZONING DISTRICT AS STATED IN THE MOST RECENT CITY OF BENTONVILLE ZONING CODE. FOR MORE INFO VISIT WWW.BENTONVILLEPLANNING.COM OR CALL THE PLANNING DEPARTMENT AT (479) 271-3122.
 - SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS OF RECORD, ENCUMBRANCES, RESTRICTIVE COVENANTS, OWNERSHIP, TITLE EVIDENCE, OR ANY OTHER FACTS WHICH AN ACCURATE AND CURRENT TITLE COMMITMENT MAY DISCLOSE.
 - SIDEWALKS SHALL BE THE RESPONSIBILITY OF THE BUILDER/OWNER AT TIME OF BUILDING PERMIT ISSUANCE.
 - THERE MAY NOT BE FENCES OR ANY OTHER STRUCTURES BUILT IN ANY DRAINAGE EASEMENTS.
 - OWNER/DEVELOPER SHALL COORDINATE WITH ALL LOCAL UTILITIES TO INSURE THAT EACH LOT HAS WATER, SEWER AND ELECTRIC SERVICE.
 - 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.
 - ALL STRUCTURES MUST MAINTAIN MINIMUM OF 20' CLEARANCES FROM ALL ELECTRIC LINES.



LEGEND

- FOUND PIPE
- FOUND REBAR
- ⊙ SET 1/2" REBAR W/CAP (LS #1370)
- SANITARY SEWER MANHOLE
- CLEAN-OUT
- WATER METER
- GM GAS METER
- UTILITY POLE
- SEWER LINE
- PROPERTY LINE
- RIGHT OF WAY LINE
- CENTERLINE
- EASEMENT LINE

OWNER INFORMATION
NFD LLC
501 NW "B" STREET
BENTONVILLE, AR 72712

PARENT TRACT:

PART OF LOTS 10, 11 AND 12, BLOCK 16 OF DEMINGS 2ND ADDITION, CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT BOOK 9, PAGE 157 OF THE BENTON COUNTY RECORDS.

NEW LOT 15 DESCRIPTION:

PART OF PART LOTS 10, 11 AND 12, BLOCK 16 OF DEMINGS 2ND ADDITION, CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT BOOK 9, PAGE 157 OF THE BENTON COUNTY RECORDS, AND BEING MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT THE NW CORNER OF SAID PART LOTS 10, 11 AND 12; THENCE S 87°20'49" E A DISTANCE OF 68.00 FEET; THENCE S 02°58'29" W A DISTANCE OF 79.20 FEET TO THE NORTH RIGHT-OF-WAY LINE OF NW 5TH STREET; THENCE ALONG SAID NORTH RIGHT-OF-WAY LINE N 87°19'56" W A DISTANCE OF 68.00 FEET; THENCE LEAVING SAID NORTH RIGHT-OF-WAY LINE N 02°58'29" E A DISTANCE OF 79.18 FEET; TO THE POINT OF BEGINNING, WITH AN AREA OF 5384.99 SQUARE FEET, OR 0.12 ACRES, MORE OR LESS, AND SUBJECT TO ALL RIGHTS-OF-WAY, EASEMENTS AND RESTRICTIVE COVENANTS OF RECORD OR FACT.

NEW LOT 16 DESCRIPTION:

PART OF PART LOTS 10, 11 AND 12, BLOCK 16 OF DEMINGS 2ND ADDITION, CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT BOOK 9, PAGE 157 OF THE BENTON COUNTY RECORDS, AND BEING MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT THE NE CORNER OF SAID PART LOTS 10, 11 AND 12; THENCE ALONG THE WEST RIGHT-OF-WAY LINE OF NW "B" STREET S 01°29'55" W A DISTANCE OF 63.31 FEET; THENCE CONTINUING ALONG SAID WEST RIGHT-OF-WAY LINE S 02°48'16" W A DISTANCE OF 15.92 FEET TO THE INTERSECTION OF SAID WEST RIGHT-OF-WAY LINE AND THE NORTH RIGHT-OF-WAY LINE OF NW 5TH STREET; THENCE ALONG SAID NORTH RIGHT-OF-WAY LINE N 87°19'56" W A DISTANCE OF 77.23 FEET; THENCE LEAVING SAID NORTH RIGHT-OF-WAY LINE N 02°58'29" E A DISTANCE OF 79.20 FEET; THENCE S 87°20'49" E A DISTANCE OF 75.56 FEET; TO THE POINT OF BEGINNING, WITH AN AREA OF 6062.64 SQUARE FEET, OR 0.14 ACRES, MORE OR LESS, AND SUBJECT TO ALL RIGHTS-OF-WAY, EASEMENTS AND RESTRICTIVE COVENANTS OF RECORD OR FACT.

FLOOD CERTIFICATION:

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

CERTIFICATE OF OWNERSHIP AND DEDICATION:

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

DATE OF EXECUTION: _____

PRINT NAME: _____

SIGNATURE: _____

CERTIFICATE OF SURVEY ACCURACY:

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

DATE OF EXECUTION _____

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

CERTIFICATE OF AUTHORIZATION
COA CERTIFICATE NUMBER: 3049

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

NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

CERTIFICATE OF APPROVAL:

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

DATE OF EXECUTION: _____

SIGNED _____
PLANNING COMMISSION CHAIRPERSON

DATE OF EXECUTION: _____

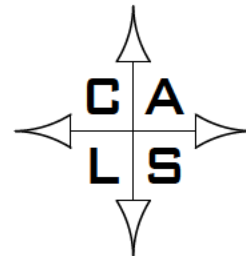
SIGNED _____
MAYOR, CITY OF BENTONVILLE

SIGNED _____
CITY CLERK, CITY OF BENTONVILLE

BENTONVILLE PROJECT #LS21-0061

CASTER & ASSOCIATES
LAND SURVEYING, INC.

2715 SE "I" Street, Suite 5
Bentonville, AR 72712
(479) 268-4464

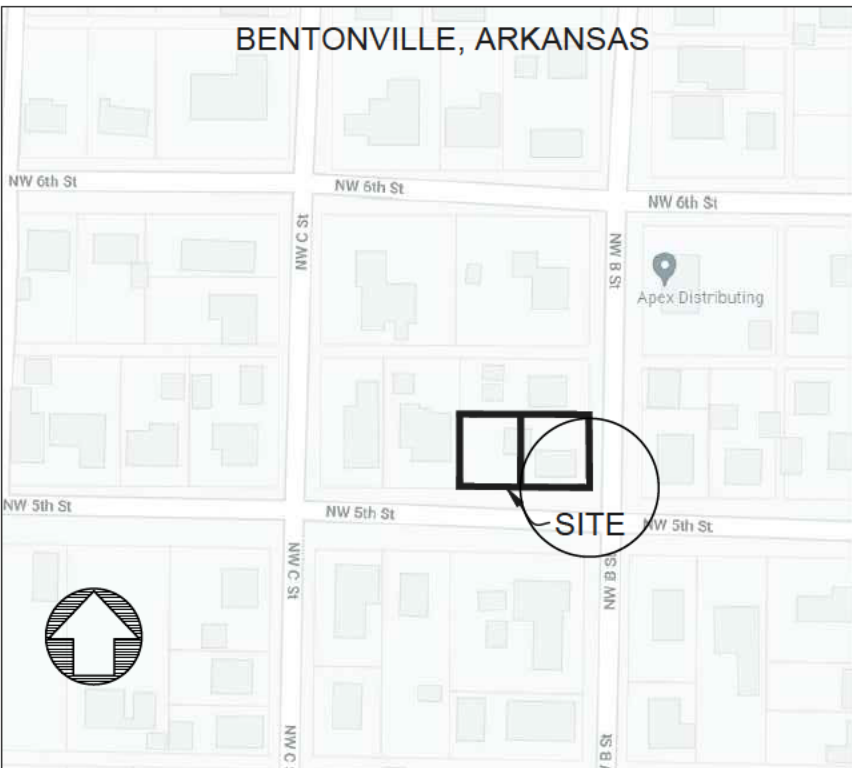


SCALE: 1" = 30' DATE: 7-13-22

LOT SPLIT
PART LOTS 10, 11 & 12, BLK. 16
DEMINGS 2ND ADDITION
CREATING LOTS 15 & 16

501 NW "B" STREET
BENTONVILLE, BENTON COUNTY, AR

JOB #	DRAWN BY:	CHK'D BY:	PAGE
21-235LS	ASD	RJC	1 OF 1



VICINITY MAP
(N.T.S.)

ORDINANCE NO. _____

**AN ORDINANCE ACCEPTING A LOT SPLIT OF LOTS 10, 11, & 12, BLOCK 16 OF
DEMINGS 2ND ADDITION; CREATING NEW LOTS 15 & 16 OF DEMINGS 2ND
ADDITION TO THE CITY OF BENTONVILLE, ARKANSAS; AND FOR OTHER
PURPOSES.**

(PROJECT NUMBER: LS21-0061)

WHEREAS, pursuant to the provisions of the Land Development Code of the Bentonville Municipal Code, the lot split of LOTS 10, 11, & 12, BLOCK 16 OF DEMINGS 2ND ADDITION, creating new LOTS 15 & 16 OF DEMINGS 2ND ADDITION, to the City of Bentonville, Benton County, Arkansas, was submitted to the Bentonville Planning Commission on May 16, 2023;

WHEREAS, said lot split is attached hereto as Exhibit “A”;

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

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

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

Section 1: That the lot split of LOTS 10, 11, & 12, BLOCK 16 OF DEMINGS 2ND ADDITION creating new LOTS 15 & 16 OF DEMINGS 2ND ADDITION to the City of Bentonville, Arkansas, should be and the same is hereby accepted and approved for all purposes;

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

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 AND APPROVED this _____ day of _____, 2023

APPROVED:

ATTEST:

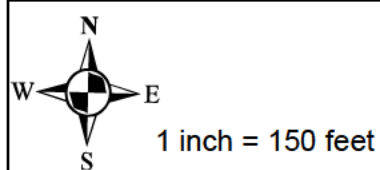
Stephanie Orman, Mayor

Kirby Romines, City Clerk



Legend

 Pending Planning Commission Items



LS22-0034 9/6/22
LOT SPLIT
SKYVIEW ACRES SUBDIVISION
LOTS 35-37 CREATING LOTS 53-58



ORDINANCE NO. _____

**AN ORDINANCE ACCEPTING A LOT SPLIT OF LOTS 35, 36, & 37 OF SKYVIEW
ACRES SUBDIVISION; CREATING NEW LOTS 53-58 OF SKYVIEW ACRES
SUBDIVISION TO THE CITY OF BENTONVILLE, ARKANSAS; AND FOR OTHER
PURPOSES.**

(PROJECT NUMBER: LS22-0034)

WHEREAS, pursuant to the provisions of the Land Development Code of the Bentonville Municipal Code, the lot split of LOTS 35, 36, & 37 OF SKYVIEW ACRES SUBDIVISION, creating new LOTS 53-58 OF SKYVIEW ACRES SUBDIVISION, to the City of Bentonville, Benton County, Arkansas, was submitted to the Bentonville Planning Commission on May 16, 2023;

WHEREAS, said lot split is attached hereto as Exhibit “A”;

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

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

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

Section 1: That the lot split of LOTS 35, 36, & 37 OF SKYVIEW ACRES SUBDIVISION creating new LOTS 53-58 OF SKYVIEW ACRES SUBDIVISION to the City of Bentonville, Arkansas, should be and the same is hereby accepted and approved for all purposes;

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

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.

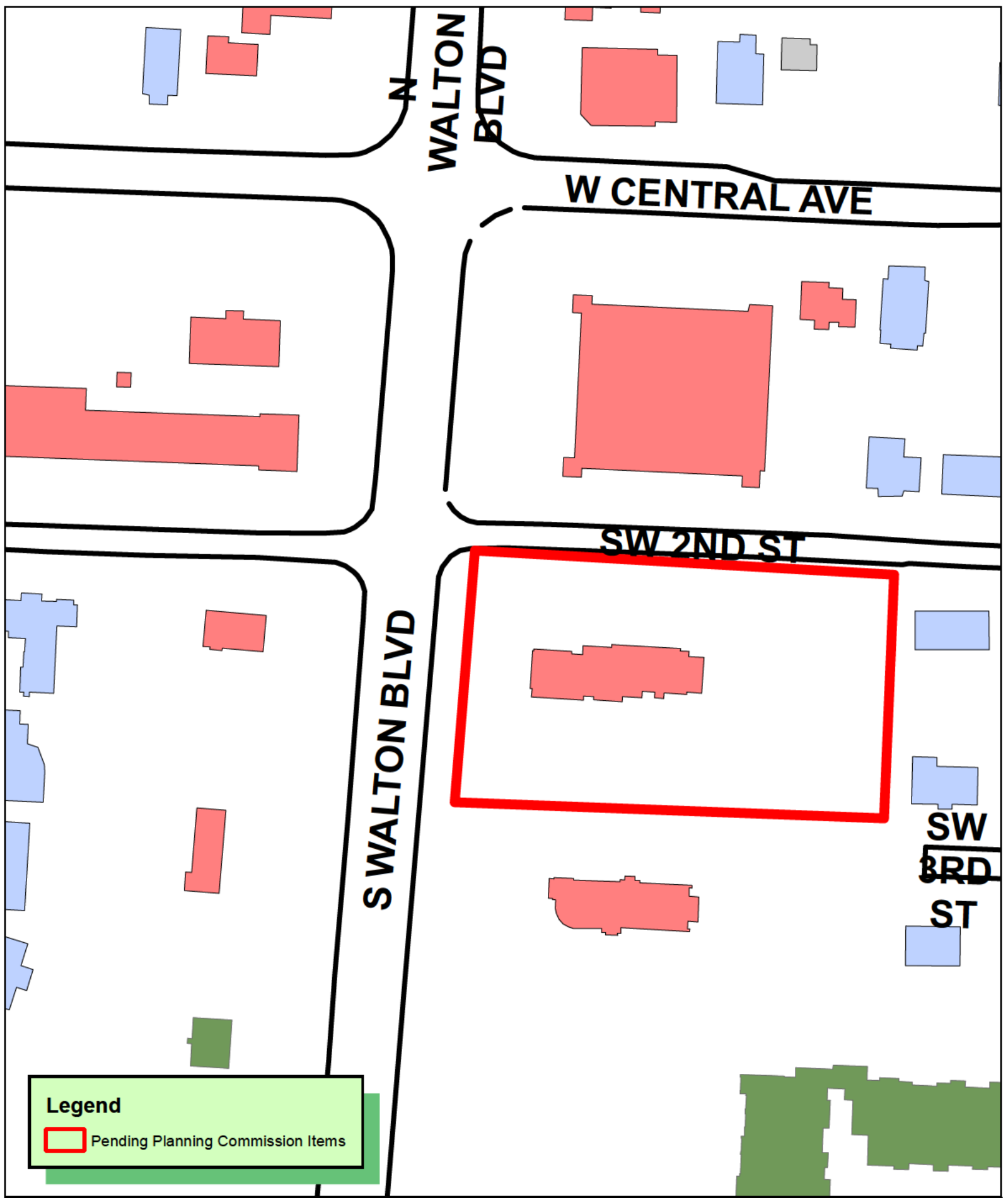
PASSED AND APPROVED this _____ day of _____, 2023

APPROVED:

ATTEST:

Stephanie Orman, Mayor

Kirby Romines, City Clerk



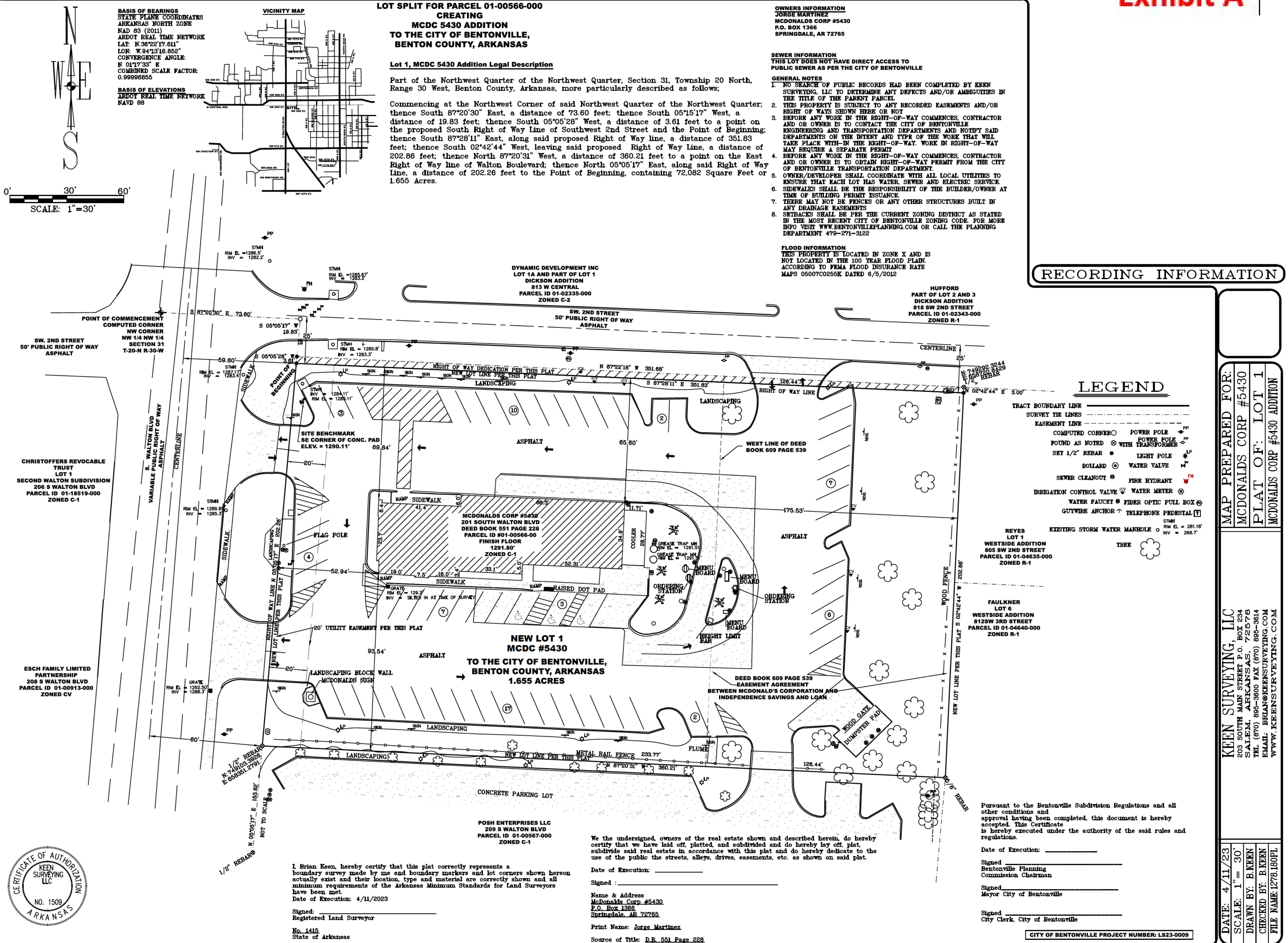
Legend

 Pending Planning Commission Items

 1 inch = 100 feet

LS23-0009 3/7/23
LOT SPLIT
MCDONALDS
201 S WALTON BLVD





ORDINANCE NO. _____

**AN ORDINANCE ACCEPTING A LOT SPLIT OF UNPLATTED SECTION LAND;
CREATING NEW LOT 1 OF MCDC 5430 ADDITION TO THE CITY OF
BENTONVILLE, ARKANSAS; AND FOR OTHER PURPOSES.**

(PROJECT NUMBER: LS23-0009)

WHEREAS, pursuant to the provisions of the Land Development Code of the Bentonville Municipal Code, the lot split of UNPLATTED SECTION LAND, creating new LOT 1 OF MCDC 5430 ADDITION, to the City of Bentonville, Benton County, Arkansas, was submitted to the Bentonville Planning Commission on May 16, 2023;

WHEREAS, said lot split is attached hereto as Exhibit “A”;

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

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

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

Section 1: That the lot split of UNPLATTED SECTION LAND creating new LOT 1 OF MCDC 5430 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 are hereby authorized and directed to evidence the acceptance of said lot split by certifying said acceptance on the approved lot split;

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.

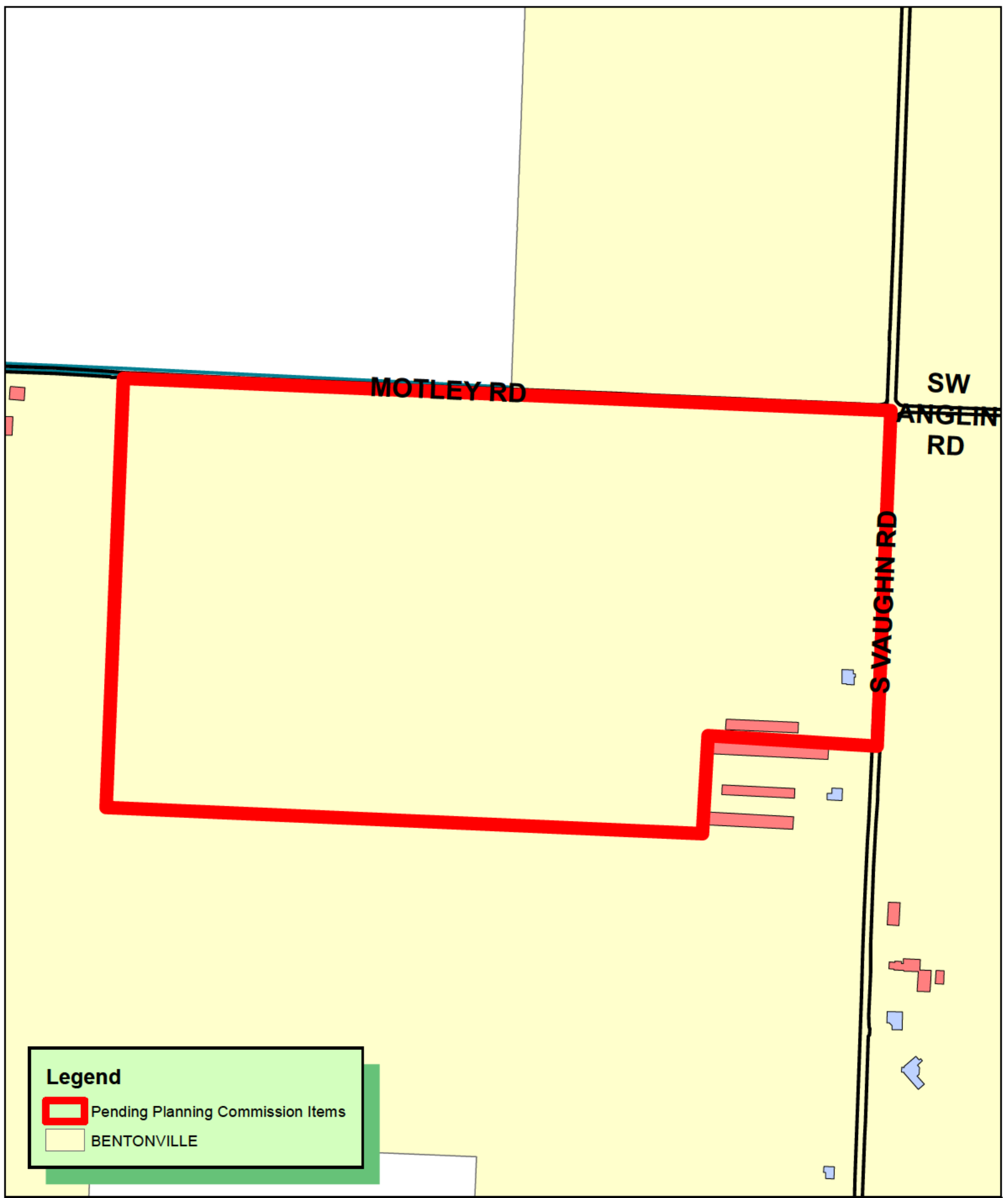
PASSED AND APPROVED this _____ day of _____, 2023

APPROVED:

- **ATTEST:**

Stephanie Orman, Mayor

Kirby Romines, City Clerk



LOT SPLIT FOR PARCEL 01-08199-075
CREATING MCKISSIC SPRINGS LOTS 1 & 2
BENTONVILLE, ARKANSAS

PARENT DESCRIPTION:

PART OF THE NW 1/4 OF SECTION 17, TOWNSHIP 19 NORTH, RANGE 31 WEST, BENTON COUNTY ARKANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE NW 1/4 OF SAID SECTION 17;
THENCE ALONG THE EAST LINE THEREOF S02°19'35"W 1157.13 FEET;
THENCE LEAVING SAID EAST LINE N86°27'39"W 583.38 FEET;
THENCE S03°20'59"W 337.38 FEET;
THENCE N87°30'08"W 2055.09 FEET TO THE WEST LINE OF THE NW 1/4 OF SAID SECTION 17;
THENCE ALONG SAID WEST LINE N02°18'34"E 1480.18 FEET TO THE NORTHWEST CORNER OF THE NW 1/4 OF SAID SECTION 17;
THENCE ALONG THE NORTH LINE THEREOF S87°34'56"E 2644.80 FEET TO THE POINT OF BEGINNING, CONTAINING 85.51 ACRES, MORE OR LESS AND SUBJECT TO THE RIGHT-OF-WAY OF MOTLEY ROAD ALONG THE NORTH AND SOUTH VAUGHN ROAD ALONG THE EAST AND SUBJECT TO ANY AND ALL EASEMENTS OF RECORD OR FACT.

LOT 1 DESCRIPTION:

PART OF THE NW 1/4 OF SECTION 17, TOWNSHIP 19 NORTH, RANGE 31 WEST, BENTON COUNTY ARKANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE NW 1/4 OF SAID SECTION 17, SAID POINT BEING A RAILROAD SPIKE;
THENCE ALONG THE EAST LINE THEREOF S02°19'35"W 588.73 FEET;
THENCE LEAVING SAID EAST LINE N87°35'04"W 42.20 FEET TO THE POINT OF BEGINNING, SAID POINT BEING A 5/8" IRON PIN EMBOSSED PS 1460;
THENCE N87°35'04"W 258.85 FEET TO A 5/8" IRON PIN EMBOSSED PS 1460;
THENCE S44°20' 29"W 24.06 FEET TO A 5/8" IRON PIN EMBOSSED PS 1460;
THENCE N42°35'04"W 90.02 FEET TO A 5/8" IRON PIN EMBOSSED PS 1460;
THENCE N87°35'04"W 85.38 FEET TO A 5/8" IRON PIN EMBOSSED PS 1460;
THENCE S56°57'15"W 216.96 FEET TO A 5/8" IRON PIN EMBOSSED PS 1460;
THENCE S01°37' 36"W 206.69 FEET TO A 5/8" IRON PIN EMBOSSED PS 1460;
THENCE N87°35'04"W 74.27 FEET TO A 5/8" IRON PIN EMBOSSED PS 1460;
THENCE S38°17'10"W 99.38 FEET TO A 5/8" IRON PIN EMBOSSED PS 1460;
THENCE S02°24'56"W 526.72 FEET TO A 5/8" IRON PIN EMBOSSED PS 1460;
THENCE N87°30'08"W 1835.46 FEET TO A 5/8" IRON PIN EMBOSSED PS 1460;
THENCE N02°18'34"E 1436.04 FEET TO A 5/8" IRON PIN EMBOSSED PS 1460;
THENCE S87°33'24"E 2569.82 FEET TO A 5/8" IRON PIN EMBOSSED PS 1460;
THENCE S02°33'43"W 543.39 FEET TO A 5/8" IRON PIN EMBOSSED PS 1460 AND THE POINT OF BEGINNING CONTAINING 71.74 ACRES, MORE OR LESS AND SUBJECT TO ANY AND ALL EASEMENTS OF RECORD OR FACT.

LOT 2 DESCRIPTION:

PART OF THE NW 1/4 OF SECTION 17, TOWNSHIP 19 NORTH, RANGE 31 WEST, BENTON COUNTY ARKANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE NW 1/4 OF SAID SECTION 17, SAID POINT BEING A RAILROAD SPIKE;
THENCE ALONG THE EAST LINE THEREOF S02°19'35"W 588.73 FEET;
THENCE LEAVING SAID EAST LINE N87°35'04"W 42.20 FEET TO THE POINT OF BEGINNING, SAID POINT BEING A 5/8" IRON PIN EMBOSSED PS 1460;
THENCE S02°33'43"W 567.53 FEET TO A 5/8" IRON PIN EMBOSSED PS 1460;
THENCE N86°27'39"W 538.84 FEET TO A 1/2" IRON PIN;
THENCE S03°20'59"W 337.38 FEET TO A 1/2" IRON PIN EMBOSSED PS 147;
THENCE N87°30'08"W 184.64 FEET TO A 5/8" IRON PIN EMBOSSED PS 1460;
THENCE N02°24'56"E 526.72 FEET TO A 5/8" IRON PIN EMBOSSED PS 1460;
THENCE N38°17'10"E 99.38 FEET TO A 5/8" IRON PIN EMBOSSED PS 1460;
THENCE S87°35'04"E 74.27 FEET TO A 5/8" IRON PIN EMBOSSED PS 1460;
THENCE N01°37'36"E 206.69 FEET TO A 5/8" IRON PIN EMBOSSED PS 1460;
THENCE N56°57'15"E 216.96 FEET TO A 5/8" IRON PIN EMBOSSED PS 1460;
THENCE S87°35'04"E 85.38 FEET TO A 5/8" IRON PIN EMBOSSED PS 1460;
THENCE S42°35'04"E 90.02 FEET TO A 5/8" IRON PIN EMBOSSED PS 1460;
THENCE N44°20'29"E 24.06 FEET TO A 5/8" IRON PIN EMBOSSED PS 1460;
THENCE S87°35'04"E 258.85 FEET TO THE POINT OF BEGINNING, CONTAINING 9.97 ACRES, MORE OR LESS AND SUBJECT TO ANY AND ALL EASEMENTS OF RECORD OR FACT.

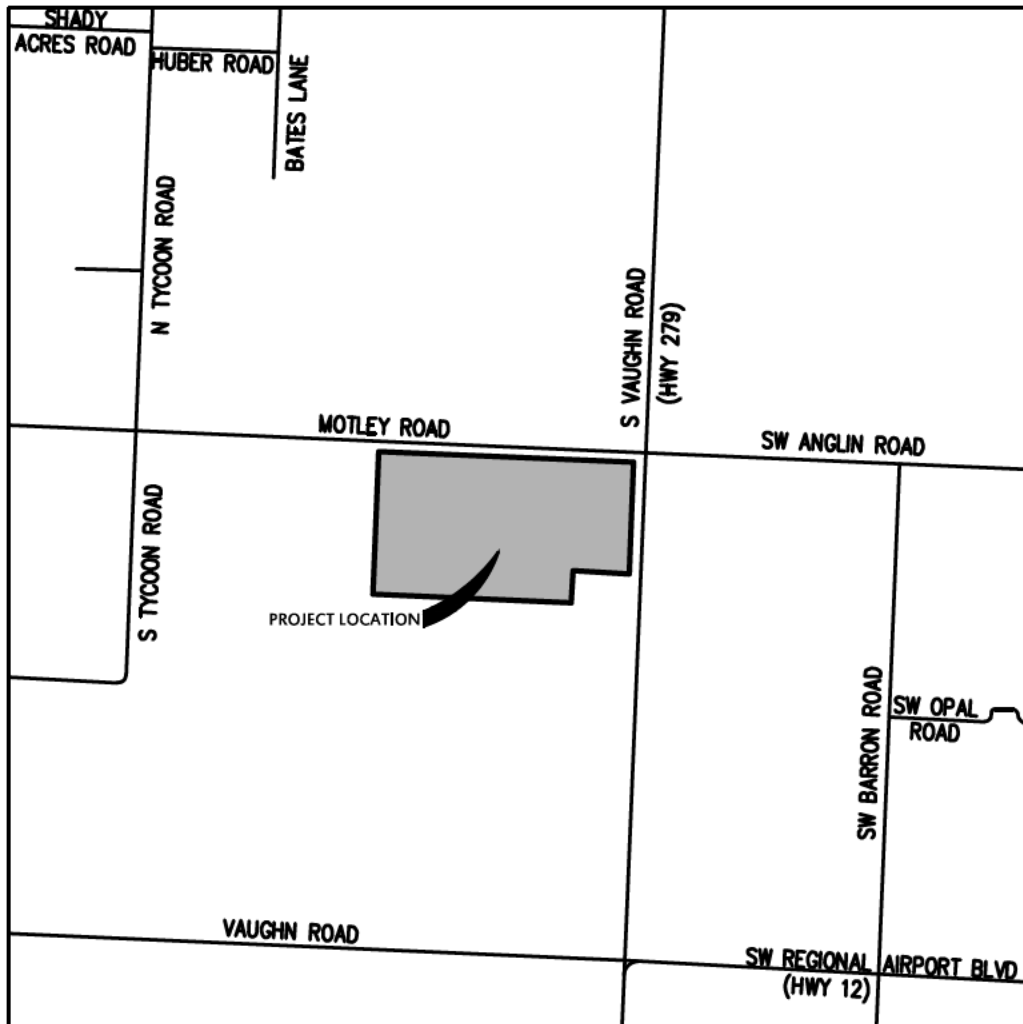
STREET RIGHT OF WAY DESCRIPTION:

PART OF THE NW 1/4 OF SECTION 17, TOWNSHIP 19 NORTH, RANGE 31 WEST, BENTON COUNTY ARKANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE NW 1/4 OF SAID SECTION 17, SAID POINT BEING A 3/4" IRON ROD;
THENCE ALONG THE NORTH LINE THEREOF S87°34'56"E 2644.80 FEET TO THE NORTHEAST CORNER OF THE NW 1/4 OF SAID SECTION 17, SAID POINT BEING A RAILROAD SPIKE;
THENCE ALONG THE EAST LINE THEREOF S02°19'35"W 1157.13 FEET;
THENCE LEAVING SAID EAST LINE N86°27'39"W 44.54 FEET TO A 5/8" IRON PIN EMBOSSED PS 1460;
THENCE N02°33'43"E 1110.93 FEET TO A 5/8" IRON PIN EMBOSSED PS 1460;
THENCE N87°33'24"W 2569.82 FEET TO A 5/8" IRON PIN EMBOSSED PS 1460;
THENCE S02°18'34"W 1436.04 FEET TO A 5/8" IRON PIN EMBOSSED PS 1460;
THENCE N87°30'08"W 35.00 FEET TO A 1/2" IRON PIN EMBOSSED PS 944;
THENCE N02°18'34"E 1480.18 FEET TO THE POINT OF BEGINNING, CONTAINING 4.95 ACRES, MORE OR LESS AND SUBJECT TO ANY AND ALL EASEMENTS OF RECORD OR FACT.

SITE OWNER/DEVELOPER:

BUFFINGTON HOMES OF ARKANSAS, LLC
PO BOX 8519
FAYETTEVILLE, AR 72703
MARY MCGETTRICK
479-251-1106



VICINITY MAP NTS

NOTES:

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

THE PROPERTY SURVEYED IS WITHIN THE MUNICIPAL LIMITS OF BENTONVILLE, AR.

THE BOUNDARY DETERMINATION SHOWN HEREON WAS BASED UPON THE FOLLOWING DOCUMENTS AND NO OTHERS: DEED RECORD L202085006, DEED RECORD 1999-91817, DEED RECORD L202025694, DEED RECORD 535-613, & PLAT RECORD 645-46, DEED RECORD 2006-19549, DEED RECORD 2017-22412, PLAT RECORD P1-731, PLAT RECORD 23L-233, PLAT RECORD 2015-96, PLAT RECORD P4-83, PLAT RECORD 2007-145, PLAT RECORD V-149, PLAT RECORD 2003-732.

ACCORDING TO THE CITY OF BENTONVILLE GIS WEB SITE THE PROPERTY SURVEYED IS ZONED THE FOLLOWING: ZONE R-1

NO ATTEMPT WAS MADE TO SHOW BUILDING SETBACK LINES GRAPHICALLY ON THE SURVEY. THE DESIGNATION OR ORIENTATION OF SETBACKS THAT AFFECT THE USE OF THIS PROPERTY ARE DETERMINED BY THE LOCAL GOVERNING JURISDICTION. SETBACK DIMENSIONS WILL BE BASED ON THE ORIENTATION OF THE BUILDINGS TO BE CONSTRUCTED.

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

UNDERGROUND UTILITIES WERE OBTAINED EITHER FROM LOCATION PROVIDED BY ARKANSAS ONE CALL TICKET 210406-1805 OR SCALED FROM THE CITY OF BENTONVILLE'S GIS WEB SITE.

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

THE SURVEYOR HAS NOT MADE A SEPARATE INVESTIGATION OR SEARCH FOR EASEMENTS OF RECORD, ENCUMBRANCES, OR RESTRICTIVE COVENANTS, OR ANY OTHER FACTS WHICH AN ACCURATE AND COMPLETE TITLE SEARCH MAY DISCLOSE. ANY EASEMENTS SHOWN HEREON CAME TO THE ATTENTION OF THE SURVEYOR IN THE COURSE OF HIS RESEARCH OF THE PROPERTY BOUNDARY. OTHER RECORD EASEMENTS, ENCUMBRANCES, OR COVENANTS MAY EXIST ON THE SURVEYED PROPERTY.

THIS PROPERTY IS NOT IN FLOOD ZONE "A" OR "AE", AND IS OUTSIDE THE 100-YEAR FLOOD PLAIN AS SHOWN ON THE NATIONAL FLOOD INSURANCE PROGRAM'S FIRM PANEL NUMBER 05007C02350K, REVISED DATE JUNE 5, 2012.

THIS PROPERTY IS WITHIN THE BASE LEVEL ENGINEERING STUDY AREA. ORDINANCE 2022-99 REQUIRES COMPLIANCE WITH SECTION 1500 OF THE BENTONVILLE MUNICIPAL CODE ON FLOOD HAZARD PREVENTION. A LOMR (CASE NO. 22-06-2867P) HAS BEEN APPROVED BY FEMA FOR COMMUNITY NOTIFICATION. THE FLOODPLAIN, FLOODWAY, AND BASE FLOOD ELEVATIONS (BFE) ARE SHOWN WITH THIS PLAT.

THE ABOVE STATEMENT IS FOR INFORMATION ONLY AND THIS SURVEYOR ASSUMES NO LIABILITY FOR THE CORRECTNESS OF THE CITED MAP. IN ADDITION, NO INDEPENDENT STUDY OF THE LIKELIHOOD OF FLOODING OF THE SURVEYED PROPERTY HAS BEEN DONE BY THE SURVEYOR AND NO OPINION OF FLOOD HAZARDS IS INCLUDED IN THIS SURVEY.

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

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

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

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

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

CERTIFICATE OF OWNERSHIP

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

DATE OF EXECUTION: _____

BY: _____
BUFFINGTON BW LLC

(PRINT)

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

CERTIFICATE OF APPROVAL

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

DATE OF EXECUTION: _____

SIGNED _____
BENTONVILLE PLANNING COMMISSION CHAIRMAN

SIGNED _____
MAYOR CITY OF BENTONVILLE

SIGNED _____
CITY CLERK, CITY OF BENTONVILLE

CERTIFICATE OF SURVEYING ACCURACY:

I HEREBY DECLARE THAT ON THE ____ DAY OF _____, 2023 THE HEREON PLATTED AND DESCRIBED SURVEY WAS COMPLETED UNDER MY SUPERVISION AND THE IRON PINS WERE FOUND OR SET, AS SHOWN, TO THE BEST OF MY KNOWLEDGE AND BELIEF.



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

KEVIN J. MONTGOMERY PLS 1460
PROFESSIONAL LAND SURVEYOR

ATLAS PAGE: 521

CITY OF BENTONVILLE PROJECT NUMBER: LS23-0019

RECORD INFORMATION

OWNER: 01-08199-075
BUFFINGTON BW LLC
4800 S VAUGHN RD
BENTONVILLE, AR 72712
SITE SURVEYOR: CRAFTON TULL
901 N. 47TH ST., SUITE 400
ROGERS, AR, 72756
KEVIN.MONTGOMERY@CRAFTONTULL.COM
479-636-4838
STATE PLAT CODE:
500-19N-31W-0-17-04-400-1460

SEAL

LOT SPLIT FOR PARCEL 01-08199-075 CREATING
MCKISSIC SPRINGS LOTS 1 & 2

PREPARED FOR:
BUFFINGTON BW LLC

ARKANSAS
BENTONVILLE

LS23-0019

DATE: 04/24/2023
PROJECT NO.: 20300700
CONTACT: K. MONTGOMERY

901 N. 47th St., Suite 400
Rogers, Arkansas 72756
Crafton Tull
architecture | engineering | surveying
479.636.4838 | 479.631.6224 |
www.craftontull.com

CERTIFICATE OF AUTHORIZATION

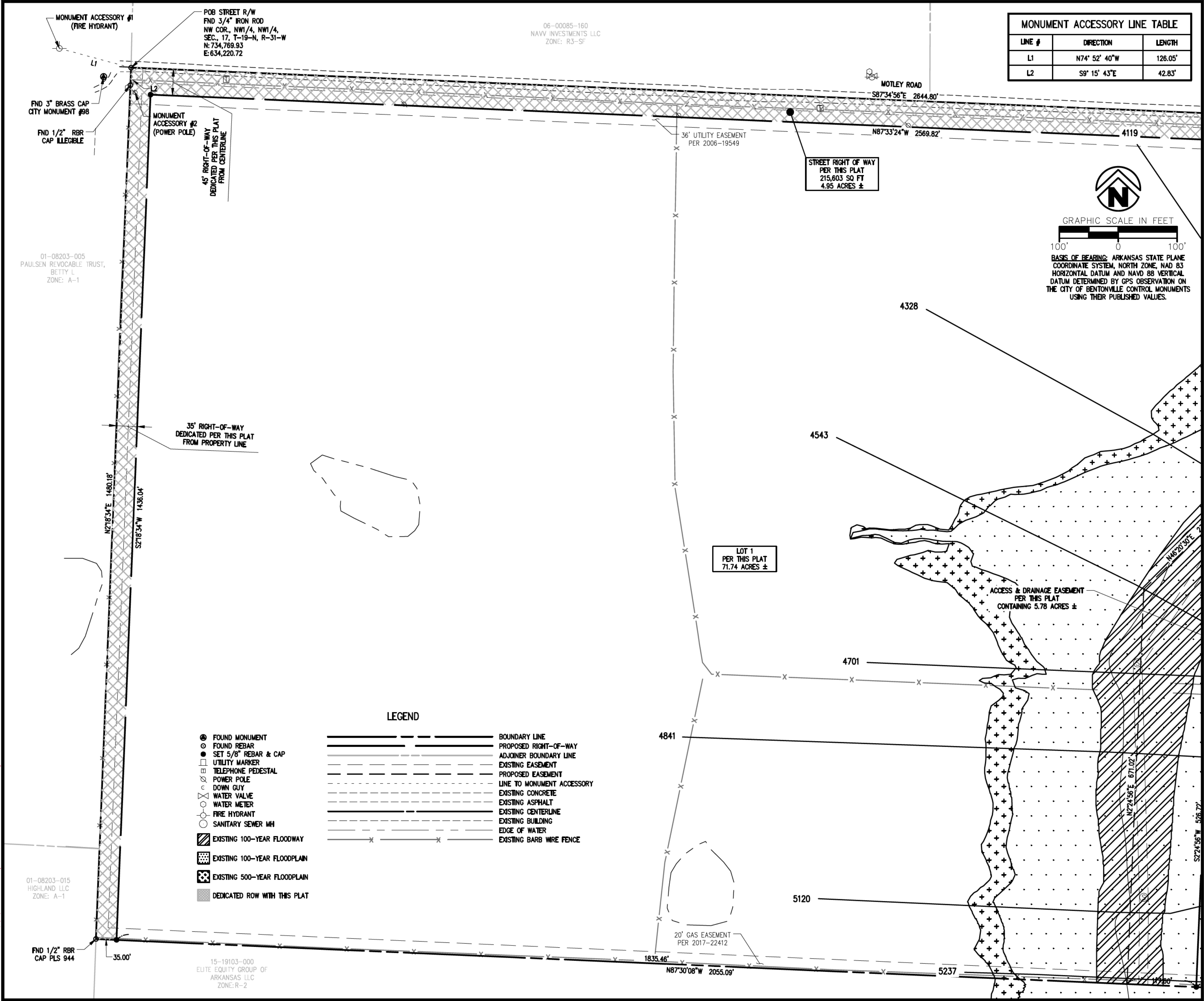


© 2023 Crafton, Tull & Associates, Inc.

DELTA	DESCRIPTION	DATE

SHEET NO.:

1 OF 3



RECORD INFORMATION

STATE PLAT CODE:
500-19N-31W-0-17-04-400-1460

SEAL



LOT SPLIT FOR PARCEL 01-08199-075 CREATING
MCKISSIC SPRINGS LOTS 1 & 2

PREPARED FOR:
BUFFINGTON BW LLC

ARKANSAS
BENTONVILLE

LS23-0019

DATE: 04/24/2023
PROJECT NO.: 20300700
CONTACT: K. MONTGOMERY

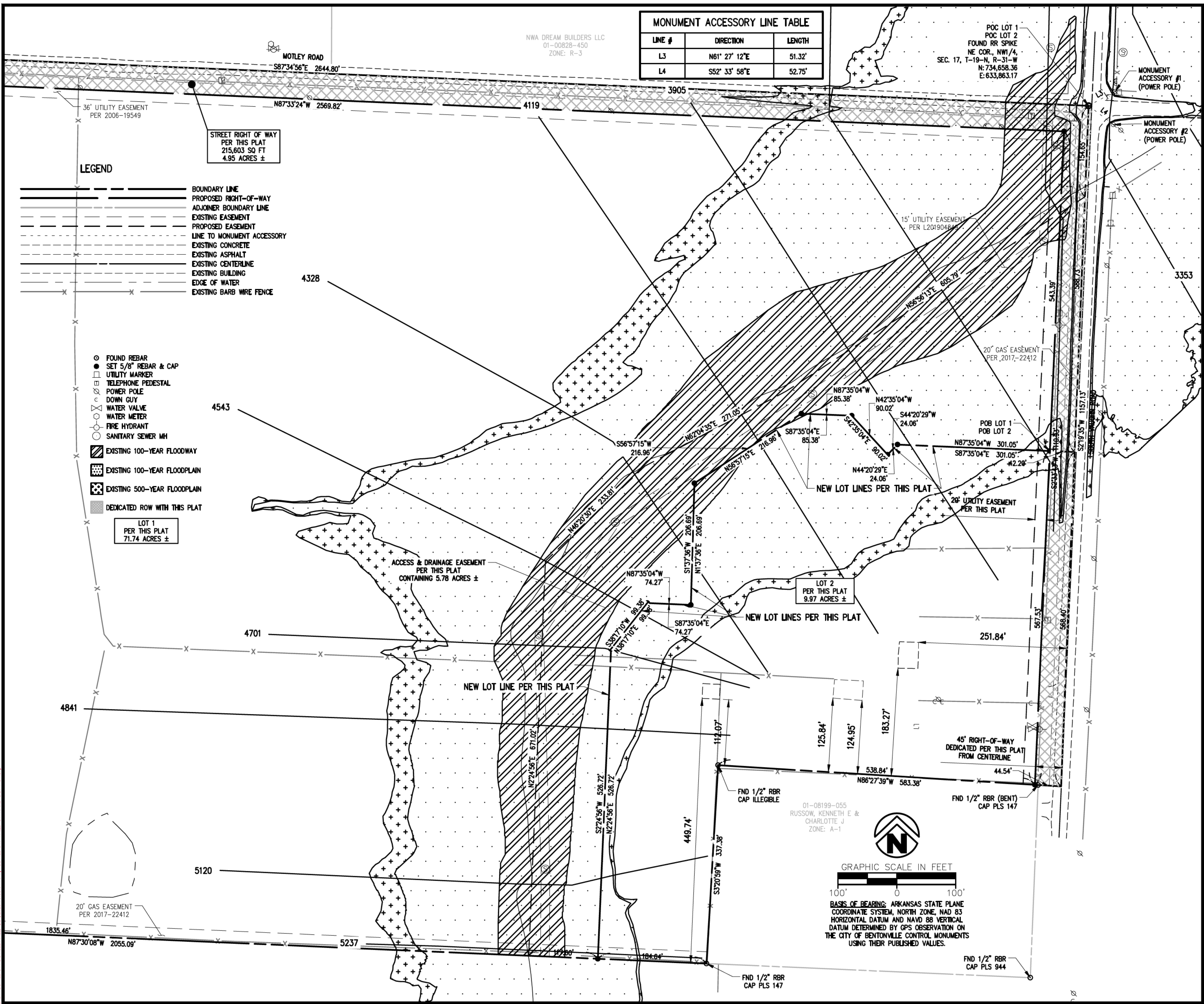
901 N. 47th St., Suite 400
Rogers, Arkansas 72756
Crafton Tull
architecture | engineering | surveying
479.636.4838 | 479.631.6224 |
www.craftontull.com

CERTIFICATE OF AUTHORIZATION
CRAFTON, TULL & ASSOCIATES, INC.
No. 107
ARKANSAS ENGINEER

DELTA	DESCRIPTION	DATE

SHEET NO.:

2 OF 3



RECORD INFORMATION

STATE PLAT CODE:
500-19N-31W-0-17-04-400-1460

SEAL



LOT SPLIT FOR PARCEL 01-08199-075 CREATING
MCKISSIC SPRINGS LOTS 1 & 2

PREPARED FOR:
BUFFINGTON BW LLC

ARKANSAS
BENTONVILLE

LS23-0019

DATE: 04/24/2023
PROJECT NO.: 20300700
CONTACT: K. MONTGOMERY

901 N. 47th St., Suite 400
Rogers, Arkansas 72756
Crafton Tull
architecture | engineering | surveying
479.636.4838 | 479.631.6224 |
www.craftontull.com

CERTIFICATE OF AUTHORIZATION
CRAFTON TULL & ASSOCIATES, INC.
No. 157
ARKANSAS ENGINEER

DELTA	DESCRIPTION	DATE

SHEET NO.:

ORDINANCE NO. _____

**AN ORDINANCE ACCEPTING A LOT SPLIT OF SECTIONAL LAND; CREATING
NEW LOTS 1 & 2 OF MCKISSIC SPRINGS ADDITION TO THE CITY OF
BENTONVILLE, ARKANSAS; AND FOR OTHER PURPOSES.**

(PROJECT NUMBER: LS23-0019)

WHEREAS, pursuant to the provisions of the Land Development Code of the Bentonville Municipal Code, the lot split of SECTIONAL LAND, creating new LOTS 1 & 2 OF MCKISSIC SPRINGS ADDITION, to the City of Bentonville, Benton County, Arkansas, was submitted to the Bentonville Planning Commission on May 16, 2023;

WHEREAS, said lot split is attached hereto as Exhibit “A”;

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

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

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

Section 1: That the lot split of SECTIONAL LAND creating new LOTS 1 & 2 OF MCKISSIC SPRINGS 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 are hereby authorized and directed to evidence the acceptance of said lot split by certifying said acceptance on the approved lot split;

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 AND APPROVED this _____ day of _____, 2023

APPROVED:

ATTEST:

Stephanie Orman, Mayor

Kirby Romines, City Clerk

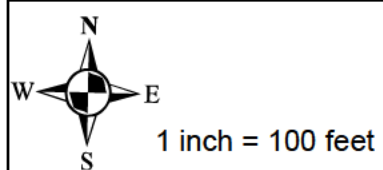


LS23-0023 5/16/23

LOT SPLIT

HUFFMAN ADD

LOT 27 CREATING LOTS 29-30



LAST SITE VISIT:
NOVEMBER 3, 2020

BASIS OF BEARING:
GPS OBSERVATION - AR NORTH ZONE
NAD 83(2011) HORIZONTAL DATUM

REFERENCE DOCUMENTS:

- 1) WARRANTY DEED FILED IN BOOK L2020 AT PAGE 61832
- 2) WARRANTY DEED FILED IN BOOK 2005 AT PAGE 44497
- 3) PLAT OF SURVEY FILED IN BOOK L2017 AT PAGE 56698
- 4) PLAT OF SURVEY FILED IN BOOK Y AT PAGE 529
- 5) PLAT OF SURVEY FILED IN BOOK 2006 AT PAGE 905
- 6) PLAT OF SURVEY FILED IN BOOK 76 AT PAGE 56
- 7) PLAT OF SURVEY FILED IN BOOK B AT PAGE 108
- 7) PLAT OF SURVEY FILED IN BOOK L2021 AT PAGE 39733
- 8) WARRANTY DEED FILED IN BOOK L2021 AT PAGE 79913

PARENT TRACT #01-03179-000 (LOT 27) DESCRIPTION:

A PART OF LOT 12, HUFFMAN'S ADDITION, BENTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT AN EXISTING REBAR MARKING THE SOUTHWEST CORNER OF SAID LOT 12 AND RUNNING THENCE N02°01'43"E 104.00' TO AN EXISTING REBAR, THENCE S87°44'25"E 177.15' TO AN EXISTING REBAR ON THE WEST MASTER STREET PLAN RIGHT-OF-WAY OF NORTHWEST D STREET, THENCE ALONG SAID RIGHT-OF-WAY S02°09'58"W 104.00' TO AN EXISTING REBAR, THENCE LEAVING SAID RIGHT-OF-WAY N87°44'25"W 176.90' TO THE POINT OF BEGINNING, CONTAINING 0.42 ACRES, MORE OR LESS. SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD.

NEW LOT 29:

A PART OF LOT 12, HUFFMAN'S ADDITION, BENTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT A POINT WHICH IS N02°01'43"E 52.00' FROM AN EXISTING REBAR MARKING THE SOUTHWEST CORNER OF SAID LOT 12 AND RUNNING THENCE N02°01'43"E 52.00' TO AN EXISTING REBAR, THENCE S87°44'25"E 177.15' TO AN EXISTING REBAR ON THE WEST MASTER STREET PLAN RIGHT-OF-WAY OF NORTHWEST D STREET, THENCE ALONG SAID RIGHT-OF-WAY S02°09'58"W 52.00', THENCE LEAVING SAID RIGHT-OF-WAY N87°44'25"W 177.02' TO THE POINT OF BEGINNING, CONTAINING 0.21 ACRES, MORE OR LESS. SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD.

NEW LOT 30:

A PART OF LOT 12, HUFFMAN'S ADDITION, BENTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT AN EXISTING REBAR MARKING THE SOUTHWEST CORNER OF SAID LOT 12 AND RUNNING THENCE N02°01'43"E 52.00', THENCE S87°44'25"E 177.02' TO THE WEST MASTER STREET PLAN RIGHT-OF-WAY OF NORTHWEST D STREET, THENCE ALONG SAID RIGHT-OF-WAY S02°09'58"W 52.00' TO AN EXISTING REBAR, THENCE LEAVING SAID RIGHT-OF-WAY N87°44'25"W 176.90' TO THE POINT OF BEGINNING, CONTAINING 0.21 ACRES, MORE OR LESS. SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD.

PROPERTY OWNERS:

FREEMAN LIVING TRUST
STEVEN M & JULIE P FREEMAN
205 NW D STREET
BENTONVILLE, AR 72712

ATLAS PAGE:
361

OWNER'S CERTIFICATION:

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: STEVEN M. FREEMAN - TRUSTEE JULIE P. FREEMAN - TRUSTEE

SOURCE OF TITLE: DEED BOOK L2021 AT PAGE 79913

SUBSCRIBED AND SWORN BEFORE ME, THIS ____ DAY OF ____, 2023.

NOTARY PUBLIC

CERTIFICATE OF APPROVAL:

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

DATE OF EXECUTION:

SIGNED: COMMUNITY DEVELOPMENT DIRECTOR

CERTIFICATE OF SURVEYING ACCURACY:

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

DATE OF EXECUTION:

SIGNED: REGISTERED LAND SURVEYOR NO. 1642 - STATE OF ARKANSAS

PLAT NOTES:

1. THE LOCATION OF UTILITIES SHOWN HEREON ARE FROM OBSERVED EVIDENCE OF ABOVE GROUND APPURTENANCES. ALL UTILITY LINES APPEARING ON THIS PLAT, AS WELL AS THOSE THAT MAY EXIST UNDERGROUND NEED TO BE VERIFIED PRIOR TO DOING ANY TYPE OF EXCAVATION. SOME UTILITY LINES MAY ALSO EXIST THAT WERE NOT SHOWN ON THIS PLAT.
2. SIDEWALKS SHALL BE THE RESPONSIBILITY OF THE BUILDER/OWNER AT TIME OF BUILDING PERMIT ISSUANCE.
3. OWNER DEVELOPER SHALL COORDINATE WITH ALL LOCAL UTILITIES TO INSURE THAT EACH LOT HAS WATER, SEWER AND ELECTRIC SERVICE.
4. BEFORE ANY WORK IN THE RIGHT-OF-WAY COMMENCES, CONTRACTOR AND OR OWNER IS TO OBTAIN RIGHT-OF-WAY PERMIT FROM THE CITY OF BENTONVILLE TRANSPORTATION DEPARTMENT.
5. THERE MAY NOT BE ANY FENCES OR ANY OTHER STRUCTURES BUILT IN ANY DRAINAGE EASEMENTS.

BEUD NOTES:

1. OWNER TO CONTACT NEW SERVICE COORDINATOR (271-3139) TO DISCUSS ELECTRIC SERVICE PRIOR TO BEGINNING ANY CONSTRUCTION. FAILURE TO CONTACT BEUD PRIOR TO CONSTRUCTION WILL RESULT IN DELAYS TO GET ELECTRIC SERVICE.
2. BEUD'S STANDARD PRACTICE IS TO PLACE UNDERGROUND EQUIPMENT (TRANSFORMERS, SECONDARY PEDESTALS, JUNCTION BOXES, ETC) ON THE LOT LINE OF A DEVELOPMENT. ANY ADJUSTMENTS TO THE PROPERTY LINE THAT RESULT IN OUR EQUIPMENT NOT BEING ON THE LOT LINE WILL REQUIRE THE DEVELOPER TO PAY FOR THE COST OF BEUD TO RELOCATE THE EQUIPMENT TO THE LOT LINE.
3. ALL STRUCTURES MUST MAINTAIN MINIMUM OF 20' CLEARANCES FROM ALL ELECTRIC LINES.

PROPERTY ZONED:
DN-1

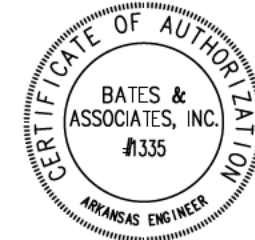
BUILDING SETBACK NOTE:

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

FLOOD CERTIFICATION:

NO PORTION OF THIS PROPERTY 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 #05007C0255K. DATED 06/05/2012)

LOT SPLIT OF LOT 27, HUFFMAN'S ADDITION, CREATING NEW LOTS 29 & 30



ADJACENT LAND OWNERS

1) FREEMAN LIVING TRUST - STEVEN M & JULIE P
401 W CENTRAL AVE
BENTONVILLE AR 72712-5226
PARCEL #01-03209-000
ZONED: DN-1

2) OSO TORO LLC
16428 ENGLEWOOD AVE
LOS GATOS, CA 95032
PARCEL #01-03211-000
ZONED: R-1

3) MAB EMPRESAS LLC
5543 EDMONDSON PIKE #1122
NASHVILLE, TN 37211
PARCEL #01-03212-000
ZONED: R-1

4) SCHUBER, JOHN D & ANGELA F TRUSTEES
205 LEFORS ST
BENTONVILLE AR 72712-5142
PARCEL #01-03177-000
ZONED: R-1

5) HAMMARSTROM, LAURA A
207 NW D ST
BENTONVILLE AR 72712-5226
PARCEL #01-03178-000
ZONED: R-1

6) BENTONVILLE SCHOOL DISTRICT
SCHWANHAUSSER, JANET
500 TIGER BLVD
BENTONVILLE AR 72712
PARCEL #01-01094-000
ZONED: R-1

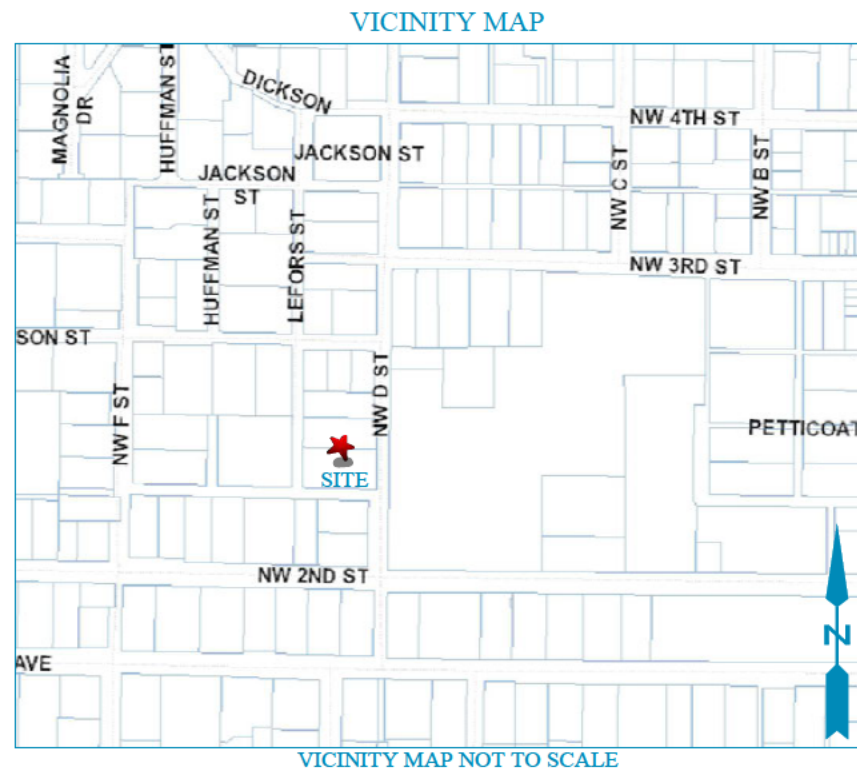
REVISION	DATE
REVISED PER IST SUBMITTAL COMMENTS	4-24-23



I HEREBY CERTIFY THIS TO BE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF ON THIS THE 3RD DAY OF NOVEMBER, 2020.



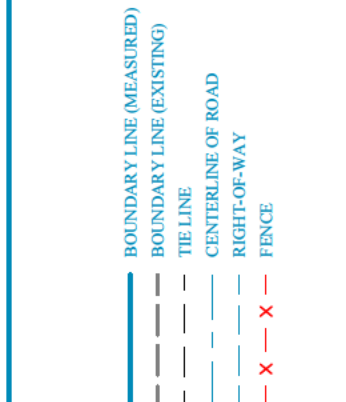
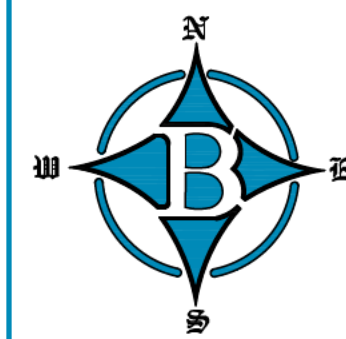
IF THE SIGNATURE ON THIS SEAL IS NOT AN ORIGINAL AND NOT BLUE IN COLOR THEN IT SHOULD BE ASSUMED THAT THIS PLAT MAY HAVE BEEN ALTERED. THE ABOVE CERTIFICATION SHALL NOT APPLY TO ANY COPY THAT DOES NOT BEAR AN ORIGINAL SEAL AND SIGNATURE.



BENTONVILLE PROJECT # LS23-0023

“Exhibit A”

RECORDING NUMBER/DATE



LEGEND:
THESE STANDARD SYMBOLS WILL BE FOUND IN THE DRAWING.

Bates & Associates, Inc.
Engineers & Surveyors



FOR USE AND BENEFIT OF: STEVE FREEMAN	ADDRESS: 205 NORTHWEST D STREET BENTONVILLE, ARKANSAS 72712	DATE: 04/24/23	SCALE: 1"=80'	SURVEYED: DRAFTED: RGS: REVISED: DT	LOCATION: SOUTH 104' OF LOT 12 HUFFMAN ADDITION	COA #1335
--	---	-------------------	------------------	---	---	-----------

DRAWING #20-332 SPLIT 2023

ORDINANCE NO. _____

**AN ORDINANCE ACCEPTING A LOT SPLIT OF LOT 27 OF HUFFMAN'S
ADDITION; CREATING NEW LOTS 29 & 30 OF HUFFMAN'S ADDITION TO THE
CITY OF BENTONVILLE, ARKANSAS; AND FOR OTHER PURPOSES.**

(PROJECT NUMBER: LS23-0023)

WHEREAS, pursuant to the provisions of the Land Development Code of the Bentonville Municipal Code, the lot split of LOT 27 OF HUFFMAN'S ADDITION, creating new LOTS 29 & 30 OF HUFFMAN'S ADDITION, to the City of Bentonville, Benton County, Arkansas, was submitted to the Bentonville Planning Commission on May 16, 2023;

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

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

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

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

Section 1: That the lot split of LOT 27 OF HUFFMAN'S ADDITION creating new LOTS 29 & 30 OF HUFFMAN'S 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 are hereby authorized and directed to evidence the acceptance of said lot split by certifying said acceptance on the approved lot split;

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.

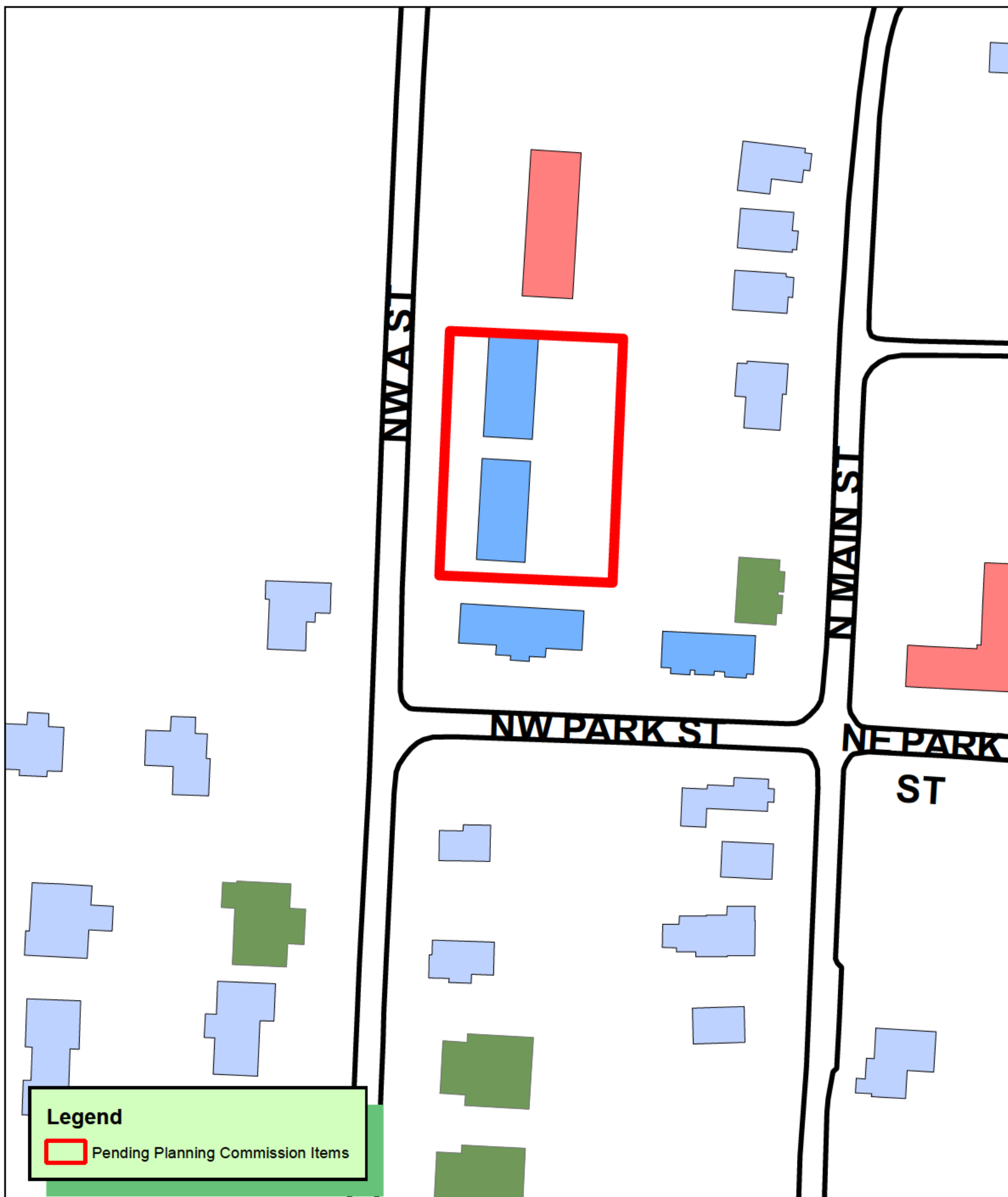
PASSED AND APPROVED this _____ day of _____, 2023

APPROVED:

ATTEST:

Stephanie Orman, Mayor

Kirby Romines, City Clerk



Legend

 Pending Planning Commission Items


1 inch = 100 feet

LS23-0024 5/16/23
LOT SPLIT
W A BURKS
LOTS 2-3 BLOCK 2 CREATING LOTS 35-39

20


THE CITY OF
BENTONVILLE

ADJACENT LAND OWNERS

1) SHORES BYPASS TRUST
MARY KAY & SHORES LEASING PROPERTIES LLC
PO BOX 569
BENTONVILLE, AR 72712
PARCEL #01-04517-000
ZONED: R-1
2) RUBLEY, BILL
904 N QUAIL TER
ROGERS, AR 72756
PARCEL #01-04521-000
ZONED: R-1
3) PARIS, ROBERT WAYNE
1005 N MAIN ST
BENTONVILLE, AR 72712
PARCEL #01-04520-000
ZONED: R-1
4) ZEDIKER TIMOTHY C & ELIZABETH P
508 NW B ST
BENTONVILLE, AR 72712
PARCEL #01-04519-000
ZONED: DN-2
5) LOXBLOX LLC
1308 SPRING ST
BENTONVILLE, AR 72712
PARCEL #01-04519-001
ZONED: DN-2
6) JDP INVESTMENTS LLC
190 E STACY RD 306-373
ALLEN, TX 75002-9734
PARCEL #01-04518-000
ZONED: R-3
7) OBREGON GUINEA LLC &
CANURA GUZMAN LLC
38 W WIMBLEDON WAY
ROGERS, AR 72758
PARCEL #01-04515-000
ZONED: R-3
8) MANNING, BOBBY R & WANDA
1003 NW A ST
BENTONVILLE, AR 72712
PARCEL #01-02752-000
ZONED: R-1
9) BENTONVILLE RE DEVELOPMENT LLC
1706 CAROLYN ST
BENTONVILLE, AR 72712
PARCELS #01-02750-000, #01-02751-000
& #01-02751-001
ZONED: R-1 & DN-2

FIELD WORK:
JANUARY 17-19 & 21-23, 2023

BASIS OF BEARING:
GPS OBSERVATION - AR NORTH ZONE
NAD 83 - HORIZONTAL DATUM

PROPERTY ZONED:
R-1

BUILDING SETBACK NOTE:
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

REFERENCE DOCUMENTS:
1) PLAT OF SURVEY FILED IN BOOK 5 AT PAGE 121
2) PLAT OF SURVEY FILED IN BOOK P AT PAGE 30
3) PLAT OF SURVEY FILED IN BOOK 34 AT PAGE 230
4) PLAT OF SURVEY FILED IN BOOK L2022 AT PAGE 61013
5) PLAT OF SURVEY FILED IN BOOK 7 AT PAGE 68
6) FINAL PLAT OF W A BURKS ADDITION FILED IN BOOK A AT PAGE 119
7) WARRANTY DEED FILED IN BOOK L2020 AT PAGE 03906

FLOOD CERTIFICATION:
NO PORTION OF THIS PROPERTY 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 #05007C00901 DATED 09/28/2007)

PLAT NOTES:
1 THE LOCATION OF UTILITIES SHOWN HEREON ARE FROM OBSERVED EVIDENCE OF ABOVE
GROUND APPURTENANCES. ALL UTILITY LINES APPEARING ON THIS PLAT, AS WELL AS THOSE
THAT MAY EXIST UNDERGROUND NEED TO BE VERIFIED PRIOR TO DOING ANY TYPE OF
EXCAVATION. SOME UTILITY LINES MAY ALSO EXIST THAT WERE NOT SHOWN ON THIS PLAT.
2 SIDEWALKS SHALL BE THE RESPONSIBILITY OF THE BUILDER/OWNER AT TIME OF BUILDING
PERMIT ISSUANCE.
3 OWNER/DEVELOPER SHALL COORDINATE WITH ALL LOCAL UTILITIES TO INSURE THAT EACH
LOT HAS WATER, SEWER AND ELECTRIC SERVICE.
4 BEFORE ANY WORK IN THE RIGHT-OF-WAY COMMENCES, CONTRACTOR AND OR OWNER IS TO
OBTAIN RIGHT-OF-WAY PERMIT FROM THE CITY OF BENTONVILLE TRANSPORTATION
DEPARTMENT.
5 THERE MAY NOT BE ANY FENCES OR ANY OTHER STRUCTURES BUILT IN ANY DRAINAGE
EASEMENTS.
6 NO RESIDENTIAL LOT SHALL BE PERMITTED DIRECT ACCESS TO NW A STREET. A COLLECTOR
STREET. ALL RESIDENTIAL SUBDIVISION DEVELOPMENT CONTIGUOUS TO A COLLECTOR,
MINOR OR MAJOR ARTERIAL STREET SHALL ORIENT FRONTAGE TO A LOCAL STREET OR
ALLEY, AND BACK OF THE PROJECT, WITHOUT ACCESS TO THE SAID MAJOR STREETS.
7 A VARIANCE REQUEST FOR INSUFFICIENT MINIMAL LOT WIDTH REQUIREMENTS PER DN-1
ZONING (FOR NEW LOT 35) HAS BEEN SUBMITTED.

BEUD NOTES:
1 OWNER TO CONTACT NEW SERVICE COORDINATOR (271-3139) TO DISCUSS ELECTRIC SERVICE PRIOR TO BEGINNING ANY
CONSTRUCTION. FAILURE TO CONTACT BEUD PRIOR TO CONSTRUCTION WILL RESULT IN DELAYS TO GET ELECTRIC SERVICE.
2 BEUD'S STANDARD PRACTICE IS TO PLACE UNDERGROUND EQUIPMENT (TRANSFORMERS, SECONDARY PEDESTALS, JUNCTION BOXES,
ETC) ON THE LOT LINE OF A DEVELOPMENT. ANY ADJUSTMENTS TO THE PROPERTY LINE THAT RESULT IN OUR EQUIPMENT NOT BEING
ON THE LOT LINE WILL REQUIRE THE DEVELOPER TO PAY FOR THE COST OF BEUD TO RELOCATE THE EQUIPMENT TO THE LOT LINE.
3 ALL STRUCTURES MUST MAINTAIN MINIMUM OF 20' CLEARANCES FROM ALL ELECTRIC LINES.

SURVEY DESCRIPTIONS:

PARCEL #01-04516-000:
LOTS 2 AND 3 OF THE REPLAT OF LOTS 1 THROUGH 6, BLOCK 2 OF W A BURKS ADDITION TO THE CITY OF BENTONVILLE, BENTON COUNTY,
ARKANSAS, AS SHOWN ON PLAT RECORD 5 AT PAGE 121, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT
AN EXISTING REBAR ON THE EAST RIGHT-OF-WAY OF NORTHWEST A STREET MARKING THE NORTHWEST CORNER OF SAID LOT 3 AND
RUNNING THENCE S86°27'11"E 149.97' TO AN EXISTING REBAR, THENCE S02°44'54"W 160.00' FROM AN EXISTING REBAR
MARKING THE NORTHWEST CORNER OF LOT 3 OF SAID BLOCK 2 AND RUNNING THENCE S86°27'10"E 149.93', THENCE S02°44'54"W 39.89' TO
AN EXISTING REBAR, THENCE N86°25'57"W 149.93' TO AN EXISTING REBAR, THENCE S02°44'54"W 40.00', THENCE N86°25'57"W
149.93' TO THE EAST RIGHT-OF-WAY OF NORTHWEST A STREET, THENCE ALONG SAID RIGHT-OF-WAY N02°44'05"E 199.84' TO THE POINT OF
BEGINNING, CONTAINING 0.69 ACRES, MORE OR LESS. SUBJECT TO THAT PORTION IN NORTHWEST A STREET MASTER STREET PLAN
RIGHT-OF-WAY ON THE WEST SIDE OF HEREIN DESCRIBED TRACT AND ALSO SUBJECT TO ALL OTHER EASEMENTS AND RIGHTS-OF-WAY OF
RECORD.

NEW LOT 35:
A PART OF LOT 2 OF THE REPLAT OF LOTS 1 THROUGH 6, BLOCK 2 OF W A BURKS ADDITION TO THE CITY OF BENTONVILLE, BENTON
COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD 5 AT PAGE 121, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT:
BEGINNING AT A POINT ON THE EAST RIGHT-OF-WAY OF NORTHWEST A STREET WHICH IS S02°44'05"W 160.00' FROM AN EXISTING REBAR
MARKING THE NORTHWEST CORNER OF LOT 3 OF SAID BLOCK 2 AND RUNNING THENCE S86°27'10"E 149.93', THENCE S02°44'54"W 39.89' TO
AN EXISTING REBAR, THENCE N86°25'57"W 149.93' TO AN EXISTING REBAR, THENCE S02°44'54"W 40.00', THENCE N86°25'57"W
149.93' TO THE EAST RIGHT-OF-WAY OF NORTHWEST A STREET, THENCE ALONG SAID RIGHT-OF-WAY N02°44'05"E 199.84' TO THE POINT OF
BEGINNING, CONTAINING 0.14 ACRES, MORE OR LESS. SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD.

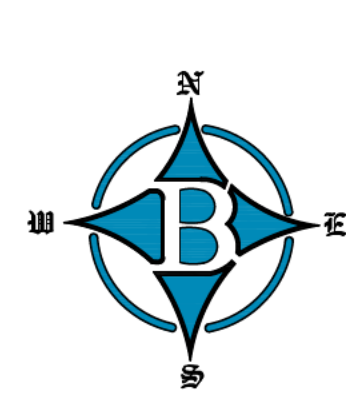
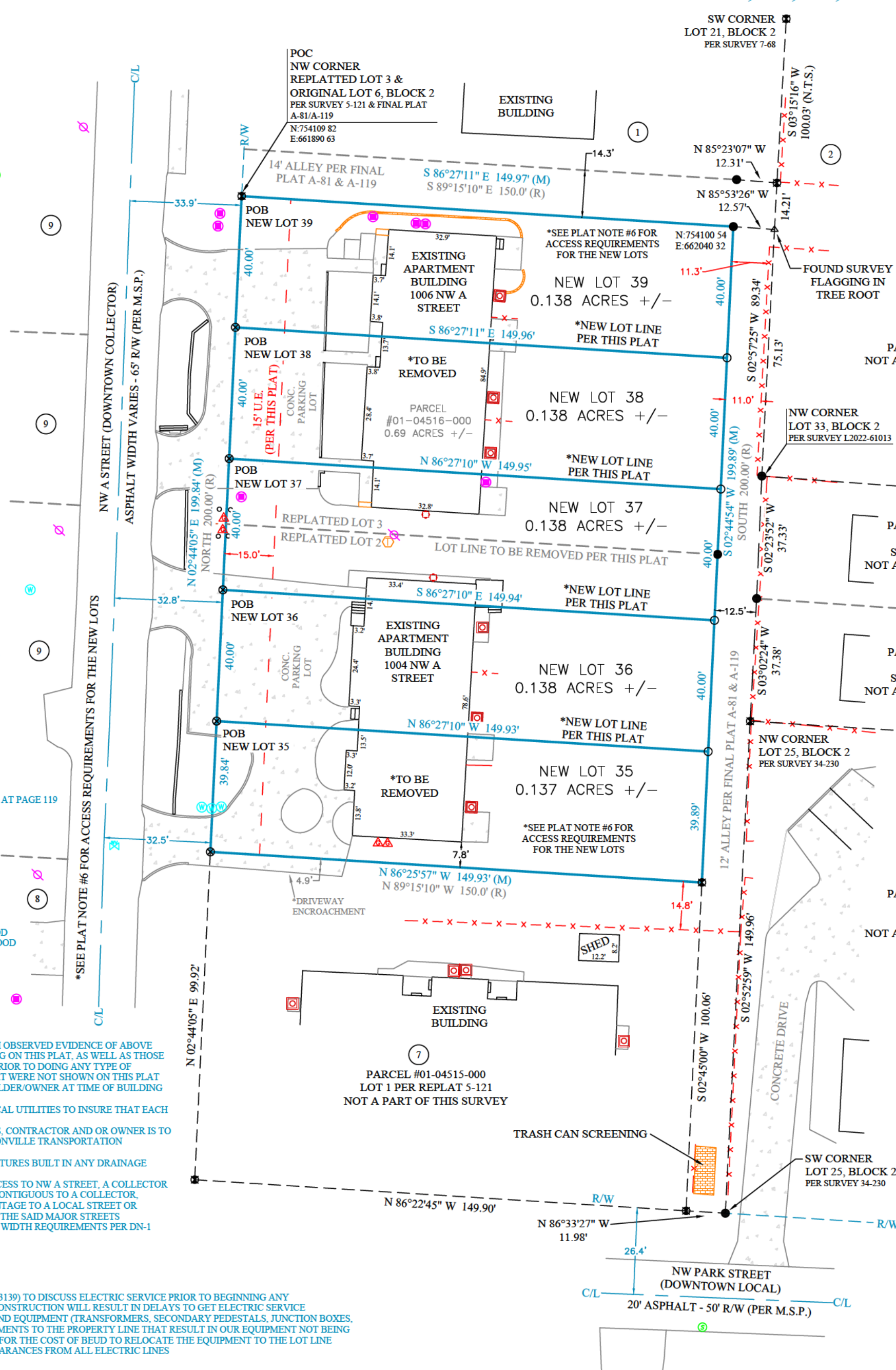
NEW LOT 36:
A PART OF LOT 2 OF THE REPLAT OF LOTS 1 THROUGH 6, BLOCK 2 OF W A BURKS ADDITION TO THE CITY OF BENTONVILLE, BENTON
COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD 5 AT PAGE 121, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT:
BEGINNING AT A POINT ON THE EAST RIGHT-OF-WAY OF NORTHWEST A STREET WHICH IS S02°44'05"W 120.00' FROM AN EXISTING REBAR
MARKING THE NORTHWEST CORNER OF LOT 3 OF SAID BLOCK 2 AND RUNNING THENCE S86°27'10"E 149.94', THENCE S02°44'54"W 40.00',
THENCE N86°27'10"W 149.93' TO THE EAST RIGHT-OF-WAY OF NORTHWEST A STREET, THENCE ALONG SAID RIGHT-OF-WAY N02°44'05"E 40.00' TO
THE POINT OF BEGINNING, CONTAINING 0.14 ACRES, MORE OR LESS. SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD.

NEW LOT 37:
A PART OF LOTS 2 AND 3 OF THE REPLAT OF LOTS 1 THROUGH 6, BLOCK 2 OF W A BURKS ADDITION TO THE CITY OF BENTONVILLE,
BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD 5 AT PAGE 121, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS,
TO-WIT: BEGINNING AT A POINT ON THE EAST RIGHT-OF-WAY OF NORTHWEST A STREET WHICH IS S02°44'05"W 80.00' FROM AN EXISTING
REBAR MARKING THE NORTHWEST CORNER OF SAID LOT 3 AND RUNNING THENCE S86°27'10"E 149.93', THENCE S02°44'54"W 40.00',
THENCE N86°27'10"W 149.94' TO THE EAST RIGHT-OF-WAY OF NORTHWEST A STREET, THENCE ALONG SAID RIGHT-OF-WAY N02°44'05"E 40.00' TO
THE POINT OF BEGINNING, CONTAINING 0.14 ACRES, MORE OR LESS. SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD.

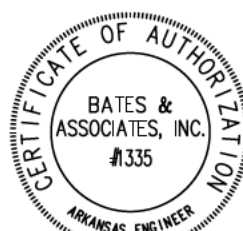
NEW LOT 38:
A PART OF LOT 3 OF THE REPLAT OF LOTS 1 THROUGH 6, BLOCK 2 OF W A BURKS ADDITION TO THE CITY OF BENTONVILLE, BENTON
COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD 5 AT PAGE 121, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT:
BEGINNING AT A POINT ON THE EAST RIGHT-OF-WAY OF NORTHWEST A STREET WHICH IS S02°44'05"W 120.00' FROM AN EXISTING REBAR
MARKING THE NORTHWEST CORNER OF SAID LOT 3 AND RUNNING THENCE S86°27'10"E 149.96', THENCE S02°44'54"W 40.00',
THENCE N86°27'10"W 149.95' TO THE EAST RIGHT-OF-WAY OF NORTHWEST A STREET, THENCE ALONG SAID RIGHT-OF-WAY N02°44'05"E 40.00' TO
THE POINT OF BEGINNING, CONTAINING 0.14 ACRES, MORE OR LESS. SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD.

NEW LOT 39:
A PART OF LOT 3 OF THE REPLAT OF LOTS 1 THROUGH 6, BLOCK 2 OF W A BURKS ADDITION TO THE CITY OF BENTONVILLE, BENTON
COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD 5 AT PAGE 121, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT:
BEGINNING AT AN EXISTING REBAR ON THE EAST RIGHT-OF-WAY OF NORTHWEST A STREET MARKING THE NORTHWEST CORNER OF SAID
LOT 3 AND RUNNING THENCE S86°27'11"E 149.97' TO AN EXISTING REBAR, THENCE S02°44'54"W 40.00', THENCE N86°27'11"W 149.96' TO THE
EAST RIGHT-OF-WAY OF NORTHWEST A STREET, THENCE ALONG SAID RIGHT-OF-WAY N02°44'05"E 40.00' TO THE POINT OF BEGINNING,
CONTAINING 0.14 ACRES, MORE OR LESS. SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD.

LOT SPLIT OF REPLATTED LOT 2 & REPLATTED LOT 3, BLOCK 2 OF W.A.
BURKS ADDITION CREATING NEW LOTS #35, 36, 37, 38 & 39



RECORDING NUMBER/DATE



I HEREBY CERTIFY THIS TO BE TRUE AND CORRECT
TO THE BEST OF MY KNOWLEDGE AND BELIEF
ON THIS THE 23RD DAY OF JANUARY, 2023.



OWNER'S CERTIFICATION:
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: _____
MARK HANEY

SOURCE OF TITLE: DEED BOOK L2020 AT PAGE 03906

SUBSCRIBED AND SWORN BEFORE ME, THIS ____ DAY OF ____, 2023

NOTARY PUBLIC

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

DATE OF EXECUTION: _____

SIGNED: _____
BENTONVILLE PLANNING
COMMISSION CHAIRMAN

SIGNED: _____
MAYOR, CITY OF BENTONVILLE

SIGNED: _____
CITY CLERK, CITY OF BENTONVILLE

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

DATE OF EXECUTION: _____

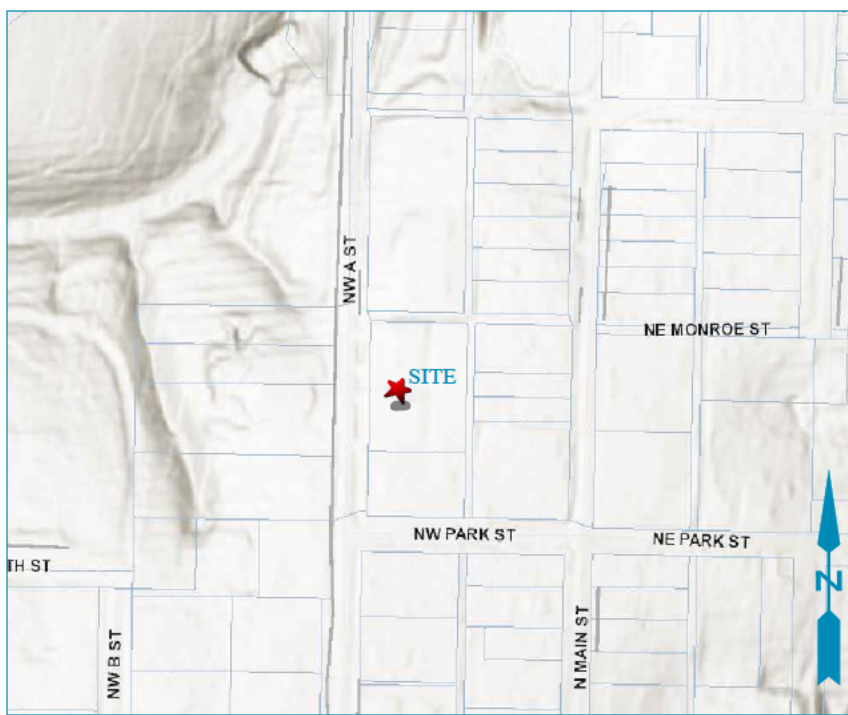
SIGNED: _____
REGISTERED LAND SURVEYOR NO. 1642 - STATE OF ARKANSAS

PROPERTY OWNER:
HANEY ENTERPRISES LLC
1307 NW K ST
BENTONVILLE, AR 72712

ATLAS PAGE:
361

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.

VICINITY MAP



BENTONVILLE PROJECT #LS23-0024

FOR USE AND BENEFIT OF:
MARK HANEY
ADDRESS:
1004 & 1006 NW A STREET
BENTONVILLE, ARKANSAS
DATE: 04/24/23
LOCATION:
REPLATTED
LOTS 2 & 3
BLOCK 2
W.A. BURKS
ADDITION

Bates & Associates, Inc.
Engineers - Surveyors
7230 S. Pleasant Ridge Dr. • Fayetteville, Arkansas 72704 • 479.442.3350
BATES & ASSOCIATES, INC. Copyright 2023
This survey was conducted for the person or persons whose name(s) appear on this plat. This plat is
protected by copyright. No one including the person(s) named may reproduce this plat without the
express written consent of Bates & Associates, Inc. Surveyor has made no independent
investigation for easements of record, encroachments, restrictive covenants, ownership title
evidence, or any other fact which a complete and accurate title search may disclose. Any flood
statement provided on this plat is for information only and Bates & Associates, Inc. assumes no
liability for the correctness of the herein cited maps, hereinafter the above statement does not
represent the opinion of Bates & Associates, Inc. of the probability of flooding.

LEGEND:
THESE STANDARD SYMBOLS WILL
BE FOUND IN THE DRAWING.
(W) RECORD BEARING & DISTANCE
(M) MEASURED BEARING & DISTANCE
● FOUND 5/8" REBAR
⊗ FOUND 1/2" REBAR
⊗ SET CHISELED "X" IN CONC
△ COMPUTED POINT
○ SET 5/8" REBAR CAP
○ SANITARY SEWER MH
○ TELEPHONE PEDESTAL
○ ELECTRICAL METER
— BOUNDARY LINE (MEASURED)
--- PARCEL / LOT LINE
--- THE LINE
--- CENTERLINE OF ROAD
--- RIGHT-OF-WAY
- - - - - FENCE
○ WATER METER
○ CLEANOUT
○ POWER POLE
○ WATER VALVE
○ GAS METER
○ AC CONDENSER UNIT
○ BOLLARD

REVISION:	DATE:
REVISED PER 1ST SUBMITTAL COMMENTS	4-24-23

ORDINANCE NO. _____

**AN ORDINANCE ACCEPTING A LOT SPLIT OF REPLATTED LOT 2 AND
REPLATTED LOT 3, BLOCK 2 OF W.A. BURKS ADDITION; CREATING NEW LOTS
35-39, BLOCK 2 OF W.A. BURKS ADDITION TO THE CITY OF BENTONVILLE,
ARKANSAS; AND FOR OTHER PURPOSES.**

(PROJECT NUMBER: LS23-0024)

WHEREAS, pursuant to the provisions of the Land Development Code of the Bentonville Municipal Code, the lot split of REPLATTED LOT 2 AND REPLATTED LOT 3, BLOCK 2 OF W.A. BURKS ADDITION, creating new LOTS 35-39, BLOCK 2 OF W.A. BURKS ADDITION, to the City of Bentonville, Benton County, Arkansas, was submitted to the Bentonville Planning Commission on May 16, 2023;

WHEREAS, said lot split is attached hereto as Exhibit “A”;

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

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

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

Section 1: That the lot split of REPLATTED LOT 2 AND REPLATTED LOT 3, BLOCK 2 OF W.A. BURKS ADDITION creating new LOTS 35-39, BLOCK 2 OF W.A. BURKS ADDITION to the City of Bentonville, Arkansas, should be and the same is hereby accepted and approved for all purposes;

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

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.

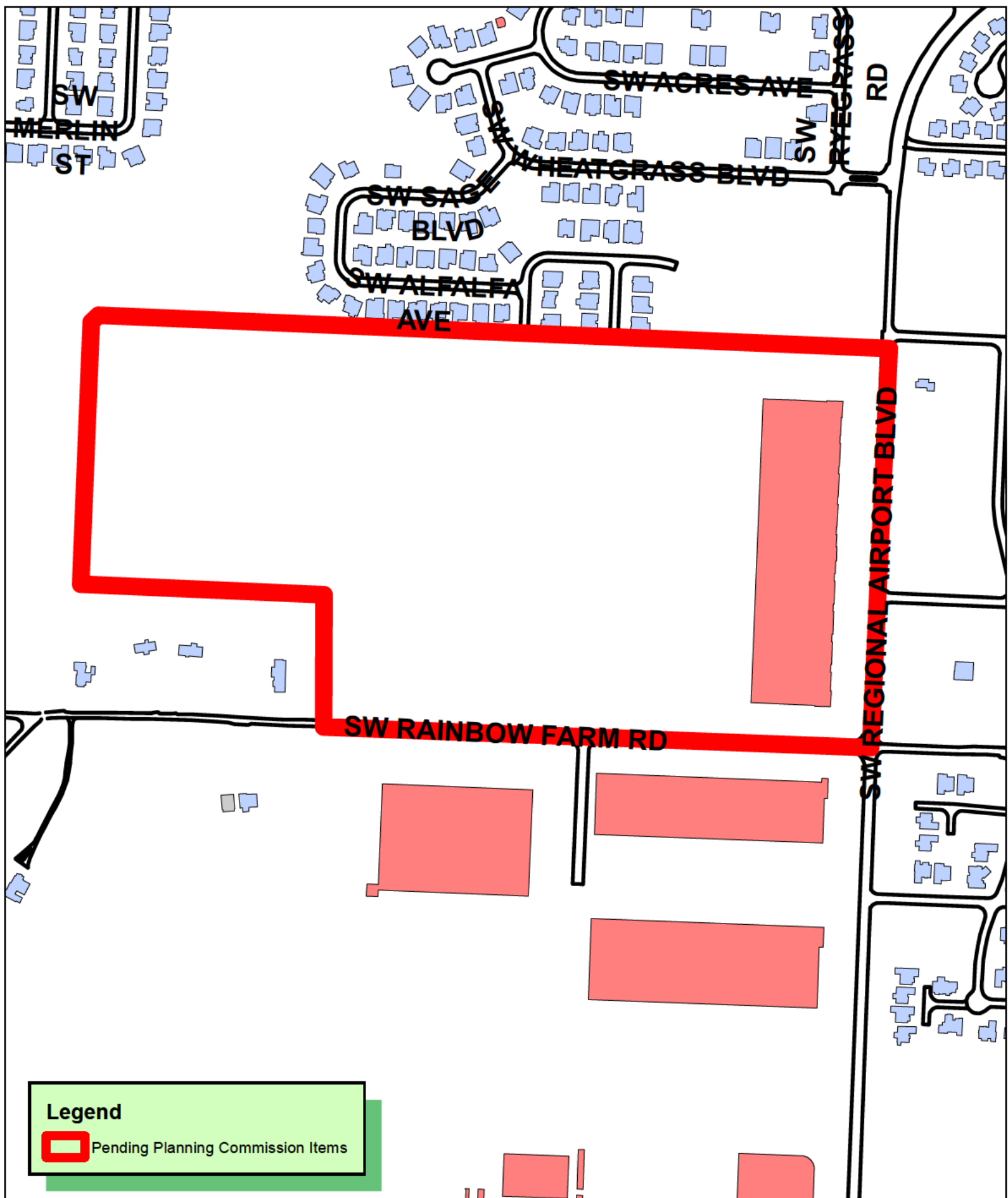
PASSED AND APPROVED this _____ day of _____, 2023

APPROVED:

ATTEST:

Stephanie Orman, Mayor

Kirby Romines, City Clerk



Legend

 Pending Planning Commission Items


1 inch = 400 feet

LS23-0025 5/16/23
LOT SPLIT
GATEWAY PARK NORTH SUBDIVISION
LOT 1 CREATING LOTS 2-3



Parent Tract Lot 1 Gateway Park North Addition

A part of the Southeast Quarter of the Southeast Quarter and a part of the Southwest Quarter of the Southeast Quarter, all in Section 10, Township 19 North, Range 31 West of the Fifth Principal Meridian, Benton County, Arkansas being more particularly described as follows:

Beginning at a point from which the Southeast Corner of Section 10, Township 19 North, Range 31 West bears (basis of bearing, Grid North) South 00°10'23" West a distance of 56.92 feet and South 87°50'07" East a distance of 1799.89 feet, being marked with a one and one-half inch (1 ½ ") Aluminum monument; thence North 00°10'23" East along the east line of Warranty Deed Book 709 Page 44, a distance of 378.55 feet to a one-half inch (1/2") rebar; thence along and coincident with the North Line of Said Deed Record, North 87°32'01" West a distance of 801.36 feet to a one-half inch (1/2") rebar marking the Northwest Corner of Warranty Deed Book 2006 Page 32033; thence along and coincident with the West Line of the Southwest Quarter of the Southeast Quarter, North 02°15'30" East a distance of 862.25 feet to an existing five-eighths inch (5/8") rebar with 1227 cap; thence North 47°26'55" East a distance of 32.55 feet to an existing five-eighths inch (5/8") rebar with 1227 cap being on the North line of the Southwest Quarter of the Southeast Quarter; thence along and coincident with the North Line of the South half of the Southeast Quarter, South 87°35'57" East a distance of 2556.42 feet to a five-eighths inch (5/8") rebar with 1227 cap; thence South 02°19'27" West, along the existing Right of Way as depicted on Arkansas State Highway and Transportation Department Plans State Job 090057, a distance of 1267.27 feet to a one-half inch (1/2") rebar with 1834 cap being on the North Right of Way of Rainbow Farm Road; thence along said Right of Way, North 87°50'56" West a distance of 904.60 feet to a one-half inch (1/2") rebar with 1834 cap; thence North 85°17'29" West a distance of 195.79 feet to a one-half inch (1/2") rebar with 1834 cap; thence North 87°41'36" West a distance of 662.46 feet to the Point of Beginning.

Lot 2 Description

A part of Lot 1, Gateway Park North Property Line Adjustment, as filed for record as Plat Document Number L202174798 on October 5, 2021 and being a part of the Southeast Quarter of Section 10, Township 19 North, Range 31 West of the Fifth Principal Meridian, Benton County Arkansas and more particularly described as follows:

BEGINNING at a mag nail with PS 1834 washer in a chiseled cross found at the southeast corner of said Lot 1; **THENCE** along the north right of way of Rainbow Farm Road, North 87°50'56" West, 502.38 feet to a one-half inch (1/2") rebar with PS 1507 cap set on the south line of aforementioned Lot 1; **THENCE** departing said right of way, North 02°19'20" East, 1,269.46 feet to a one-half inch (1/2") rebar with 1507 cap set on the north line of said Lot 1; **THENCE** along said line, South 87°35'57" East, 502.66 feet to a five-eighths inch (5/8") rebar with PS 1227 cap found on the west right-of-way of Arkansas Highway 12; **THENCE** along said right of way, South 02°20'07" West a distance of 1267.27 feet to the **POINT OF BEGINNING**, containing 14.63 acres, more or less.

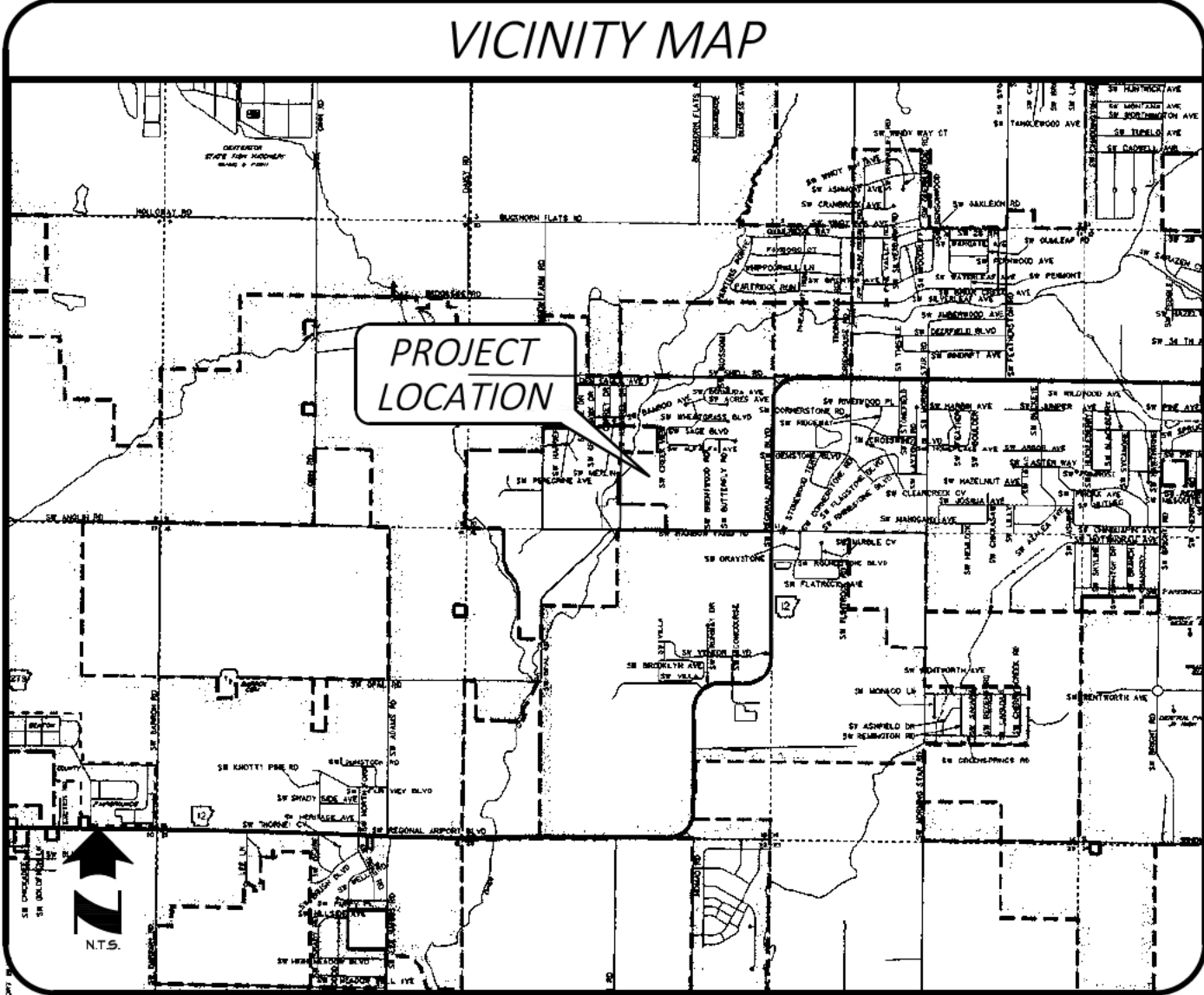
Lot 3 Description

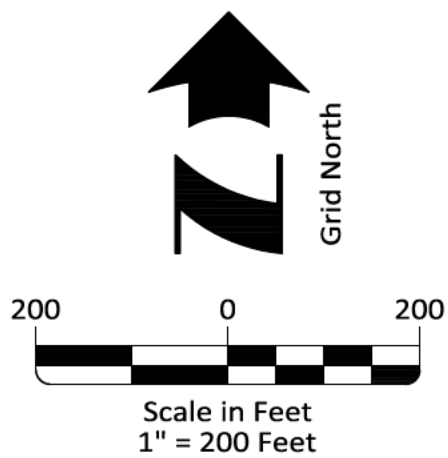
A part of Lot 1, Gateway Park North Property Line Adjustment, as filed for record as Plat Document Number L202174798 on October 5, 2021 and being a part of the Southeast Quarter of Section 10, Township 19 North, Range 31 West of the Fifth Principal Meridian, Benton County Arkansas and more particularly described as follows:

COMMENCING at a mag nail with PS 1834 washer in a chiseled cross found at the southeast corner of aforementioned Lot 1 (basis of bearings, Grid North); **THENCE** along the north right of way of Rainbow Farm Road, North 87°50'56" West, 502.38 feet to a one-half inch (1/2") rebar with PS 1507 cap and the **POINT OF BEGINNING**; **THENCE** continuing along said north right-of-way, the following three (3) calls: **1.** North 87°50'56" West, 402.22 feet to a one-half inch (1/2") rebar with PS 1507 cap; **2.** North 85°17'29" West a distance of 195.79 feet to a one-half inch (1/2") rebar with PS 1834 cap; **3.** North 87°41'36" West, 662.46 feet to one-half inch (1/2") rebar with PS 1834 cap; **THENCE** leaving said north right-of-way, North 00°10'23" East, 378.55 feet to a one-half inch (1/2") rebar; **THENCE** North 87°32'01" West, 801.36 feet to a one-half inch (1/2") rebar; **THENCE** along and coincident with the west line of the Southwest Quarter of the Southeast Quarter, North 02°15'30" East a distance of 862.25 feet to a five-eighths inch (5/8") rebar with 1227 cap; **THENCE** North 47°26'55" East, 32.55 feet to a five-eighths inch (5/8") rebar with 1227 cap found on the north line of the Southwest Quarter of the Southeast Quarter; **THENCE** along the north line of Lot 1, South 87°35'57" East, 2,053.75 feet to a one-half inch rebar with PS 1507 cap; **THENCE** departing said north line, South 02°19'20" West, 1269.46 feet to the **POINT OF BEGINNING**, containing 53.29 acres, more or less.

Reference Documents:

- 1) ALTA/ACSM Survey by Ramsey Surveying Inc. Plat Book 2004 Page 928 dated July 23, 2004.
- 2) A Boundary Survey by Thomas Copelin filed for record January 13, 1988.
- 3) Rolling Acres Subdivision Phase I by Terry Ging, PS 1301, and Northstar engineering consultants filed for record at Plat Book 2005 Page 944 on August 3, 2005.
- 4) Lamplighter Estates: Lot 2 and 3, creating Lots 5 and 6 by David Platz, PS 1553, filed for record at Plat Book 2016 Page 462.
- 5) Corporate Warranty Deed filed for record at Book 2004 Page 41439 on September 3, 2004.
- 6) Property Line Adjustment creating Lot 1, Gateway North Subdivision, Document L202174798, October 5, 2021.
- 7) Title Commitment by Fidelity National Title Insurance Company countersigned by Joshua Hite of City title and Closing. File No. 18-4144 and commitment date of January 24, 2019.
- 8) Arkansas State Highway and Transportation Department: Construction Plans for Hwy. 12 Widening (Little Osage Cr. - Morningstar Rd. Benton County, AHTD Job NO. 090057, Microfilmed October 26, 1999, P.E. Robert L. Walters 4034. Stationing of drainage structure improvements, based on plans, were used to place Right of Way.

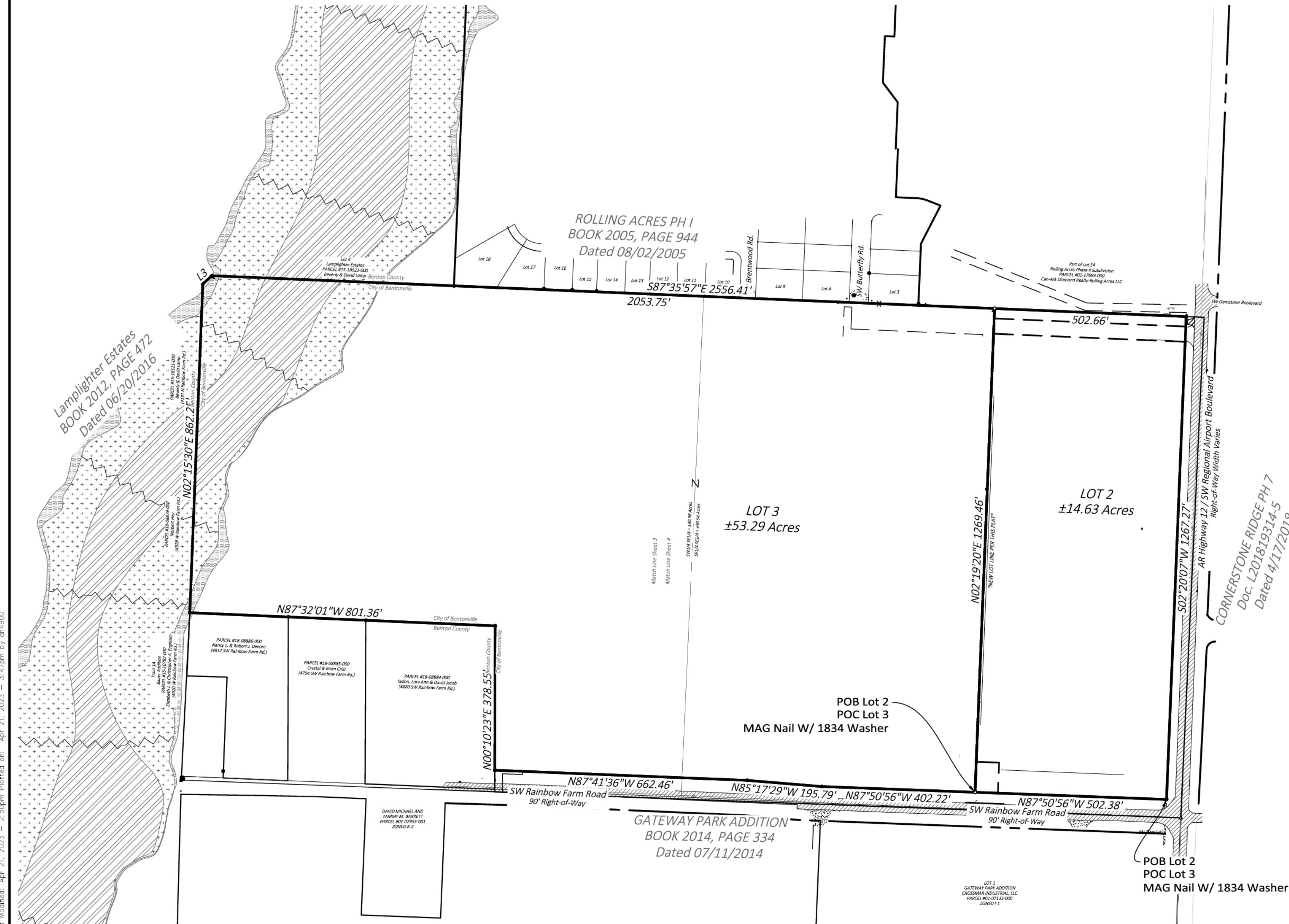




LEGEND

- Ex. Section Line
- Ex. Quarter Section Line
- Ex. Quarter Quarter Section Line
- Ex. Boundary Line
- Ex. Adjacent Boundary Line
- Ex. Right of Way Line
- Ex. Road Centerline
- Ex. Easement Line
- Dedicated Easement Line
- Ex. Asphalt
- Ex. Concrete
- Ex. Gravel
- Ex. Base Flood Elevation Line
- Ex. FEMA Floodway
- Ex. FEMA Floodzone "AE"
- Ex. FEMA Floodzone "A"
- Ex. Fence Line
- Ex. Rebar, as noted
- Ex. Nail
- Ex. Monument
- Ex. Chiseled "X"
- Set 1/2" Rebar w/ PS# 1507 Cap
- Set Mag Nail w/ PS# 1507 Washer
- Ex. Water Meter
- Ex. Fire Hydrant
- Ex. Water Valve
- Ex. Fire Department Connection
- Ex. Sewer Manhole
- Ex. Gas Meter
- Ex. Telephone Pedestal
- Ex. Fiber Optic Pedestal
- Ex. Electric Pedestal
- Ex. Electric Meter
- Ex. Power Pole
- Ex. Power Pole w/ Guy Wire
- Ex. Light Pole
- Ex. Sign
- (R) Record Bearing and Distance
- Instrument #L202174798

Drawing Name: C:\Users\ah4900\AppData\Local\Temp\AcPublish_4292\CM-17 Lot Split.dwg Last Modified: Apr 21, 2023 - 2:50pm Plotted on: Apr 21, 2023 - 3:47pm by ah4900



Zoning - Light Industrial (I-1)

Setbacks shall be per the current zoning district as stated in the most recent City of Bentonville Zoning Code.

FOR REVIEW

CITY OF BENTONVILLE #LS23-0025

LOT SPLIT

Gateway North Subdivision
Creating Lot 2 AND 3

Project No. CMI-17

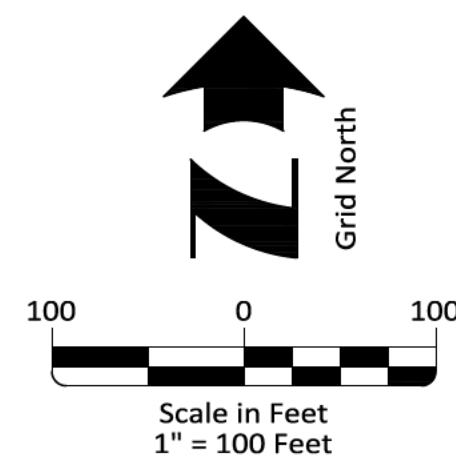
Drawn By JDSC
Checked By KAS

Date: 04.04.2023

Sht 2 of 4

“Exhibit A”

Filing Block



Property Line Table		
Line #	Bearing	Length
L1	N 87°50'07" W	39.31'
L2	N 02°20'07" E	46.74'
L3	N 47°26'55" E	32.55'

Easement Line Table		
Line #	Bearing	Length
EL4	N 87°34'32" W	28.13'
EL5	S 02°25'28" W	16.00'
EL6	N 02°25'28" E	36.00'
EL7	N 90°00'00" W	19.92'
EL8	N 02°34'18" E	20.00'
EL9	N 90°00'00" E	20.00'

See Legend Sheet 2 of 4

Zoning - Light Industrial (I-1)
Setbacks shall be per the current zoning district as stated in the most recent City of Bentonville Zoning Code.

FOR REVIEW

CITY OF BENTONVILLE #LS23-0025

LOT SPLIT

Gateway North Subdivision
Creating Lots 2 AND 3

Project No. CMI-17

Drawn By JDSC
Checked By KAS

Date: 04.04.2023

Sht 3 of 4

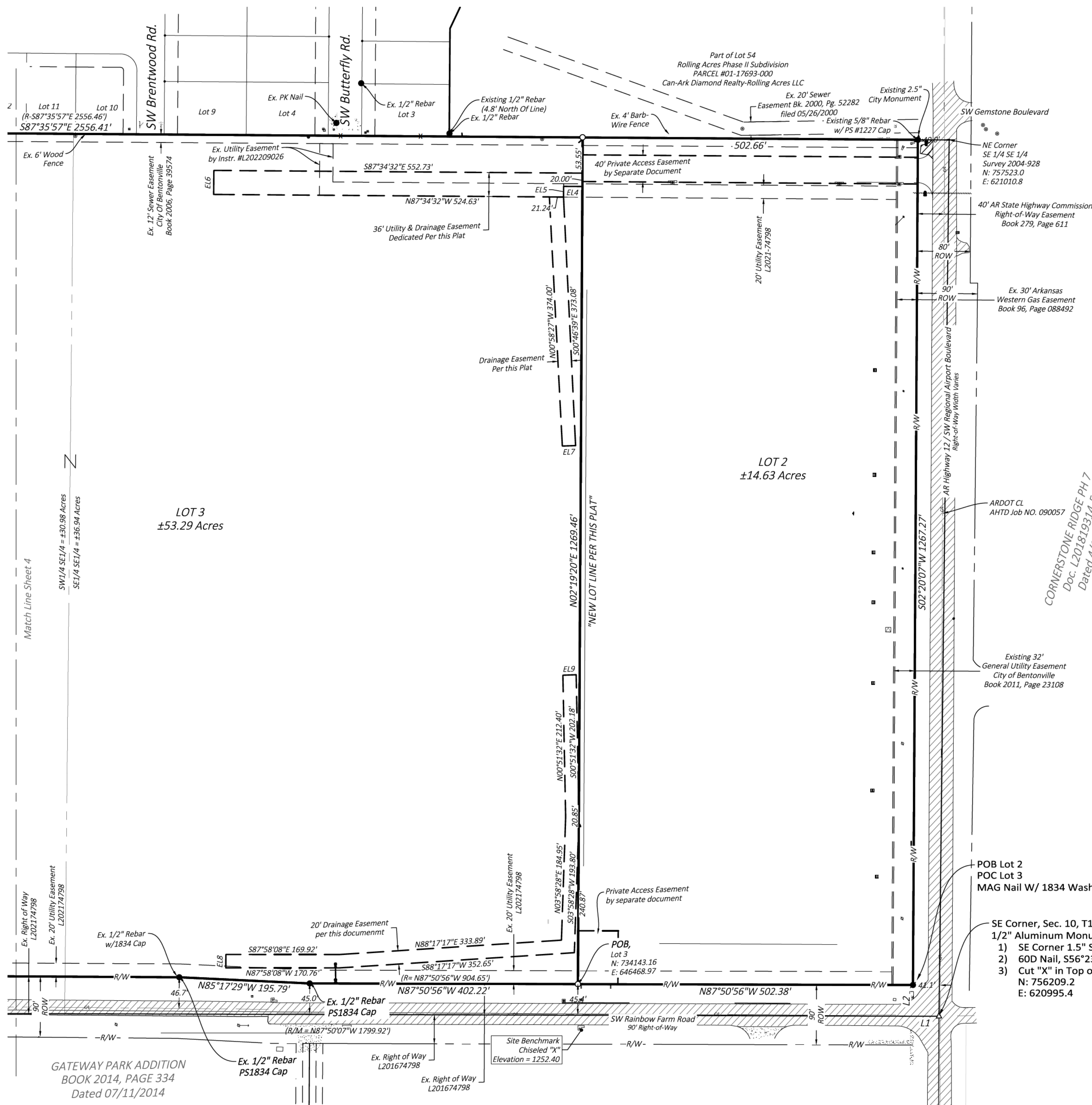
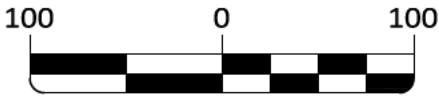


Exhibit A

Filing Block



Scale in Feet
1" = 100 Feet

Zoning - Light Industrial (I-1)

Setbacks shall be per the current zoning district as stated in the most recent City of Bentonville Zoning Code.

Property Line Table		
Line #	Bearing	Length
L1	N 87°50'07" W	39.31'
L2	N 02°20'07" E	46.74'

Easement Line Table		
Line #	Bearing	Length
EL4	N 87°34'32" W	28.13'
EL5	S 02°25'28" W	16.00'
EL6	N 02°25'28" E	36.00'
EL7	N 90°00'00" W	19.92'
EL8	N 02°34'18" E	20.00'
EL9	N 90°00'00" E	20.00'

See Legend Sheet 2 of 4

FOR REVIEW

CITY OF BENTONVILLE #LS23-0025

LOT SPLIT

Gateway North Subdivision
Creating Lots 2 AND 3

Project No. CMI-17

Drawn By JDSC
Checked By KAS

Date: 04.04.2023

Sht 4 of 4

ORDINANCE NO. _____

AN ORDINANCE ACCEPTING A LOT SPLIT OF LOT 1 OF GATEWAY PARK NORTH ADDITION; CREATING NEW LOTS 2 & 3 OF GATEWAY PARK NORTH ADDITION TO THE CITY OF BENTONVILLE, ARKANSAS; AND FOR OTHER PURPOSES.

(PROJECT NUMBER: LS23-0025)

WHEREAS, pursuant to the provisions of the Land Development Code of the Bentonville Municipal Code, the lot split of LOT 1 OF GATEWAY PARK NORTH ADDITION, creating new LOTS 2 & 3 OF GATEWAY PARK NORTH ADDITION, to the City of Bentonville, Benton County, Arkansas, was submitted to the Bentonville Planning Commission on May 16, 2023;

WHEREAS, said lot split is attached hereto as Exhibit “A”;

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

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

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

Section 1: That the lot split of LOT 1 OF GATEWAY PARK NORTH ADDITION creating new LOTS 2 & 3 OF GATEWAY PARK NORTH 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 are hereby authorized and directed to evidence the acceptance of said lot split by certifying said acceptance on the approved lot split;

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.

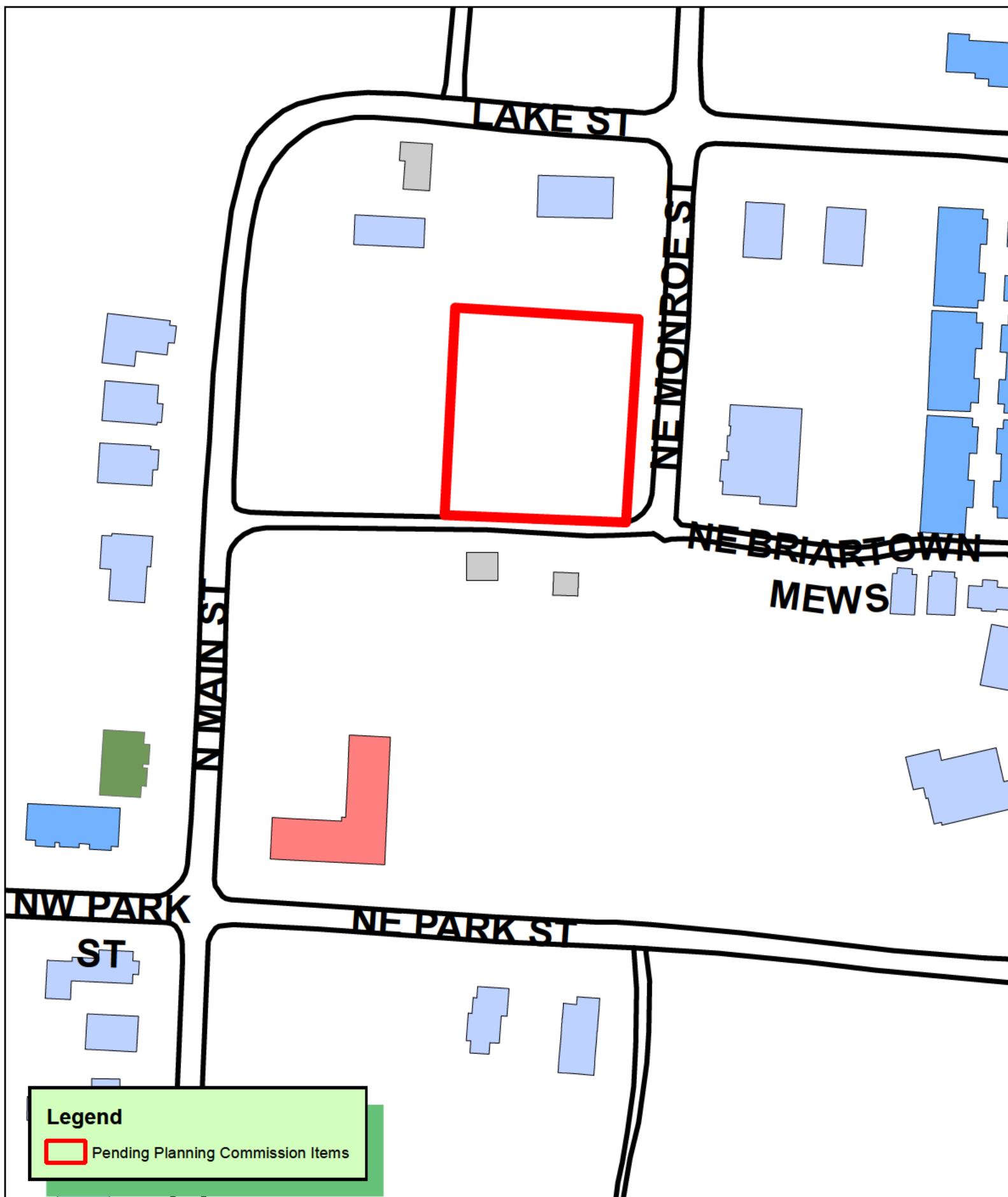
PASSED AND APPROVED this _____ day of _____, 2023

APPROVED:

ATTEST:

Stephanie Orman, Mayor

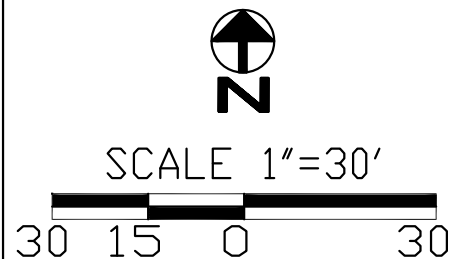
Kirby Romines, City Clerk



1 inch = 100 feet

LS23-0026 5/16/23
LOT SPLIT
W A BURKS ADDITION
LOTS 30-32 BLOCK 6 CREATING LOTS 38-43

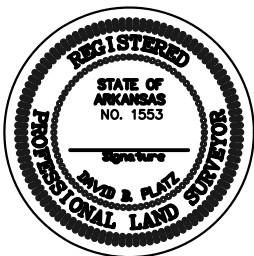




- LEGEND**
- S.I.P. SET IRON PIN
 - ⊙ PK FOUND PK NAIL
 - ⊙ S-PK SET PK NAIL
 - F.I.P. FOUND IRON PIN
 - PROPERTY LINE
 - - - CENTERLINE
 - ⊕ POWER POLE
 - ⊕ SEWER MANHOLE
 - ⊕ WATER METER
 - ⊕ TELEPHONE
 - ⊕ GAS METER

CITY REQUIRED NOTES:

1. ANY ADDITIONAL SIDEWALKS REQUIRED SHALL BE THE RESPONSIBILITY OF THE BUILDER / OWNER.
2. OWNER / DEVELOPER HAS COORDINATED WITH ALL LOCAL UTILITIES TO INSURE THAT EACH LOT HAS WATER, SEWER AND ELECTRIC SERVICE.
3. THERE MAY NOT BE FENCES OR ANY OTHER STRUCTURES BUILT IN ANY DRAINAGE EASEMENTS.
4. BEFORE ANY WORK IN THE RIGHT-OF-WAY COMMENCES, CONTRACTOR AND OR OWNER IS TO CONTACT THE CITY OF BENTONVILLE ENGINEERING AND TRANSPORTATION DEPARTMENTS AND NOTIFY SAID DEPARTMENTS ON THE INTENT AND TYPE OF THE WORK THAT WILL TAKE PLACE WITH-IN THE RIGHT-OF-WAY.
5. ALL STRUCTURES MUST MAINTAIN MINIMUM OF 20' CLEARANCES FROM ALL ELECTRIC LINES.



CERTIFICATE OF OWNERSHIP

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

DATE OF EXECUTION _____

SIGNED: _____

NAME AND ADDRESS: _____

PRINT NAME: _____

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

STATE OF ARKANSAS)

COUNTY OF BENTON)

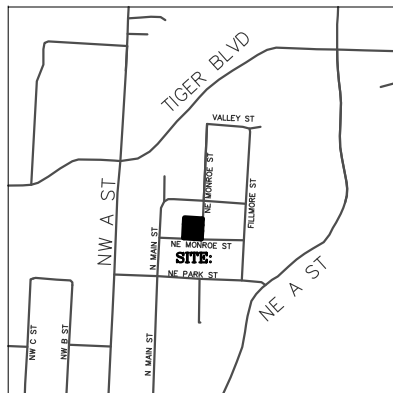
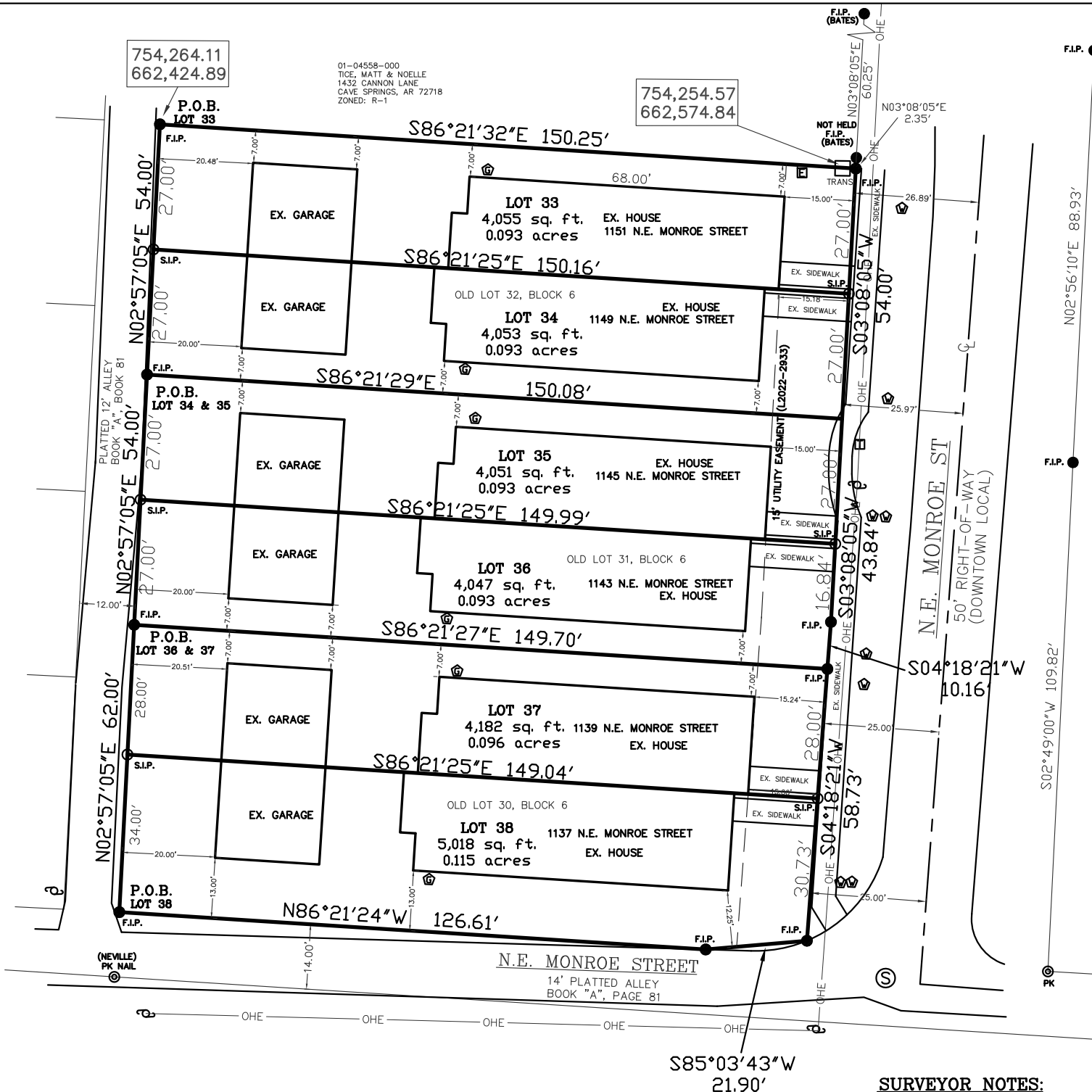
SWORN TO AND SUBSCRIBED BEFORE ME THIS _____ DAY OF _____, 2023.

NOTARY PUBLIC SIGNATURE _____

754,264.11
662,424.89

01-04558-000
TICE, MATT & NOELLE
1432 CANNON LANE
CAVE SPRINGS, AR 72718
ZONED: R-1

754,254.57
662,574.84



VIC. MAP

PROPERTY DESCRIPTION (PARENT)

LOT 30-32, BLOCK 6, IN W.A. BURKS ADDITION TO THE CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS, FOUND IN BOOK L2022 AT PAGE 2933

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

PROPERTY DESCRIPTION (LOT 33)

THE NORTH 1/2 OF OLD LOT 32, BLOCK 6, W.A. BURKS ADDITION, TO THE CITY OF BENTONVILLE, BENTON COUNTY, BEGINNING AT THE NORTHWEST CORNER OF OLD LOT 32, BLOCK 6; THENCE SOUTH 86°21'32" EAST 150.25 FEET; THENCE SOUTH 03°08'05" WEST 27.00 FEET; THENCE NORTH 86°21'25" WEST 150.16 FEET; THENCE NORTH 02°57'05" EAST 27.00 FEET TO THE POINT OF BEGINNING, CONTAINING 0.093 ACRES MORE OR LESS.

PROPERTY DESCRIPTION (LOT 34)

THE SOUTH 1/2 OF OLD LOT 32, BLOCK 6, W.A. BURKS ADDITION, TO THE CITY OF BENTONVILLE, BENTON COUNTY, BEGINNING AT THE SOUTHWEST CORNER OF OLD LOT 32, BLOCK 6; THENCE NORTH 02°57'05" EAST 27.00 FEET; THENCE SOUTH 86°21'25" EAST 150.16 FEET; THENCE SOUTH 03°08'05" WEST 27.00 FEET; THENCE NORTH 86°21'29" WEST 150.08 FEET TO THE POINT OF BEGINNING, CONTAINING 0.093 ACRES MORE OR LESS.

PROPERTY DESCRIPTION (LOT 35)

THE NORTH 1/2 OF OLD LOT 31, BLOCK 6, W.A. BURKS ADDITION, TO THE CITY OF BENTONVILLE, BENTON COUNTY, BEGINNING AT THE NORTHWEST CORNER OF OLD LOT 31, BLOCK 6; THENCE SOUTH 86°21'29" EAST 150.08 FEET; THENCE SOUTH 03°08'05" WEST 27.00 FEET; THENCE NORTH 86°21'25" WEST 149.99 FEET; THENCE NORTH 02°57'05" EAST 27.00 FEET TO THE POINT OF BEGINNING, CONTAINING 0.093 ACRES MORE OR LESS.

PROPERTY DESCRIPTION (LOT 36)

THE SOUTH 1/2 OF OLD LOT 31, BLOCK 6, W.A. BURKS ADDITION, TO THE CITY OF BENTONVILLE, BENTON COUNTY, BEGINNING AT THE SOUTHWEST CORNER OF OLD LOT 31, BLOCK 6; THENCE NORTH 02°57'05" EAST 27.00 FEET; THENCE SOUTH 86°21'25" EAST 149.99 FEET; THENCE SOUTH 03°08'05" WEST 16.84 FEET; THENCE SOUTH 04°18'21" WEST 10.16 FEET; THENCE NORTH 86°21'27" WEST 149.70 FEET TO THE POINT OF BEGINNING, CONTAINING 0.093 ACRES MORE OR LESS.

PROPERTY DESCRIPTION (LOT 37)

PART OF OLD LOT 30, BLOCK 6, W.A. BURKS ADDITION, TO THE CITY OF BENTONVILLE, BENTON COUNTY, BEGINNING AT THE NORTHWEST CORNER OF OLD LOT 30, BLOCK 6; THENCE SOUTH 86°21'27" EAST 149.70 FEET; THENCE SOUTH 04°18'21" WEST 28.00 FEET; THENCE NORTH 86°21'25" WEST 149.04 FEET; THENCE NORTH 02°57'05" EAST 28.00 FEET TO THE POINT OF BEGINNING, CONTAINING 0.096 ACRES MORE OR LESS.

PROPERTY DESCRIPTION (LOT 38)

PART OF OLD LOT 30, BLOCK 6, W.A. BURKS ADDITION, TO THE CITY OF BENTONVILLE, BENTON COUNTY, BEGINNING AT THE SOUTHWEST CORNER OF OLD LOT 30, BLOCK 6; THENCE NORTH 02°57'05" EAST 34.00 FEET; THENCE SOUTH 86°21'25" EAST 149.04 FEET; THENCE SOUTH 04°18'21" WEST 30.73 FEET; THENCE SOUTH 85°03'43" WEST 21.90 FEET; THENCE NORTH 86°21'24" WEST 126.61 FEET TO THE POINT OF BEGINNING, CONTAINING 0.115 ACRES MORE OR LESS.

SURVEYOR NOTES:

1. PARENT DEEDS FILED IN DEED RECORD 2015-54672 & L2020-00997 & 2001-154535 AND PLA FOUND IN L2022-2933.
2. PROPERTIES ARE COUNTY TAX PARCEL #01-04555-000 & 01-04556-000 & 01-04557-000
3. THE CURRENT ZONING AT TIME OF SUBMITTAL FOR THE PROPERTY IS DOWNTOWN MEDIUM DENSITY RESIDENTIAL (DN-2). SETBACKS SHALL BE PER THE CURRENT ZONING DISTRICT AS STATED IN THE MOST RECENT CITY OF BENTONVILLE ZONING CODE. FOR MORE INFO VISIT WWW.BENTONVILLEPLANNING.COM OR CALL THE PLANNING DEPARTMENT @ 479-271-3122.
4. ALL EASEMENTS AVAILABLE TO THE SURVEYOR ARE SHOWN, TO FIND ANY/ALL EASEMENTS OF RECORD A TITLE SEARCH IS REQUIRED.

CERTIFICATE OF APPROVAL

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

DATE OF EXECUTION: _____

SIGNED: _____

MAYOR

CITY CLERK

PLANNING COMMISSION CHAIRMAN

FLOOD CERTIFICATION

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

CERTIFICATE OF ACCURACY

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

DATE OF EXECUTION: _____

SIGNED: _____

REGISTERED LAND SURVEYOR
NO. 1553
STATE OF ARKANSAS

PROP. LINE ADJUSTMENT OF LOT 30-32, BLOCK 6, W A BURK'S ADDITION, CREATING LOTS 33-38, BLOCK 6, W.A. BURK'S ADDITION BENTONVILLE, ARKANSAS

REVISIONS

No.: BY: DATE:

OWNER CONTACT INFO:

V3 CONSTRUCTION
1431 LE CHESNAY DRIVE
CENTERTON, AR 72719

273-7989
OR
366-7989

DAVID B. PLATZ
LAND SURVEYOR

P.O. BOX 223
BENTONVILLE, AR 72712

DRAWN BY: DP/ZS

DATE: 2/22/23

CHECKED BY:

JOB No.: 2021431

SCALE: 1"=30'

SHEET: 1

ORDINANCE NO. _____

**AN ORDINANCE ACCEPTING A LOT SPLIT OF LOTS 30, 31 AND 32, BLOCK 6 OF
W.A. BURK’S ADDITION CREATING NEW LOTS 33, 34, 35, 36, 37 & 38, BLOCK 6 OF
W.A. BURK’S ADDITION TO THE CITY OF BENTONVILLE, ARKANSAS; AND FOR
OTHER PURPOSES.**

(PROJECT NUMBER: LS23-0026)

WHEREAS, pursuant to the provisions of the Land Development Code of the Bentonville Municipal Code, the lot split of LOTS 30, 31 AND 32, BLOCK 6 OF W.A. BURK’S ADDITION creating new LOTS 33, 34, 35, 36, 37 & 38, BLOCK 6 OF W.A. BURK’S ADDITION, to the City of Bentonville, Benton County, Arkansas, was submitted to the Bentonville Planning Commission on May 16, 2023;

WHEREAS, said lot split is attached hereto as Exhibit “A”;

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

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

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

Section 1: That the lot split of LOTS 30, 31 AND 32, BLOCK 6 OF W.A. BURK’S ADDITION creating new LOTS 33, 34, 35, 36, 37 & 38, BLOCK 6 OF W.A. BURK’S 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 are hereby authorized and directed to evidence the acceptance of said lot split by certifying said acceptance on the approved lot split;

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 AND APPROVED this _____ day of _____, 2023

APPROVED:

ATTEST:

Stephanie Orman, Mayor

Kirby Romines, City Clerk



Elm Tree Accommodation, LLC

801 SW Elm Street Road

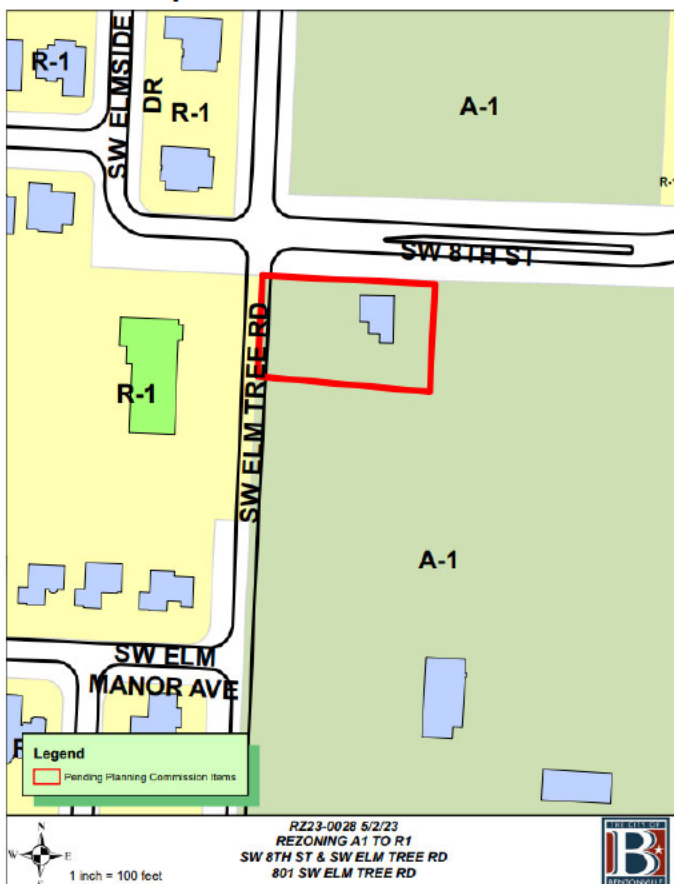
PC Date: 5/2/2023, 5/16/2023

Reviewer: Jon Stanley, Senior Planner, ASLA,
APA

Project Number	RZ23-0028
Applicant / Current Owner	Elm Tree Accommodation, LLC
Site Area	+/- 0.51 acres
Current Zoning	A-1, Agricultural
Requested Zoning	R-1, Single Family Residential
Current Future Land Use Map Designation	Residential Estates (RE)
Requested Future Land Use Map Designation	Low Density Residential (LDR)
Related projects	LS23-0016 (on 5-16-23 PC Agenda)

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

Location Map



Property Description

This property is located at 801 Elm Tree Road. It is currently zoned A-1, Agricultural. It contains an existing single-family home with a detached garage. Adjacent zonings are all either A-1, Agricultural or R-1, Low-density Single Family Residential.

Relationship to the General Plan

The Future Land Use Plan depicts this property as Residential Estates (RE) and is surrounded by Agriculture and Low-Density Residential. Low-density residential areas include detached single-family residential properties with a typical density of 3-8 units per acre. While lot size and overall density may vary from one part of the city to another, these areas represent the predominant form of residential development in Bentonville. These areas may also include local amenities for residents, including neighborhood parks, places of worship, etc.

Public Comment

Staff has NOT received public comment regarding this request.

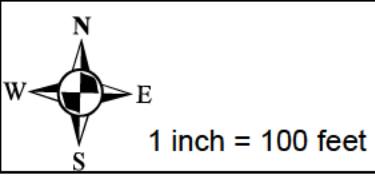
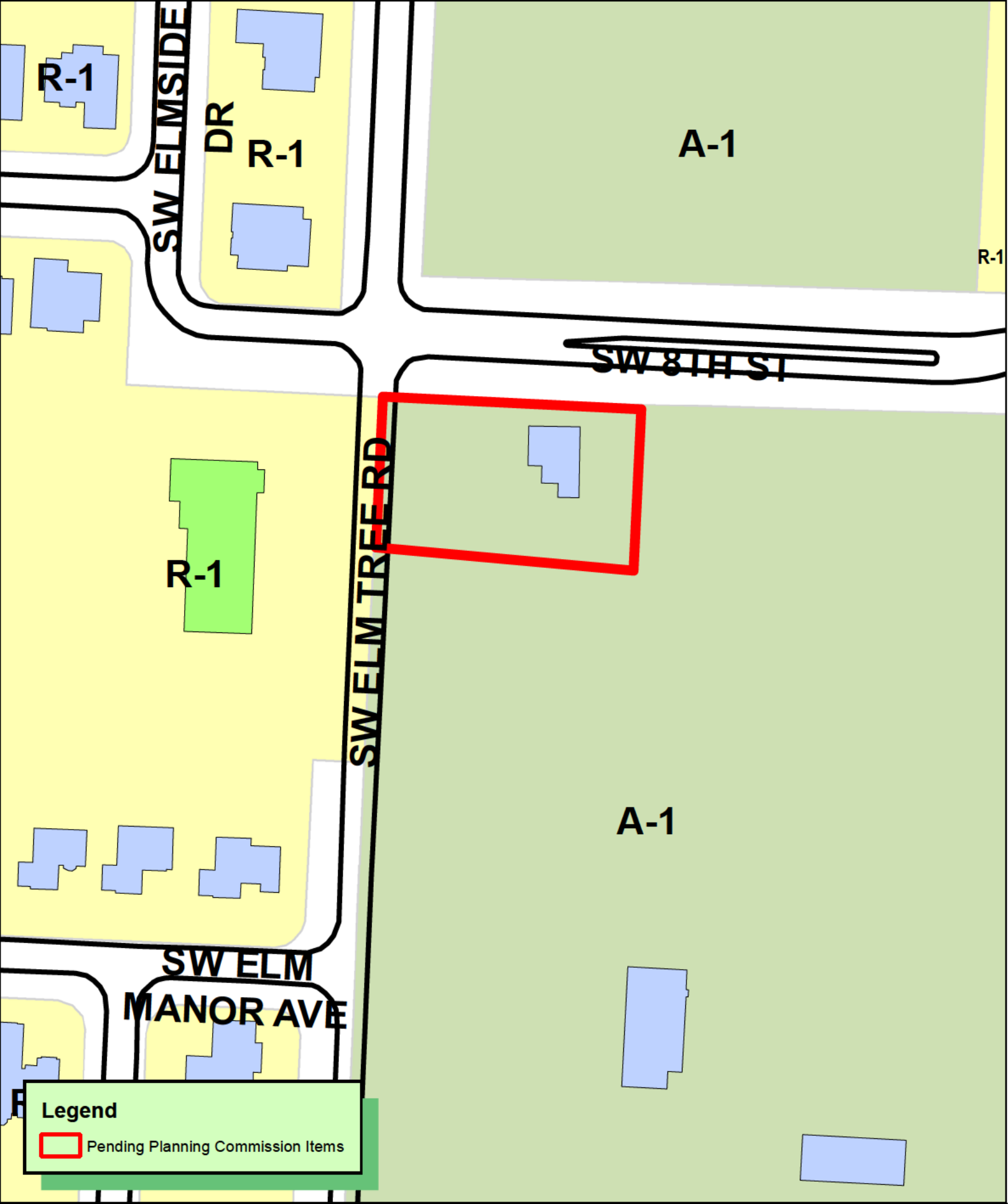
Analysis

The intent of the R-1 District is to serve low density developments in which housing is generally of the highest value and where strict separation of land uses is desired. Since R-1 Districts are separated from all commercial and industrial activity, access to connecting traffic arteries is essential.

The proposed zoning of R-1 and the request land use plan change are not consistent with the Future Land Use Plan but is compatible with the surrounding development patterns within this area of the city and support the requested change. While the proposed zoning lines do not align with actual property lines, the applicant has submitted a lot split for the property that will establish the actual property lines of which the zoning lines will then follow. The lot split is currently scheduled for the May 2, 2023, Planning Commission agenda.

Conclusion

While this request is not consistent with the Future Land Use Plan, it is consistent with the uses of the surrounding zoning districts and development patterns located in the vicinity.



RZ23-0028 5/2/23
REZONING A1 TO R1
SW 8TH ST & SW ELM TREE RD
801 SW ELM TREE RD



Narrative

Current zoning is A-1 and requesting a rezoning the Northwest approximately .62ac to R-1, which fits into the future use plan for the area. Current owners are entities owned wholly by Beau Barrett as member of the Elm Tree Accommodation, LLC. No sales are proposed at this time.

Reason (owner occupied): The Barrett's purchased this property and will be transferring house on corner with the .62+- acres (minus dedications to city) to the Jeremy and Lidia Hunt.

The property to be rezoned will conform to the adjacent residential properties and will remain as is with current occupants.

Use for .62+- acre tract will be for single family residential.

Traffic impact - None.

No signage

Appearance is in keeping with surrounding properties and will remain unchanged.

Water and Sewer is available.

RESOLUTION NO. _____

**A RESOLUTION AMENDING THE CITY OF BENTONVILLE FUTURE LAND USE
MAP FOR A SPECIFIC AREA FROM RESIDENTIAL ESTATE TO LOW-DENSITY
RESIDENTIAL; AND FOR OTHER PURPOSES.**

(PROJECT NUMBER: RZ23-0028)

WHEREAS, Elm Tree Accommodations, LLC, duly filed a petition with the Planning Commission requesting that the hereinafter described property situated in Benton County, Arkansas, be changed from its present land use classification of RESIDENTIAL ESTATE to LOW-DENSITY RESIDENTIAL, which property is described as follows:

PART OF THE NORTHWEST QUARTER (NW 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 35, TOWNSHIP 20 NORTH, RANGE 31 WEST, BENTON COUNTY, ARKANSAS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST (NW) CORNER OF THE NORTHWEST QUARTER (NW 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF SAID SECTION 35; THENCE SOUTH 87°08'14" EAST, A DISTANCE OF 211.86 FEET; THENCE SOUTH 02°51'46" WEST, A DISTANCE OF 132.05 FEET; THENCE NORTH 84°48'14" WEST, A DISTANCE OF 211.32 FEET; THENCE NORTH 02°31'49" EAST, A DISTANCE OF 123.45 FEET TO THE POINT OF BEGINNING. CONTAINING 27,017.75 SQUARE FEET OR 0.62 ACRES, MORE OR LESS.

WHEREAS, the Planning Commission duly met and considered the application and duly set the petition for public hearing to be held May 16, 2023 at the Council Chambers of the City of Bentonville;

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

WHEREAS, the Planning Commission voted to recommend to the City Council that the petition be approved and that said future land use classification as presented on the property be changed.

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

Section 1: That the above-described real property is hereby changed from its present land use classification of RESIDENTIAL ESTATE to LOW-DENSITY RESIDENTIAL on the City of Bentonville Future Land Use Map;

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 _____, 2023.

APPROVED:

ATTEST:

Stephanie Orman, Mayor

Kirby Romines, City Clerk

ORDINANCE NO. _____

**AN ORDINANCE CHANGING REAL ESTATE IN THE CITY OF
BENTONVILLE, ARKANSAS, FROM ITS PRESENT ZONING
CLASSIFICATION OF A-1, AGRICULTURAL TO R-1, LOW DENSITY
SINGLE FAMILY RESIDENTIAL; AND FOR OTHER PURPOSES.**

(PROJECT NUMBER: RZ23-0028)

WHEREAS, Elm Tree Accommodations, LLC, duly filed a petition with the Planning Commission requesting that the hereinafter described property situated in Benton County, Arkansas, be changed from its present zoning classification of A-1, AGRICULTURAL to R-1, LOW DENSITY SINGLE FAMILY RESIDENTIAL to be used in accordance with city zoning laws and state laws, which property is described as follows:

PART OF THE NORTHWEST QUARTER (NW 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 35, TOWNSHIP 20 NORTH, RANGE 31 WEST, BENTON COUNTY, ARKANSAS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST (NW) CORNER OF THE NORTHWEST QUARTER (NW 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF SAID SECTION 35; THENCE SOUTH 87°08'14" EAST, A DISTANCE OF 211.86 FEET; THENCE SOUTH 02°51'46" WEST, A DISTANCE OF 132.05 FEET; THENCE NORTH 84°48'14" WEST, A DISTANCE OF 211.32 FEET; THENCE NORTH 02°31'49" EAST, A DISTANCE OF 123.45 FEET TO THE POINT OF BEGINNING. CONTAINING 27,017.75 SQUARE FEET OR 0.62 ACRES, MORE OR LESS.

WHEREAS, the Planning Commission duly met and considered the application and duly set the petition for public hearing to be held May 16, 2023 in the Council Chambers of the City of Bentonville;

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

WHEREAS, the Planning Commission voted to recommend to the City Council that the petition be approved and that said property be rezoned from its present classification of A-1, AGRICULTURAL to R-1, LOW DENSITY SINGLE FAMILY RESIDENTIAL.

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

Section 1: That the above-described real property is hereby changed from its present zoning classification of A-1, AGRICULTURAL to R-1, LOW DENSITY SINGLE FAMILY RESIDENTIAL to be used in accordance with the city zoning laws and state laws;

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.

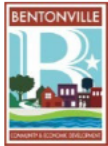
PASSED AND APPROVED this _____ day of _____, 2023.

APPROVED:

ATTEST:

Stephanie Orman, Mayor

Kirby Romines, City Clerk



Ultra Homes, LLC

1906 SW 14th Street

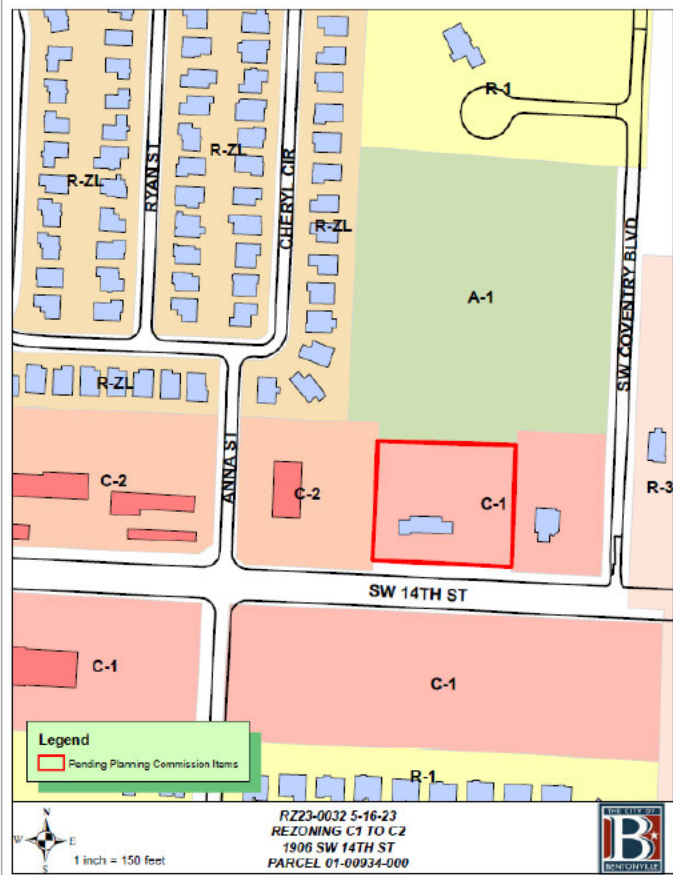
PC Date: 5/16/2023

Reviewer: Luke Aitken, Planning Technician

Project Number	RZ23-0032
Applicant / Current Owner	Ultra Homes, LLC
Site Area	+/- 1.37 acres
Current Zoning	C-1, Neighborhood Commercial
Requested Zoning	C-2, General Commercial
Current Future Land Use Map Designation	Commercial (C)
Related projects	None

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

Location Map



Property Description

This property is located in west Bentonville at 1906 SW 14th Street, just northwest of the intersection of SW Coventry Blvd and SW 14th Street. It is currently zoned C-1, Neighborhood Commercial. It contains an existing single-family home with a street facing garage. Adjacent zonings are all C-2 General Commercial, apart from an undeveloped parcel to the north zoned A-1, Agriculture.

Relationship to the General Plan

The Future Land Use Plan depicts this property as Commercial (C) with one adjacent property designated as Residential Estate to the north, and all other adjacent properties sharing the Commercial Future Land Use designation. commercial areas include uses that serve both nearby residents and those coming from other parts of the city or region. Appropriate uses in these areas include retail, restaurants, services, and offices. Vertical mixed-use developments are encouraged but are not as high a priority as in mixed-use or downtown commercial areas. General commercial uses should balance access between pedestrians and vehicles, though the impacts of parking should be minimized through site design and landscaping.

This property is located within Priority Area 2, Infill, as outlined in chapter 4 of the Bentonville Community Plan. Development in this area supports the development of vacant properties already served by infrastructure within the context of existing development.

Public Comment

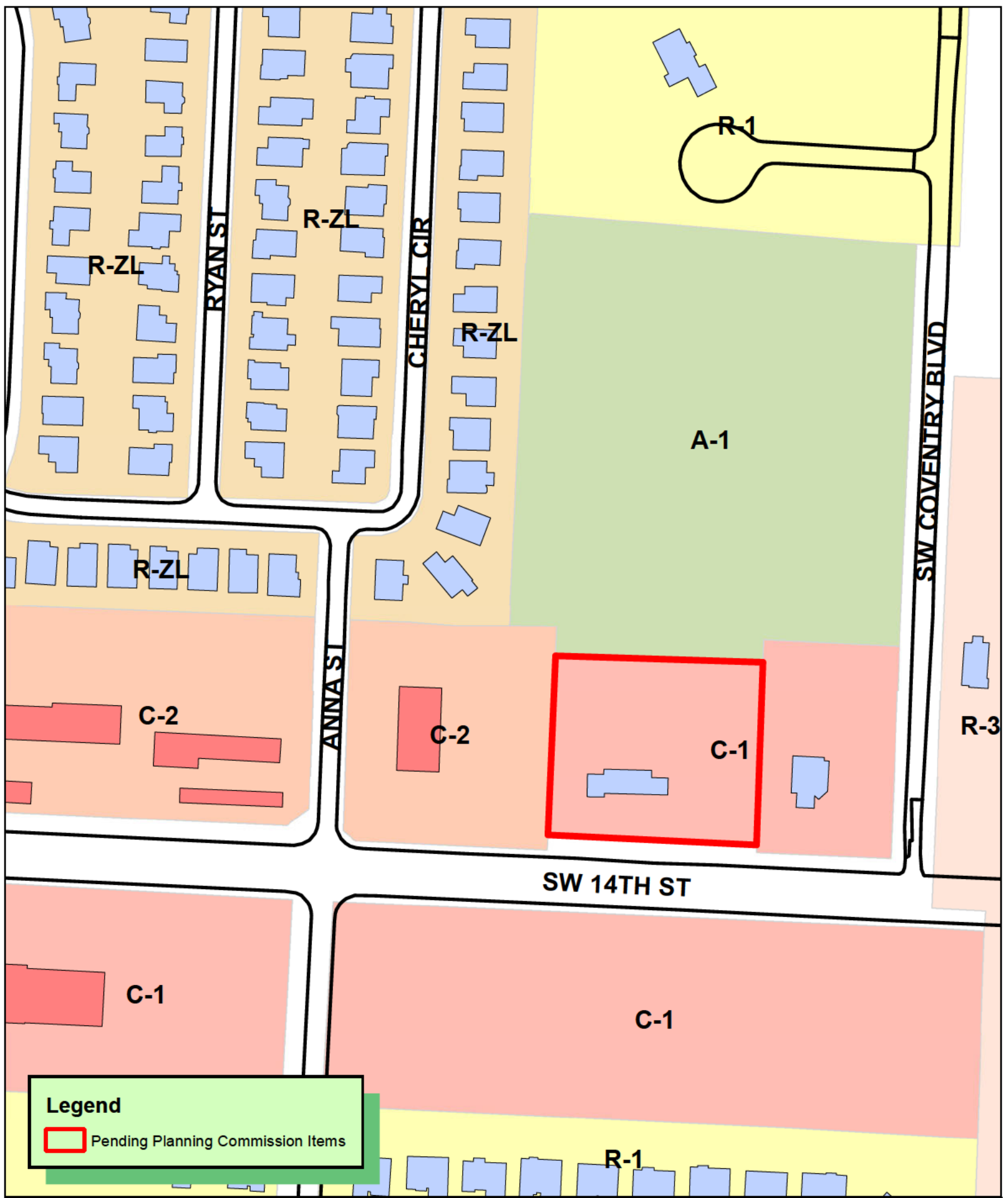
Staff has NOT received public comment regarding this request at the time of preparing this staff report.

Analysis

The C-2 District represents the least restrictive of the commercial districts and is designed to serve the planning area and highway travelers. This district shall congregate on local arterial streets in such a manner as to minimize disruptions of through traffic and shall be interspersed within the corporate boundaries. The proposed zoning of C-2, General Commercial is consistent with the Future Land Use Plan as well as nearby development patterns along SW 14th Street. Although no residential development is directly adjacent to the site in question, there is a large amount of single-family housing to the north that would serve to benefit from more accessible day to day services and retail options nearby. To that effect, a dedicated sidewalk or pedestrian access to the site aligning with the existing cross access easement to the west, upon redevelopment, would encourage patronage of the development by neighbors.

Conclusion

This request is consistent with the Future Land Use Plan and is consistent with recent nearby development patterns. For these reasons staff recommends approval of this request.



Legend

 Pending Planning Commission Items


1 inch = 150 feet

RZ23-0032 5-16-23
REZONING C1 TO C2
1906 SW 14TH ST
PARCEL 01-00934-000

THE CITY OF

BENTONVILLE

April 20, 2023

CK CIVIL ENGINEERING

1906 SW 14TH ST. REZONE NARRATIVE

101 Parkwood St #1, Suite C
Lowell, AR 72745
479-200-5242
ck-civil.com

REZONE NARRATIVE

- 1.1. The current zoning is C-1 Neighborhood Commercial and the requested zoning C-2 General Commercial.
- 1.2. Ultra Homes LLC owns the property.
- 1.3. No land sale has been proposed.
- 1.4. Allow more flexibility for the lot uses to align with the main thoroughfare.
- 1.5. Property immediately to the west is C-2. Property to the east is developed and is C-1. Property to the north is currently A-1, but its continued use as agricultural doesn't seem likely with development surrounding the property.
- 1.6. The current plan is to use the land for a 1-unit multifamily facility. These have yet to be finalized and could change but would stay within the permitted uses of C-2.
- 1.7. The addition of a small development of the lot would have a minimal impact on the existing traffic counts.
- 1.8. The proposed signage would be a building-mounted sign or a monument sign that aligns with the city's codes and ordinances. The exact nature of the sign is unknown at this time will adapt to city comments.
- 1.9. Appearance would be in a style appropriate for the development and within the city code.
- 1.10. Water is available on-site with a 12" water line. Sewer is available on the lot to the immediate west and will be accessed through the existing easement.

Prepared by Clint Karstetter with CK Civil Engineering.

Clint Karstetter, PE
Principal, Civil Engineer

ORDINANCE NO. _____

**AN ORDINANCE CHANGING REAL ESTATE IN THE CITY OF BENTONVILLE,
ARKANSAS, FROM ITS PRESENT ZONING CLASSIFICATION OF C-1,
NEIGHBORHOOD COMMERCIAL TO C-2, GENERAL COMMERCIAL; AND
FOR OTHER PURPOSES.**

(PROJECT NUMBER: RZ23-0032)

WHEREAS, Ultra Homes LLC, duly filed a petition with the Planning Commission requesting that the hereinafter described property situated in Benton County, Arkansas, be changed from its present zoning classification of C-1, NEIGHBORHOOD COMMERCIAL to C-2, GENERAL COMMERCIAL to be used in accordance with city zoning laws and state laws, which property is described as follows:

PART OF THE SW 1/4 OF THE SW 1/4 OF SECTION 36, TOWNSHIP 20 NORTH, RANGE 31 WEST, BENTON COUNTY, ARKANSAS, DESCRIBED AS BEGINNING 39.56 FEET NORTH AND NORTH 89 ° 41'40" WEST 220.98 FEET FROM THE SE CORNER OF SAID SW ¼ OF THE SW 1/4 ON THE NORTH RIGHT-OF-WAY LINE OF ARKANSAS STATE HIGHWAY #102; THENCE ALONG SAID RIGHT-OF-WAY LINE NORTH 89 ° 41'40" WEST 255.55 FEET; THENCE LEAVING NORTH RIGHT-OF-WAY NORTH 00°28'21" WEST 250.00 FEET; THENCE SOUTH 89 ° 41'40" EAST 259.19 FEET; THENCE SOUTH 00 ° 21'43" WEST 249.98 FEET TO THE POINT OF BEGINNING. LESS & EXCEPT: PART OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 20 NORTH, RANGE 31 WEST, BENTON COUNTY, ARKANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT A POINT BEING USED AS THE WEST 1/16 CORNER OF SECTION 36; THENCE NORTH 02 ° 28'23" FLAN ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36 A DISTANCE OF 45.77 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF ARKANSAS STATE HIGHWAY 102 AS ESTABLISHED BY AHTD JOB 9482; THENCE NORTH 87 ° 16'27" WEST ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 220.82 FEET FOR THE POINT OF BEGINNING; THENCE CONTINUE NORTH 87 ° 16'27" WEST ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 255.59 FEET TO A POINT; THENCE NORTH 01 ° 58'15" EAST A DISTANCE OF 18.54 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF ARKANSAS STATE HIGHWAY 102 AS ESTABLISHED BY AHTD JOB 090179; THENCE SOUTH 87 ° 52'52" EAST ALONG SAID-RIGHT OF WAY LINE A DISTANCE OF 210.85 FEET TO A POINT; THENCE SOUTH 87 ° 03'05" EAST ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 45.00 FEET TO A POINT; THENCE SOUTH 02'44'28" WEST A DISTANCE OF 20.60 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.12 ACRES OR 5,073 SQUARE FEET MORE OR LESS AS SHOWN ON PLANS PREPARED BY THE AHTD REFERENCED AS JOB 090179.

ALSO LESS & EXCEPT: PART OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 20 NORTH, RANGE 31 WEST, BENTON COUNTY, ARKANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT A POINT BEING USED AS THE WEST 1/16 CORNER OF SECTION 36, THENCE NORTH 02 ° 28'23" EAST ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36 A DISTANCE OF 45.77 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE

OF ARKANSAS STATE HIGHWAY 102 AS ESTABLISHED BY AHTD JOB 9482; THENCE NORTH 87 ° 16'27" WEST ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 476.41 FEET FOR THE POINT OF BEGINNING; THENCE CONTINUE NORTH 87 ° 16' 27" WEST ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 3.10 FEET TO A POINT; THENCE NORTH 02 ° 40'58" EAST ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 18.51 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF ARKANSAS STATE HIGHWAY 102 AS ESTABLISHED BY AHTD JOB 090179; THENCE SOUTH 87 ° 52'52" EAST ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 2.87 FEET TO A POINT; THENCE SOUTH 01 ° 58'15" WEST A DISTANCE OF 18.54 FEET TO THE POINT OF BEGINNING AND CONTAINING 55 SQUARE FEET MORE OR LESS AS SHOWN ON PLANS PREPARED BY THE AHTD REFERENCED AS JOB 090179.

WHEREAS, the Planning Commission duly met and considered the application and duly set the petition for public hearing to be held May 16, 2023 in the Council Chambers of the City of Bentonville;

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

WHEREAS, the Planning Commission voted to recommend to the City Council that the petition be approved and that said property be rezoned from its present classification of C-1, NEIGHBORHOOD COMMERCIAL to C-2, GENERAL COMMERCIAL.

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

Section 1: That the above-described real property is hereby changed from its present zoning classification of C-1, NEIGHBORHOOD COMMERCIAL to C-2, GENERAL COMMERCIAL to be used in accordance with the city zoning laws and state laws;

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 AND APPROVED this _____ day of _____, 2023.

APPROVED:

ATTEST:

Stephanie Orman, Mayor

Kirby Romines, City Clerk

LOT SPLIT STAFF REPORT



Lots 1 and 2 of 8th & Elm Subdivision

801 Southwest Elm Tree Road

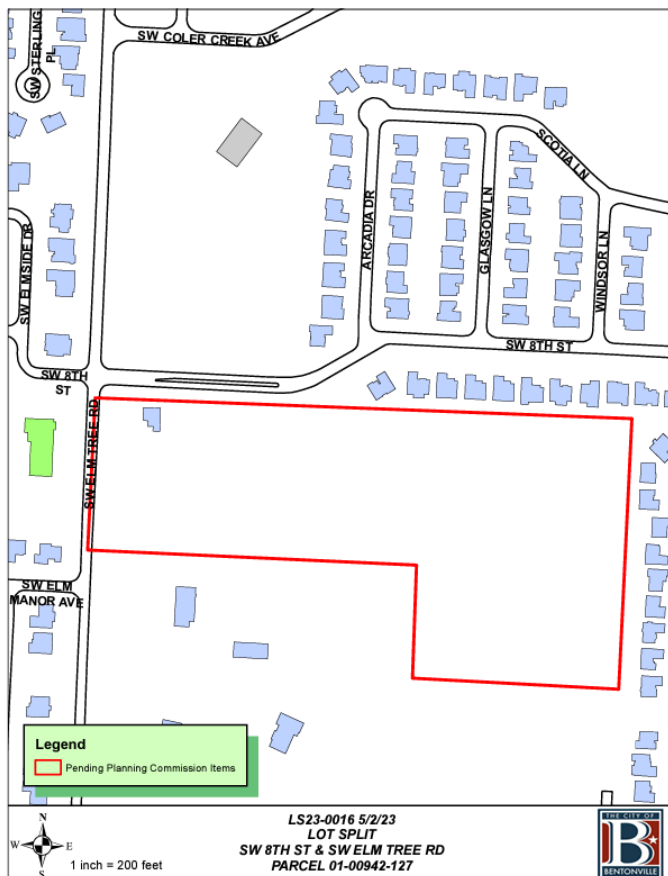
PC Date: 5/16/2023

Reviewer: Bradley Gavrielides, Planning Technician

Project Number	LS23-0016
Applicant / Current Owner	Barrett Development Group / Elm Tree Accommodations LLC
Site Area	+/- 15.03 Acres
Current Zoning	A-1, Agricultural
Future Land Use Map Designation	Residential Estate (RE)
Related Projects	RZ23-0028

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

Location Map



Property Description

This property is located at 801 Southwest Elm Tree Road. It is currently zoned A-1, Agriculture, with a Future Land Use Map classification of RE, Residential Estate. RZ23-0028 is for the Northwest corner of the property to rezone to R-1.

Project Details

The applicant is proposing a split of an existing 15.03-acre lot into two lots; Lot 1 of 8th & Elm Tree Subdivision (0.51 acres) and Lot 2 of 8th & Elm Tree Subdivision (14.16 acres). The applicant has also made concurrent rezoning and future land use map amendment requests (RZ23-0028) for this property to be classified as Low-Density Residential future land use and rezoned from A-1, Agriculture to R-1, Low Density Single Family Residential.

The plat dedicates a 20-foot-wide private ingress/egress easement along the southern edge of Lot 1, in addition to dedicating 15,604.16 Sq. Ft. or 0.36 Acres of right of way along the east of Southwest Elm Tree Road for a total of 45 ft of right-of-way on the east side, as required per the Bentonville Master Street Plan.

Waivers

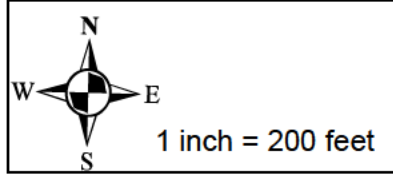
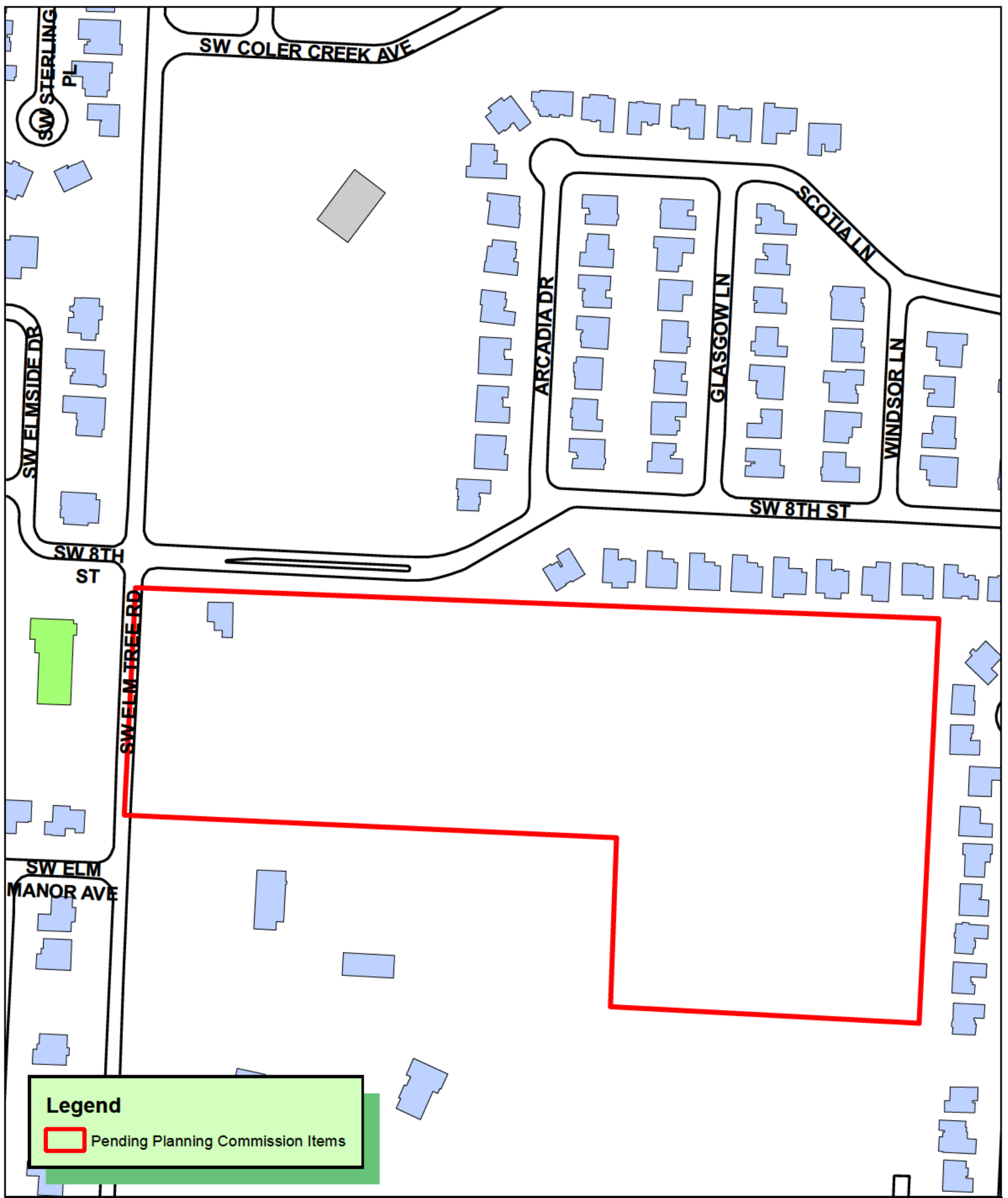
There are no waiver requests associated with this project.

Analysis and Recommendation

Staff recommends approval of the lot split, as adequate right of way is being proposed along SW Elm Tree Road and all lots proposed would comply with zoning and subdivision specific code requirements, but only if the associated rezoning is approved before this plat is voted on by Planning Commission.

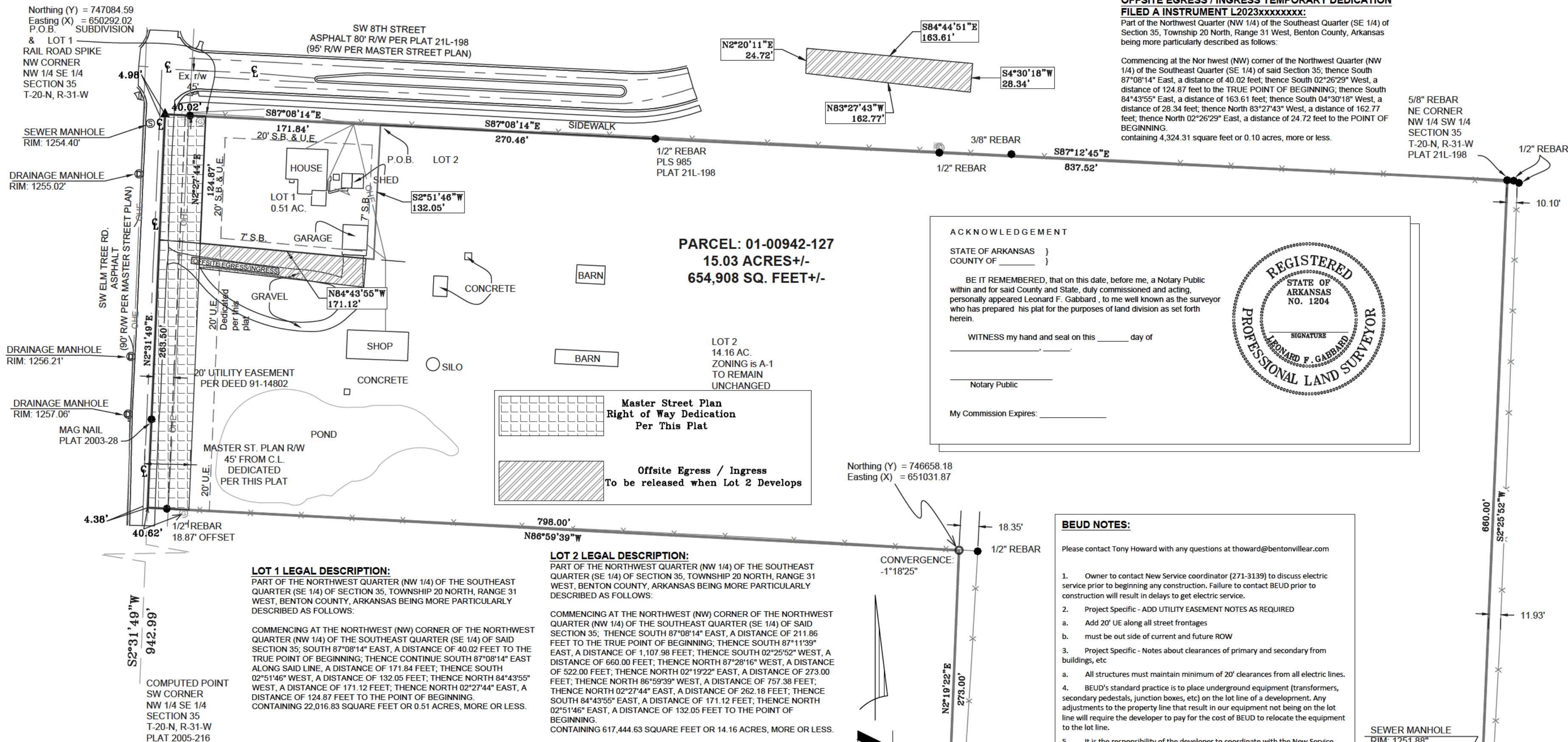
Standard Conditions of Approval

1. The applicant shall provide a digital copy of the plat.
2. All technical review comments shall be addressed prior to filing the plat or requesting a building permit.



LS23-0016 5/2/23
LOT SPLIT
SW 8TH ST & SW ELM TREE RD
PARCEL 01-00942-127





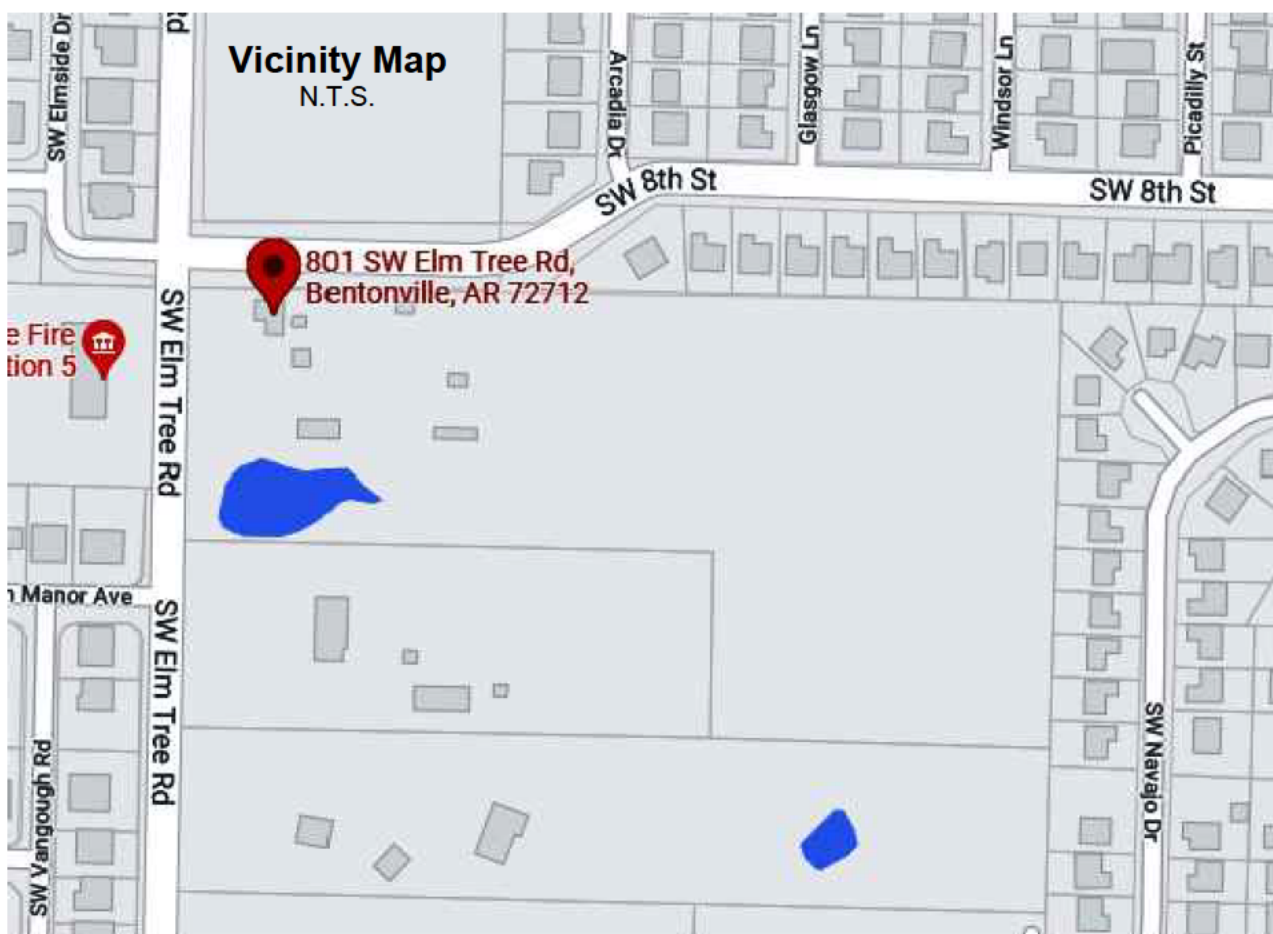
Notes:

- Except as specifically stated or shown on this plat, the survey does not purport to reflect any of the following which may be applicable to the subject real estate:
 Easements, other than possible easements which were visible at the time of making of this survey; building setback lines; restrictive covenants; subdivision restrictions; zoning or other land-use regulations, or any other facts which an accurate and current title search may disclose.
- Every document of record reviewed and considered as a part of this survey is noted hereon. Only the documents noted hereon were supplied to the surveyor.
- This plat represents a boundary survey of the parcel recorded in Deed Records, Book 90, Page 6080 at the Office of the Circuit Clerk Benton County, Arkansas.
- The contractor must determine that proposed structures are clear of all boundary lines, easements, and meet building setback requirements before construction begins.
- Basis of Bearings: Arkansas State Plane System North Zone (NAD83).
- Basis of Elevation: NAVD88
- This survey is valid only if the drawing includes the seal and signature of the surveyor.
- This survey meets current "Arkansas Minimum Standards for Property Boundary Surveys and Plats."
- No abstract of title, nor title commitment, nor results of title searches were furnished to the surveyor. There may exist other documents of record which would affect this parcel.
- Declaration is made to the original purchaser of the survey and is not transferable to any additional institutions or subsequent owners.
- Current Building zoning: A-1
- Setbacks shall be per the current zoning district as stated in the most recent City of Bentonville Zoning Code. For more info visit www.bentonvilleplanning.com or call the Planning Department @ 479-271-3122.
- Subsurface and environmental conditions were not examined nor considered a part of this survey.
- The locations of underground utilities as shown hereon are based on such above ground structures as were visible at the time of survey, and/or from record drawings provided to the surveyor. The location of underground utilities/structures may vary from locations shown hereon. No excavations were made during the progress of this survey to locate underground utilities/structures.
- No attempt has been made as a part of this boundary survey to obtain or show data concerning existence, size, depth, condition, capacity, or location of any utility or facilities.
- (BY GRAPHICAL PLOTTING ONLY)
 This property is not located within any presently established 100-year flood plain as determined by the National Flood Insurance Program, flood insurance rate map for Benton County, Arkansas. Map Number 05007C0255K. Revised date 06/05/2012.
- Sidewalks shall be the responsibility of the builder/owner at time of building permit issuance.
- 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.

SW ELM TREE ROAD RIGHT OF WAY DEDICATION:

PART OF THE NORTHWEST QUARTER (NW 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 35, TOWNSHIP 20 NORTH, RANGE 31 WEST, BENTON COUNTY, ARKANSAS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST (NW) CORNER OF THE NORTHWEST QUARTER (NW 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF SAID SECTION 35; THENCE SOUTH 87°08'14" EAST, A DISTANCE OF 40.02 FEET; THENCE SOUTH 87°08'14" WEST, A DISTANCE OF 387.05 FEET; THENCE NORTH 86°59'39" WEST, A DISTANCE OF 40.62 FEET; THENCE NORTH 02°31'49" EAST, A DISTANCE OF 386.95 FEET TO THE POINT OF BEGINNING. CONTAINING 15,604.16 SQUARE FEET OR 0.36 ACRES, MORE OR LESS.



ACKNOWLEDGEMENT

STATE OF ARKANSAS }
 COUNTY OF _____ }

BE IT REMEMBERED, that on this date, before me, a Notary Public within and for said County and State, duly commissioned and acting, personally appeared Leonard F. Gabbard, to me well known as the surveyor who has prepared his plat for the purposes of land division as set forth herein.

WITNESS my hand and seal on this _____ day of _____

 Notary Public

My Commission Expires: _____

REGISTERED
 STATE OF ARKANSAS
 NO. 1204
 PROFESSIONAL LAND SURVEYOR
 LEONARD F. GABBARO

BEUD NOTES:

Please contact Tony Howard with any questions at thoward@bentonvillear.com

- Owner to contact New Service coordinator (271-3139) to discuss electric service prior to beginning any construction. Failure to contact BEUD prior to construction will result in delays to get electric service.
- Project Specific - ADD UTILITY EASEMENT NOTES AS REQUIRED
 - Add 20' UE along all street frontages
 - must be out side of current and future ROW
- Project Specific - Notes about clearances of primary and secondary from buildings, etc
 - All structures must maintain minimum of 20' clearances from all electric lines.
- BEUD's standard practice is to place underground equipment (transformers, secondary pedestals, junction boxes, etc) on the lot line of a development. Any adjustments to the property line that result in our equipment not being on the lot line will require the developer to pay for the cost of BEUD to relocate the equipment to the lot line.
- It is the responsibility of the developer to coordinate with the New Service Coordinator @ 479 271-3139 to determine if equipment is in conflict.

SUBDIVISION LEGAL DESCRIPTION:

PART OF THE NORTHWEST QUARTER (NW 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 35, TOWNSHIP 20 NORTH, RANGE 31 WEST, BENTON COUNTY, ARKANSAS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST (NW) CORNER OF THE NORTHWEST QUARTER (NW 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF SAID SECTION 35; THENCE SOUTH 87°08'14" EAST A DISTANCE OF 482.32 FEET TO A FOUND 1/2" REBAR PLS 985; THENCE SOUTH 87°12'45" EAST A DISTANCE OF 837.52 FEET TO A FOUND 5/8" REBAR; THENCE SOUTH 02°25'52" WEST A DISTANCE OF 660.00 FEET TO A SET 5/8" REBAR PLS 1845; THENCE NORTH 87°28'16" WEST A DISTANCE OF 522.00 FEET TO A SET 5/8" REBAR PLS 1845; THENCE NORTH 02°19'22" EAST A DISTANCE OF 273.00 FEET TO A SET 5/8" REBAR PLS 1845; THENCE NORTH 86°59'39" WEST A DISTANCE OF 758.00 FEET; THENCE NORTH 02°31'49" EAST A DISTANCE OF 386.95 FEET TO THE POINT OF BEGINNING. CONTAINING 15.03 ACRES OR 654,908 SQUARE FEET MORE OR LESS. SUBJECT TO ANY EASEMENTS OR RIGHT-OF-WAYS OF RECORD OR FACT IF ANY.

State Filing Code:
 500-20N-31W-0-35-240-04-1845

Lot Split for Parcel 01-00942-127
 Creating 8th & Elm Subdivision
 Lots 1 & 2

G.C.

Gabbard Consulting
 7521 W Wedington Dr.
 Fayetteville, Arkansas 72704
 Telephone: (479) 409-9259
leonardgabbard5@gmail.com

ATLAS
 PAGE
 401

Recording Information
Job Number: 23-001
Field Work: W.A.A.S.
Drawn By: N.R. & L.G.
Checked By: L.G.

Date: 03/31/2023
Scale: 1"=80'
Basis of Bearings:(NAD83) Arkansas State Plane North Zone

TREE LINE	WOOD FENCE	CHAIN LINK FENCE	WIRE FENCE	PAINTED STRIPE	OVERHEAD ELECTRIC LINE
RECORD DISTANCE	RECORD BEARING	SANITARY SEWER MANHOLE	DECIDUOUS TREE	EVERGREEN TREE	
CABLE RISER	TRAFFIC SIGNAL	WATER METER	WATER VALVE	FIRE HYDRANT	GAS METER
MONUMENT SET (5/8" REBAR WCAP)	AHTD R-O-W MONUMENT	BENCHMARK	GUARD POST	UTILITY POLE	TELEPHONE RISER
					FIBER OPTIC TELEPHONE RISER
					ELECTRICAL RISER

List of waivers, variances, and Conditional Uses:
 There are no waivers, variances and/or conditional uses at the time of preparing this plat.

Owner/Developer & LLC Information:

Beau S. Barrett Representing
 Elm Tree Accommodation LLC
 960 NW 'C' Street
 Bentonville, AR 72712
 Phone: 1 (479) 366-0696
 Email: beau@bleoffice.com

SHEET NO.
 1 OF 1
 City Proj. No. : LS23-0016

EXHIBIT B**EASMENT LEGAL DESCRIPTION**

OFFSITE EGRESS / INGRESS TEMPORARY DEDICATION TO BE PROVIDED BY SEPARATE INSTRUMENT:
Part of the Northwest Quarter (NW 1/4) of the Southeast Quarter (SE 1/4) of Section 35, Township 20 North, Range 31 West, Benton County, Arkansas being more particularly described as follows:

*Commencing at the Northwest (NW) corner of the Northwest Quarter (NW 1/4) of the Southeast Quarter (SE 1/4) of said Section 35; thence South 87°08'14" East, a distance of 40.02 feet; thence South 02°26'29" West, a distance of 124.87 feet to the TRUE POINT OF BEGINNING; thence South 84°43'55" East, a distance of 163.61 feet; thence South 04°30'18" West, a distance of 28.34 feet; thence North 83°27'43" West, a distance of 162.77 feet; thence North 02°26'29" East, a distance of 24.72 feet to the POINT OF BEGINNING.
containing 4,324.31 square feet or 0.10 acres, more or less.*

ORDINANCE NO. _____

**AN ORDINANCE ACCEPTING A LOT SPLIT OF UNPLATTED LAND; CREATING NEW
LOTS 1 AND 2 OF 8TH & ELM SUBDIVISION TO THE CITY OF BENTONVILLE,
ARKANSAS; AND FOR OTHER PURPOSES.**

(PROJECT NUMBER: LS23-0016)

WHEREAS, pursuant to the provisions of the Land Development Code of the Bentonville Municipal Code, the lot split of UNPLATTED LAND, creating new LOTS 1 AND 2 OF 8TH & ELM SUBDIVISION, to the City of Bentonville, Benton County, Arkansas, was submitted to the Bentonville Planning Commission on May 16, 2023;

WHEREAS, said lot split is attached hereto as Exhibit “A”;

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

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

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

Section 1: That the lot split of UNPLATTED LAND creating new LOTS LOTS 1 AND 2 OF 8TH & ELM SUBDIVISION to the City of Bentonville, Arkansas, should be and the same is hereby accepted and approved for all purposes;

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

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 AND APPROVED this _____ day of _____, 2023

APPROVED:

ATTEST:

Stephanie Orman, Mayor

Kirby Romines, City Clerk



Agenda Item Form

Date of City Council Meeting	5/23/2023
Department	Planning
Submitted by	Tyler Overstreet
Phone	(479) 271-3144

Item Type: (Check Applicable Item Type)					
☐ Budget Adjustment	☐ Change Order	☐ Informational	☒ Ordinance	☐ Resolution	☐ Bid Award
Recommendation/Suggested Action (Enter recommendation in space below):					
An appeal by Ecological Design Group, representing Lucatoni, LLC, to a Planning Commission approval of a Rezoning Request from R-1, Low-Density Single-Family Residential to DN-2, Downtown Medium-Density Residential for property located at 411 NW C Street. The applicant is appealing in order to request approval of their original rezoning request from R-1, Low-Density Single-Family Residential to DN-3, Downtown High-Density Residential.					

Estimated Cost	\$
Is this Item Budgeted?	☐ Yes ☐ No
If no, please explain how item will be funded (briefly explain in space below):	





Memorandum

To: City Council
From: Tyler Overstreet, AICP
Date: May 23, 2023
RE: RZ23-0031, Lucatoni Appeal

On May 2, 2023, the Planning Commission considered a rezoning request at 411 NW C Street for Lucatoni, LLC. The applicant requested the property be rezoned from its present classification of R-1, Low-Density Single-Family Residential to DN-3, Downtown High-Density Residential. After the conclusion of the public hearing and discussion between staff, the applicant, and the Planning Commission, the applicant amended their rezoning request to DN-2, Downtown Medium-Density Residential. The Planning Commission approved the rezoning request to DN-2 by a vote of 7-0.

After the May 2 Planning Commission meeting, the applicant realized that their architectural design plans were above the 36-foot height allowance of DN-2. As a result, the applicant would like for the City Council to reconsider their rezoning request to DN-3, Downtown High-Density Residential, which is the reason for the appeal on tonight's agenda. City Council may approve the appeal, which approves the application to DN-3, deny the appeal, which denies the application to DN-3, or send the application back to the Planning Commission for reconsideration. Within this evening's packet, you will find the original staff report and packet which was presented to the Planning Commission, the May 2nd meeting minutes, and the applicant's appeal letter and associated attachments.

Please let me know if you have any questions about the original requests, the appeal, or the process. Thank you.

Regards,

Tyler Overstreet
Director of Planning and Community Development, City of Bentonville



May 3, 2023

To Whom It May Concern:

Lucatoni LLC would like to respectfully appeal the decision made regarding a rezoning request at the May 2 Planning Commission meeting. Our original submission request was for DN-3, which is supported by the land use plan indicating high density residential. During the meeting, we voluntarily agreed to request DN-2 at the suggestion of the commission after hearing concerns from several neighbors. Although we agreed to the request thinking it would not change our plans to build four townhomes, after further review of our plans, the decrease height allowed by DN-2 vs DN-3 (40' and 36' respectively) creates a challenge for our planned two level buildings with conditioned attic lofts with a maximum height of 39' along the gable ridge. Please note that the townhomes will still look like any other two level home on NW C with a traditional gable roof—the ridgeline just happens to be slightly beyond what DN-2 allows but will still fit within the character of the neighborhood with many two level homes and gable roofs.

The commission did not indicate that they would not have supported the DN-3 request, and in fact provided positive feedback during technical review along with support from staff for the original request. However, on the spot and in the moment, we agreed to the DN-2 request in a goodwill gesture towards the neighbors, mistakenly thinking it would not affect our plans. We respectfully request the commission reconsider our original request for a DN-3 zoning, which is allowed and encouraged by the future land use plan. Please forgive the oversight on my part in not fully reviewing the plans and implications of the change in our request on the spot during the meeting. Thank you for considering this appeal.

Respectfully,
Mark Haney



Legal description of 411 NW A St Parcel #01-02134-000

Lot 5, Block 6, Deming's Addition to the City of Bentonville, Benton County, Arkansas,
as shown in Plat Record "B" at Page 6.

REZONING STAFF REPORT



Lucatoni LLC

411 NW C St

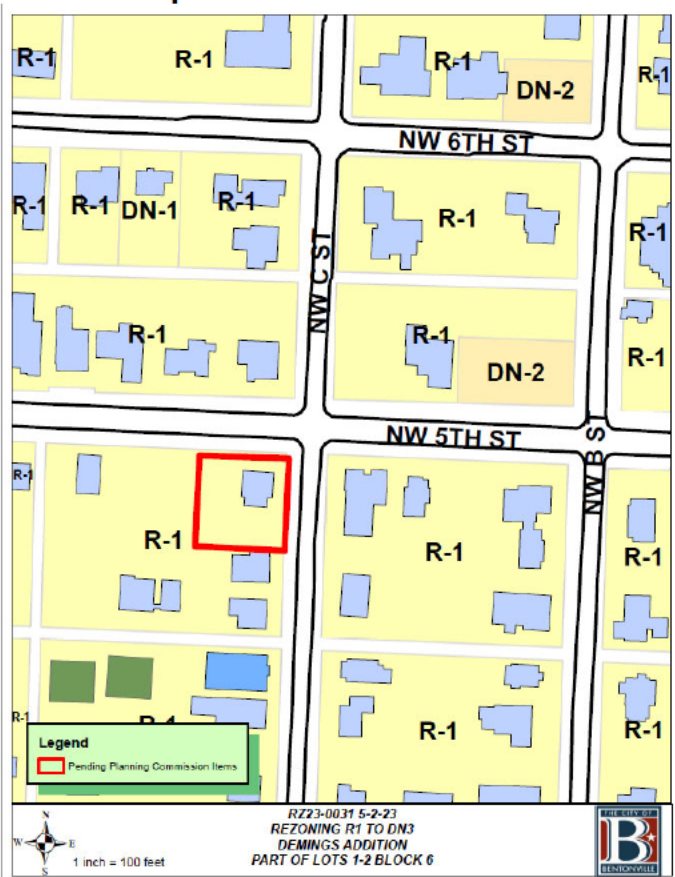
PC Date: 5/2/2023

Reviewer: Luke Aitken, Planning Technician

Project Number	RZ23-0031
Applicant / Current Owner	Lucatoni LLC
Site Area	+/- 0.30 acres
Current Zoning	R-1, Single Family Residential
Requested Zoning	DN-3, Downtown High Density Residential
Current Future Land Use Map Designation	High Density Residential (HDR)
Related projects	N/A

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

Location Map



Property Description

This property is located at 411 NW C St, at the southwest corner of NW 5th St and NW C St. It is currently zoned R-1, Single Family Residential. It contains an existing single-family home with a street facing garage. Adjacent zonings are all R-1, Low-density Single Family Residential.

Relationship to the General Plan

The Future Land Use Plan depicts this property as High Density Residential (HDR) and is surrounded by High-Density Residential to the south, east, and west, and Low Density Residential to the north across NW 5th St. High-density residential areas include apartments, condominium buildings, senior housing, and special types of group living. These areas vary greatly in terms of density depending on scale, but typically have at least 12 units per acre. These areas may also have integrated amenities for residents, including local parks, community centers, and resident-oriented commercial uses.

This property is located within Priority Area 1, as outlined in chapter 4 of the Bentonville Community Plan. Development in this area should prioritize reinvestment in urban neighborhoods in and around Downtown.

Public Comment

Staff has NOT received public comment regarding this request.

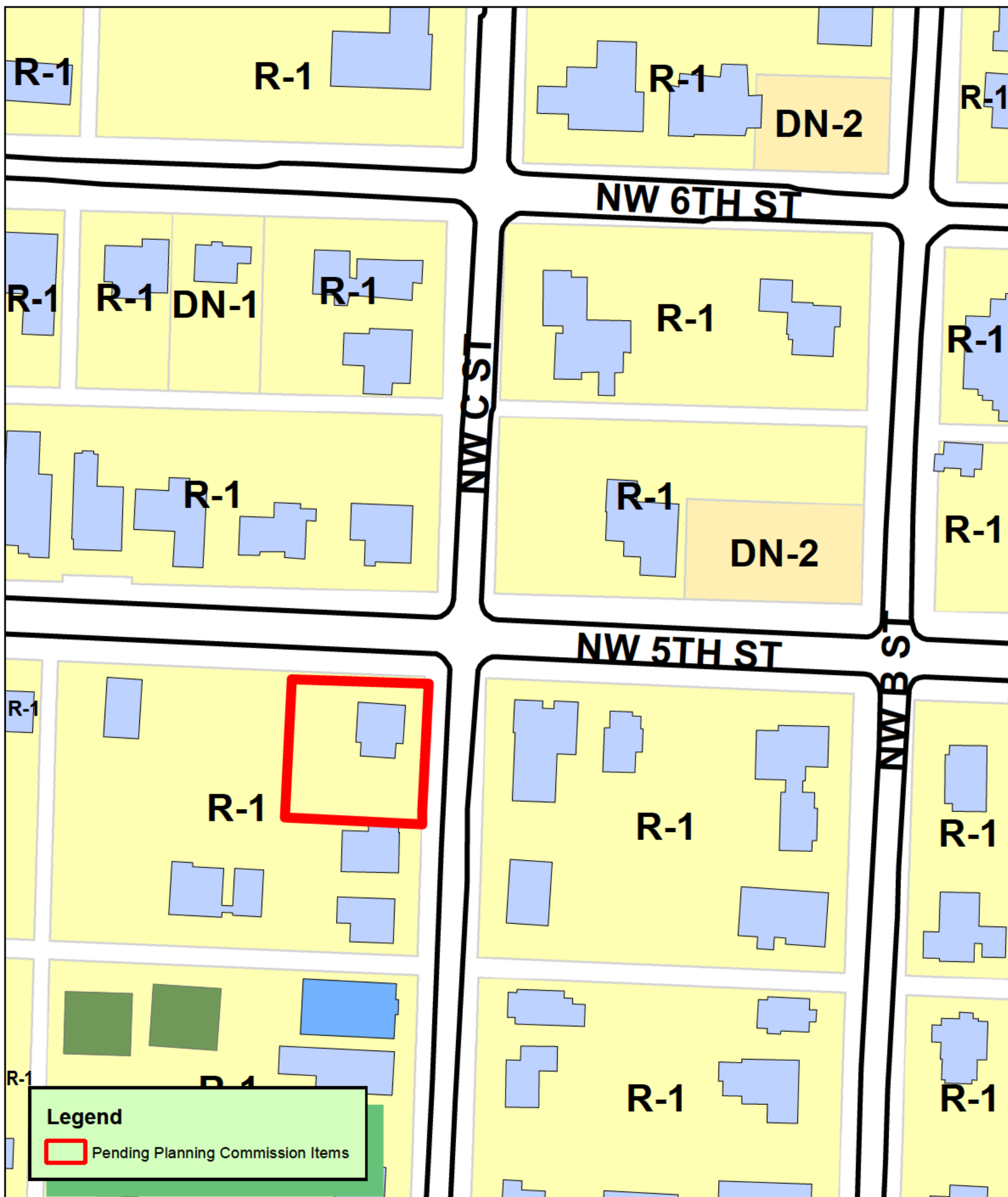
Analysis

The intent of the DN-3 district is to allow for an increased neighborhood density through the development of small-lot single-family housing and townhouses throughout the district. These areas tend to be adjacent to downtown commercial uses. In some instances, such as at the ends of blocks, multi-family apartment buildings may be an appropriate use in this district.

The proposed zoning of DN-3 is consistent with the Future Land Use Plan. There has been no high-density redevelopment directly adjacent to the property but there are some nearby multifamily developments along NW D St and NW 4th St. following surrounding development patterns within this area.

Conclusion

This request is consistent with the Future Land Use Plan and is consistent with nearby development patterns in the neighborhood. For these reasons staff recommends approval of this request.



1 inch = 100 feet

RZ23-0031 5-2-23
REZONING R1 TO DN3
DEMINGS ADDITION
PART OF LOTS 1-2 BLOCK 6





March 24, 2023

City of Bentonville Planning Commission
Community Development Building
305 SW "A" Street
Bentonville, Arkansas 72712

Re: **411 NW C Street Rezoning Request**

To the City of Bentonville Planning Commission:

On behalf of Lucatoni, LLC, Ecological Design Group (EDG) is submitting this rezone request for the parcel ID 01-02128-000.

The property is currently zoned R1; Low Density Single-family Residential. The requested change in zoning is to accommodate a higher intensity zoning district, DN-3: Downtown High Density Residential. The current ownership is Lucatoni LLC, an Arkansas Limited Liability Company. There are no proposed immediate sales after rezoning – the property is intended to be developed. The Future Land Use map identifies this property as High-Density Residential which supports the request for Downtown High Density Residential zoning.

Proposed Use

The request for Downtown High Density Residential zoning is to allow the property to be developed with uses that are both compatible and complementary to existing and planned uses in the neighborhood. These neighboring uses include single and multi-family housing.

The property has excellent vehicular access to NW C Street to the east, which is a Local Downtown roadway. In addition to vehicular access, the property is both walkable and bikeable.

Signage

At this time, no signage is planned beyond signage as allowed by City Code.

Traffic

The property is in early design with a schematic layout of 4 townhouse units. The units will be constructed in a traditional English Arts and Crafts style, as four matching townhouses with small front porches and high qu This design will enhance the corner of NE 5th Street and NW C Street. The properties have close access to the NW 5th Street and NW C Street Corridors, which has the capacity to accommodate the traffic generated by the proposed development.

Availability of Water and Sewer

Water mains are located in both NW C Street and SW 5th Street. Additionally, there is currently a fire hydrant across NW C Street. This project will require a sanitary sewer main extension of approximately 150 LF to serve the property.

Respectfully submitted,

ECOLOGICAL DESIGN GROUP, INC.



Brahm Driver, PE

RZ23-0031

NOTICE OF INTENT TO REZONE

Lucatoni, LLC _____ has requested the Bentonville Planning Commission to set a public hearing date to consider rezoning the following property from R-1, Low Density Single-Family Residential _____ to DN-3, Downtown High Density Residential _____

The legal description of the property is as follows:
A PART OF LOTS 1 AND 2, BLOCK 6, DEMING'S ADDITION TO THE CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS, AS SHOWN IN SURVEYORS RECORD G AT PAGE 163 AND 263, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT AN EXISTING REBAR WHICH IS N02°51'51"E 116.20' FROM AN EXISTING AXLE MARKING THE SOUTHEAST CORNER OF SAID LOT 1 AND RUNNING THENCE N87°10'23"W 112.45' TO AN EXISTING REBAR, THENCE N02°50'34"E 113.29', THENCE S87°23'11"E 112.48', THENCE S02°51'31"W 113.71' TO THE POINT OF BEGINNING, CONTAINING 0.29 ACRES, MORE OR LESS. SUBJECT TO THAT PORTION NORTHWEST 5TH STREET MASTER STREET PLAN RIGHT-OF-WAY ON THE NORTH SIDE OF HEREIN DESCRIBED TRACT, SUBJECT TO THAT PORTION IN NORTHWEST C STREET MASTER STREET PLAN RIGHT-OF-WAY ON THE EAST SIDE OF HEREIN DESCRIBED TRACT AND ALSO SUBJECT TO ALL OTHER EASEMENTS AND RIGHTS-OF-WAY RECORD.

The common description of the property is: 411 NW C Street
The public hearing will be held May 2nd _____, 2023 at 5:00 p.m. It will be held at 305 S.W. "A" Street.

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

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

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

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

- ☐ I/ we have no objections to the rezoning.
- ☒ I/ we object to the rezoning because:

SEE ATTACHED

[Redacted Signature]

Signature and Physical Address

DAVID KREMER

[Redacted Address]

BENTONVILLE

Regarding the request to rezone 411 NW C St from R-1, Low Density Single-Family Residential, to DN-3, Downtown High Density Residential.

As the owners of [REDACTED] directly across the street from the property in question, we have the following concerns and objections to the rezoning request:

WHEREAS the Bentonville Community Plan of 2018 recognized the importance of “respecting the unique character and defining sense of place that distinguishes Bentonville from other places.”¹

And WHEREAS the same plan posits that “new housing development in the downtown neighborhood must consider character, density, and location in order to balance factors related to existing residents’ needs and long term health of the area.”²

And WHEREAS “High-density residential areas. . .typically have at least 12 units per acre.”³
And WHEREAS the property at 411 NW C St, Parcel Number 01-02128-000, has an acreage of 0.29755 acres.⁴
And WHEREAS to achieve the high-density rating would require a minimum of 3.6 (4) units which along with the parking would take up nearly all of the lot and likely require three or more floors of elevation,

And WHEREAS the surrounding homes, several of which are owned by residents who have live in those homes their entire life, none of which is over two floors in height,

And WHEREAS the loss of lawn area could add to the flooding of the NW C with even a moderate rain,

And NOT WITHSTANDING the plan to redevelop the area south of NW 5th Street into a High Density Residential area.

We hereby respectfully request that this request to rezone the aforementioned plot from R-1 to DN-3 be rejected for this particular plot at this time.

Repectfully,
David and Johnna Kosnof

¹ Bentonville Community Plan (2018), p.3
² Bentonville Community Plan (2018), p.14
³ Bentonville Land Use Category Descriptions, p.5
⁴ From trakitweb.bentonvillear.com, property search for 411 NW C ST

NOTICE OF INTENT TO REZONE

Lucatoni, LLC

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

R-1, Low Density Single-Family Residential

to DN-3, Downtown High Density Residential

The legal description of the property is as follows:

A PART OF LOTS 1 AND 2, BLOCK 6, DEMING'S ADDITION TO THE CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS, AS SHOWN IN SURVEYORS RECORD G AT PAGE 163 AND 263, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT AN EXISTING REBAR WHICH IS N02°51'51"E 116.20' FROM AN EXISTING AXLE MARKING THE SOUTHEAST CORNER OF SAID LOT 1 AND RUNNING THENCE N87°10'23"W 112.45' TO AN EXISTING REBAR, THENCE N02°50'34"E 113.29', THENCE S87°23'11"E 112.48', THENCE S02°51'31"W 113.71' TO THE POINT OF BEGINNING, CONTAINING 0.29 ACRES, MORE OR LESS. SUBJECT TO THAT PORTION NORTHWEST 5TH STREET MASTER STREET PLAN RIGHT-OF-WAY ON THE NORTH SIDE OF HEREIN DESCRIBED TRACT, SUBJECT TO THAT PORTION IN NORTHWEST C STREET MASTER STREET PLAN RIGHT-OF-WAY ON THE EAST SIDE OF HEREIN DESCRIBED TRACT AND ALSO SUBJECT TO ALL OTHER EASEMENTS AND RIGHTS-OF-WAY RECORD.

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3. Use the bottom of this form to express your opinion by checking the appropriate box. (This may also be delivered or mailed to the above address.)

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

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

☐ I / we have no objections to the rezoning.

☒ I / we object to the rezoning because:

This is a historic section of downtown. We have several neighbors that have remained in their family home dating back generations. When we bought our property the intent was to keep an old Bentonville. →

Signature and Physical Address

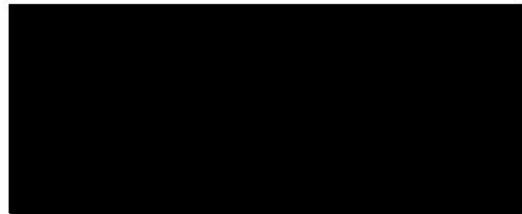
Signature and Physical Address

338 NW 5th St

impression. We understand D-2 has been approved around us to accommodate more people and we are not opposed to that. D-3 however involves smaller units in larger buildings which will destroy the neighborhood feel to an old historic and quaint town. We feel it is a mistake in this particular area of town.

D-3 was recently denied at 501 NW B,
~~be~~ as precedence, with the same arguments.

Thank you for your consideration



ORDINANCE NO. _____

**AN ORDINANCE CHANGING REAL ESTATE IN THE CITY OF
BENTONVILLE, ARKANSAS, FROM ITS PRESENT ZONING
CLASSIFICATION OF R-1, LOW DENSITY SINGLE FAMILY
RESIDENTIAL TO DN-3, DOWNTOWN HIGH DENSITY RESIDENTIAL;
AND FOR OTHER PURPOSES.
(PROJECT NUMBER: RZ23-0031)**

WHEREAS, Lucatoni LLC, duly filed a petition with the Planning Commission requesting that the hereinafter described property situated in Benton County, Arkansas, be changed from its present zoning classification of R-1, LOW DENSITY SINGLE FAMILY RESIDENTIAL to DN-3, DOWNTOWN HIGH DENSITY RESIDENTIAL to be used in accordance with city zoning laws and state laws, which property is described as follows:

A PART OF LOTS 1 AND 2, BLOCK 6, DEMING'S ADDITION TO THE CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS, AS SHOWN IN SURVEYORS RECORD G AT PAGE 163 AND 263, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT AN EXISTING REBAR WHICH IS N02°51'51"E 116.20' FROM AN EXISTING AXLE MARKING THE SOUTHEAST CORNER OF SAID LOT 1 AND RUNNING THENCE N87°10'23"W 112.45' TO AN EXISTING REBAR, THENCE N02°50'34"E 113.29', THENCE S87°23'11"E 112.48', THENCE S02°51'31"W 113.71' TO THE POINT OF BEGINNING, CONTAINING 0.29 ACRES, MORE OR LESS. SUBJECT TO THAT PORTION NORTHWEST 5TH STREET MASTER STREET PLAN RIGHT-OF-WAY ON THE NORTH SIDE OF HEREIN DESCRIBED TRACT, SUBJECT TO THAT PORTION IN NORTHWEST C STREET MASTER STREET PLAN RIGHT-OF-WAY ON THE EAST SIDE OF HEREIN DESCRIBED TRACT AND ALSO SUBJECT TO ALL OTHER EASEMENTS AND RIGHTS-OF-WAY OF RECORD.

WHEREAS, the Planning Commission duly met and considered the application and duly set the petition for public hearing to be held May 2, 2023 in the Council Chambers of the City of Bentonville;

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

WHEREAS, the Planning Commission, at the request of the applicant, voted to recommend to the City Council that an amended petition be approved and that said property be rezoned from its present classification of R-1, LOW DENSITY SINGLE FAMILY RESIDENTIAL to DN-2, DOWNTOWN MEDIUM-DENSITY RESIDENTIAL.

WHEREAS, Lucatoni, LLC appealed the approval of their rezoning request, asking that the City Council reconsider their original request of DN-3, DOWNTOWN HIGH-DENSITY RESIDENTIAL.

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

Section 1: That the above-described real property is hereby changed from its present zoning classification of R-1, LOW DENSITY SINGLE FAMILY RESIDENTIAL to DN-3, DOWNTOWN HIGH DENSITY RESIDENTIAL to be used in accordance with the city zoning laws and state laws;

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 AND APPROVED this _____ day of _____, 2023.

APPROVED:

ATTEST:

Stephanie Orman, Mayor

Kirby Romines, City Clerk



Agenda Item Form

Date of City Council Meeting	5/23/2023
Department	Utility Billing
Submitted by	Gary Wilson
Phone	(479) 271-3104

Item Type: (Check Applicable Item Type)					
☐ Budget Adjustment	☐ Change Order	☐ Informational	☐ Ordinance	☒ Resolution	☐ Bid Award
Recommendation/Suggested Action (Enter recommendation in space below):					
Resolution for City Council approval of agreement with SPMR, LLC to replace our legacy manual meter reading system, with the next generation solution using Android cell phones and cloud storage. This item was approved by the Utility Board 5-0. No budget adjustment is needed.					

Estimated Cost	\$28,934
Is this Item Budgeted?	☒ Yes ☐ No
If no, please explain how item will be funded (briefly explain in space below) :	



Memorandum

To: City Council
From: Gary Wilson
CC: Mayor Orman

The Utility Billing Department is requesting approval to transition from our legacy manual reading system to the Smart Phone Meter Reading (SPMR) system.

Our current system for manually reading meters that are not in the AMI system is obsolete. The hardware has not been manufactured for a number of years and stocks of parts to repair the current equipment is depleted. In many cases devices are cannibalized to obtain parts. Our current vendor has offered their next generation meter reading system, SPMR, to replace our system.

Highlights of the new system include:

- Hardware is based on Android cell phones
- Readings are stored in the cloud
- Ability to GPS each reading
- Ability to photograph readings
- System will use the same file formats to interface with billing system
- We can increase or decrease devices as needed
- Easy transition
- Less expensive than current system

No budget adjustment is required. The phones will be purchased using funds budgeted for an AMI system device not required. Data plan costs are already budgeted. The costs for the SPMR system is below the budgeted cost for the current legacy system and we are receiving credit for the costs already paid for the current system.



Subscription Quote for:

Bentonville AR

04/26/23

Valid 60 Days

Description - Recurring Fees	Effective Rate per Month	Qty	Cost Extended Annual Pre-Pay
SPMR SmartPhone: License, Support SmartPhones	\$ 169.00	8	\$ 16,224.00
SPMR SmartPhone: Data Hosting per SmartPhone*	\$ 69.00	8	\$ 6,624.00
SPMR Web: License, Support per Web Seat (1st Seat)	\$ 299.00	1	\$ 3,588.00
SPMR Web: License, Support per Web Seat (Add'l Seats)	\$ 169.00		\$ -
Total**			\$ 26,436.00

Other User Fees and One-Time Service Fees	Price	Qty	Cost
Setup - Web Server, Web Seat(s), Phone(s), Users (List \$899)	\$ 899.00	1	\$ 899.00
Training - SPMR Web, SPMR SmartPhone (List \$1,599)	\$ 1,599.00	1	\$ 1,599.00

*Data Hosting assumes 1 Photo per 4 Meters; Unlimited Photos is Additional \$20 per device/month, List

**RouteSTAR Pre-Payment of \$31,559.66 for September 2022 thru August 2023

**Monthly Credit Available in the Amount of \$2,629.97

**So a Conversion to SPMR on May 1 (for example) Would Include a Credit of \$10,519.88.

SPMR SUBSCRIPTION AGREEMENT

This SPMR Subscription Agreement ("Agreement") is made by and between SPMR, L.L.C., a Texas limited liability corporation, located at 811 E Plano Parkway, Suite 110A, Plano, Texas 75074 ("SPMR"), and Bentonville AR doing business at 1000 SW 14th, Bentonville, AR 72712 ("Subscriber").

RECITALS

- A. WHEREAS SPMR licenses, in object form only, proprietary computer software ("Software") as an application for smart phones, or similar devices, to record utility meter data and to communicate such data to its remote server ("Application");
- B. WHEREAS SPMR hosts the utility meter data on its remote server for retrieval by Subscriber ("Hosting") and collectively, the Application, Hosting and any other services such as training or set-up shall constitute "Services"; and
- C. WHEREAS Subscriber desires to use the Services;

IN CONSIDERATION of the terms and conditions of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 - GENERAL TERMS

- 1. ENTIRE AGREEMENT. It is agreed that this Agreement and any EXHIBIT(S) attached hereto and made a part hereby embody the entire agreement of the parties in relation to the subject matter hereunder, and that there is no other oral or written agreement or understanding between the parties at the time of execution pertaining to the subject matter of this Agreement. This Agreement shall not be modified except by the written agreement of all parties hereto.
- 2. GOVERNING LAW AND CHOICE OF VENUE. This agreement shall be construed, interpreted and enforced under the laws and statutes of the State of Texas without regard for any of said state's conflicts of law provisions. Any legal actions relating to this Agreement shall be brought in either a state court in Collin County, Texas or in a Federal court in the Northern District of Texas, Dallas Division.
- 3. TAXES. Subscriber shall pay all taxes arising out of this Agreement, except for taxes levied upon the net income of SPMR. Subscriber agrees to provide an exemption certificate with this contract if Subscriber is an exempt organization for state sales and use tax purposes.

ARTICLE 2 – PAYMENTS

- 1. APPLICATION AND OTHER SERVICES. Subscriber shall pay SPMR for the fees described in EXHIBIT 1 for the Services. Payment shall be made as follows:
 - A. Subscriber shall have access to Services when Services are activated ("Activation Date"). The initial payment of service fees shall be made within ten (10) business days of the Activation Date and if the Activation Date is not on the first day of the month, a prorated fee shall be included in the initial payment of service fees for Services provided from the Activation Date through the last day of that month. Subsequent payments shall be for an entire annual period ("Subscription Year") and shall be made on each subsequent anniversary of the start of each Subscription Year invoiced until the Agreement is terminated.
 - B. Subscriber shall pay SPMR for any support or training at SPMR's quoted price no later than thirty (30) days after the invoice date.
 - C. SPMR ongoing fees are subject to change on the first and subsequent anniversaries of the Activation Date in the amount of ten (10) percent.
 - D. Any invoice amounts payable hereunder that remain unpaid after their due date shall be subject to a late fee.
- 2. Subscriber's rights to use the Application or Hosting are expressly conditioned on the timely prepayment of the fees described in EXHIBIT 1 and Subscriber's rights to use the Application and Hosting will terminate effective the date any prepayment was due if not paid.

ARTICLE 3 – SOFTWARE

- 1. SPMR SOFTWARE LICENSE GRANT. SPMR hereby grants to Subscriber a nontransferable and nonexclusive license for the use and possession of the SPMR Software in object code form only. Said license is granted under the terms and conditions set forth herein.
- 2. Subscriber agrees that SPMR retains ownership rights to the Software, and that Subscriber acquires no title to the Software, nor any other interest in the Software, other than the right to use and possess the Software in accordance with the terms and conditions of this Agreement. All rights not explicitly granted to Subscriber are retained by SPMR.
- 3. Subscriber may not copy, decompile, reverse-engineer, disassemble, attempt to derive the source code of, modify or create derivative works of the Application or any part thereof.
- 4. Subscriber agrees that it shall not attempt to or actually sell, give, lend, lease, convey, transfer, license, sublease, provide, or in any other manner transfer any of its rights in the Software, whether or not modified. Subscriber shall obtain SPMR's written permission before allowing any non-subscriber employee, contractor or third-party any access to the Software or Application.

ARTICLE 4 – SERVICES

1. SPMR shall provide Subscriber with the Services described on the attached EXHIBIT(S).
2. Services include those specifically described on the attached EXHIBIT(S) and Subscriber agrees that any services not described such as supplemental training or consulting and any related travel and living expenses are not included and Subscriber agrees to pay such charges and expenses within thirty (30) days of SPMR's invoice.

ARTICLE 5 - WARRANTIES

1. SPMR warrants that the Software shall operate substantially in accordance with the on-line User Manual. The exclusive remedy for any valid warranty claim shall be the provision of conforming software.
2. DISCLAIMER OF WARRANTY AND LIMITATIONS OF REMEDIES. TO THE EXTENT ALLOWED BY LAW, SUBSCRIBER UNDERSTANDS AND AGREES AS FOLLOWS:
 - A. THE EXPRESS WARRANTIES AS SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH OTHER WARRANTIES ARE HEREBY DISCLAIMED AND EXCLUDED BY SPMR.
 - B. SPMR SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY DELAY IN FURNISHING SOFTWARE, SERVICES OR ANY OTHER PERFORMANCE UNDER OR PURSUANT TO THIS AGREEMENT.
 - C. SPMR DOES NOT WARRANT THE OPERATION OF SOFTWARE OR SERVICES TO BE ERROR FREE.
 - D. SPMR DOES NOT WARRANT THE EFFICIENCY, PROPAGATION OR THE PROVISION OF CELLULAR SERVICES.
 - E. THE SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF ANY AND ALL WARRANTIES AND THE SOLE REMEDIES FOR SPMR'S LIABILITY OF ANY KIND (INCLUDING LIABILITY FOR NEGLIGENCE) WITH RESPECT TO THE SOFTWARE OR SERVICES COVERED BY THIS AGREEMENT OR ANY PERFORMANCE BY SPMR UNDER OR PURSUANT TO THIS AGREEMENT, WILL BE LIMITED TO THE REMEDIES SET FORTH IN THIS ARTICLE AND IN NO EVENT SHALL EXCEED THE AGGREGATE CONSIDERATION PAID BY SUBSCRIBER IN THE MOST RECENT TWELVE MONTHS FOR THE SERVICES.
 - F. IN NO EVENT SHALL SPMR'S LIABILITY OF ANY KIND INCLUDE ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, EVEN IF SPMR SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.

ARTICLE 6 – TERM AND TERMINATION

1. This Agreement shall automatically renew for an additional Subscription Year unless Subscriber provides SPMR with written notice of termination at least sixty (60) days prior to the beginning of the upcoming Subscription Year.
2. If Subscriber defaults on any obligation in accordance with the terms and conditions of this Agreement and SPMR notifies Subscriber in writing of the details of said failure of performance, then SPMR may, at its option, terminate this Agreement without notice to Subscriber.
3. In the event either party terminates this Agreement or the license of Software, or should Subscriber fail to timely make any payment for the services, all licenses granted under this Agreement shall be terminated, and Subscriber shall, immediately, on the termination date, erase the Software in whatever form retained, and return or destroy any copies of Software documentation. Subscriber shall certify in writing to SPMR that Subscriber has so returned and/or destroyed the Software and SPMR Documentation.

SPMR, L.L.C.

Signature: _____

Print Name: _____

Title: _____

Date: _____

BENTONVILLE, AR

Signature: _____

Print Name: _____

Title: _____

Date: _____

Exhibit 1 – SPMR Services Schedule

Description - Recurring Fees	Effective Rate per Month	Qty	Cost Extended Annual Pre-Pay
SPMR SmartPhone: License, Support SmartPhones	\$ 169.00	8	\$ 16,224.00
SPMR SmartPhone: Data Hosting per SmartPhone*	\$ 69.00	8	\$ 6,624.00
SPMR Web: License, Support per Web Seat (1st Seat)	\$ 299.00	1	\$ 3,588.00
SPMR Web: License, Support per Web Seat (Add'l Seats)	\$ 169.00		\$ -
		Total**	\$ 26,436.00
Other User Fees and One-Time Service Fees	Price	Qty	Cost
Setup - Web Server, Web Seat(s), Phone(s), Users (List \$899)	\$ 899.00	1	\$ 899.00
Training - SPMR Web, SPMR SmartPhone (List \$1,599)	\$ 1,599.00	1	\$ 1,599.00
*Data Hosting assumes 1 Photo per 4 Meters; Unlimited Photos is Additional \$20 per device/month, List			

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO
ENTER INTO AN AGREEMENT WITH SPMR, LLC, TO PURCHASE
SMART PHONE METER READING SYSTEM; AND FOR OTHER
PURPOSES.**

WHEREAS, the City of Bentonville Utility Billing Department's current legacy manual meter reading devices and systems are obsolete;

WHEREAS, Smart Phone Meter Reading (SPMR) is the next generation replacement for the City's current manual meter reading system and devices;

WHEREAS, this service is available from our current vendor with seamless integration with the billing system; and

WHEREAS, this is a budgeted item.

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

Section 1: That the Mayor and City Clerk are hereby authorized to enter into an add-on agreement with SPMR, LLC to provide for meter reading software and hosting services for the Utility Billing Department;

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 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 this _____ day of _____, 2023.

APPROVED:

Stephanie Orman, Mayor

ATTEST:

Kirby Romines, City Clerk



Agenda Item Form

Date of City Council Meeting	5/23/2023
Department	Inventory Control
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 waiving the requirements for competitive bidding and entering into an agreement with AECl to purchase 3 phase transformers for \$475,915.00 plus applicable taxes. Because of market volatility and lead times related to these products, it would be neither practical nor feasible to advertise for competitive bidding. No budget adjustment is needed. Approved by Utility Board 5-0.					

Estimated Cost	\$475,915.00
Is this Item Budgeted?	☒ Yes ☐ No
If no, please explain how item will be funded (briefly explain in space below):	



MEMORANDUM

DATE: 5/23/23

TO: City Council, Mayor Orman

FROM: Travis Matlock, Electric Utility Director

RE: 3PH Transformers

The City of Bentonville recommends waiving the requirements for competitive bidding and enter into an agreement with Arkansas Electric to purchase various 3-phase transformers in the amount of \$475,915.00 plus applicable taxes. These transformers will be used replaced stock.

Approved by Utility Board 5-0.

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO AN AGREEMENT WITH ARKANSAS ELECTRIC, FOR THE PURCHASE OF THREE PHASE TRANSFORMERS, IN THE AMOUNT OF FOUR HUNDRED SEVENTY-FIVE THOUSAND NINE HUNDRED FIFTEEN DOLLARS (\$475,915.00), PLUS APPLICABLE TAXES; WAIVING THE REQUIREMENT OF COMPETITIVE BIDDING; AND FOR OTHER PURPOSES.

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

WHEREAS, due to current supply chain issues and price volatility with this project, soliciting bids is not feasible; and

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 are hereby authorized to enter into an agreement with Arkansas Electric for the purchase of three phase transformers in the amount of four hundred seventy-five thousand nine hundred fifteen dollars (\$475,915.00), plus applicable taxes;

Section 2: Due to current market volatility and supply chain issues with this product, 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; and

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 _____, 2023.

APPROVED:

STEPHANIE ORMAN, Mayor

ATTEST:

KIRBY ROMINES, City Clerk



Agenda Item Form

Date of City Council Meeting	5/23/2023
Department	Water Resource Recovery Facility
Submitted by	Chris Earl
Phone	479-696-0273

Item Type: (Check Applicable Item Type)					
☒ Budget Adjustment	☐ Change Order	☐ Informational	☒ Ordinance	☐ Resolution	☐ Bid Award

Recommendation/Suggested Action (Enter recommendation in space below):					
Ordinance for City Council approval accepting a budget adjustment and waiving competitive bidding to purchase (4) replacement RAS pumps from Jack Tyler Engineering Inc, in the amount of \$98,506.20. Due to Jack Tyler Engineering, Inc. being the sole source distributor for Flygt in Arkansas, it is not practical or feasible to solicit competitive bidding. A budget adjustment is needed to appropriate unused budgeted funds from capital-vehicles to capital-machinery and equipment and utility fund reserves. Utility Board Approved 5-0.					

Estimated Cost	98,506.20
Is this Item Budgeted?	☐ Yes ☒ No

If no, please explain how item will be funded (briefly explain in space below) :	
Adjust to appropriate funds from capital-vehicles account #47420 (previously budgeted for a vacuum trailer in 2023), into capital-machinery & equipment account #47410, due to departmental needs adjusting and costs exceeding value.	



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Budget Adjustment Request

Date of City Council Meeting	5/23/2023
Department	WRRF
Submitted by	Chris Earl
Phone	479-696-0273

Purpose of Budget Adjustment <i>(Enter purpose in space below):</i> Budget Adjustment to move \$350,000.00 from 47420- Capital Vehicles (previously budgeted for a vacuum trailer in 2023) to 47410-Machinery and Equipment, to cover Bertrem Products, Inc. Mission Radio upgrade (\$147, 173.16) and Flygt RAS Pump Replacement (\$98,506.20) and Utility Fund Reserve. The budgeted vacuum trailer has quickly grown in cost far beyond the amount budgeted originally (\$350k), and the need has diminished with the purchase of additional vacoon utility trucks in the Sewer Rehab Department. Staff has analyzed the needs of the Department carefully and determined the need for the new RAS pumps and Mission Radio Upgrade far exceed the need for a new vacuum trailer. The \$104,320.64 balance will be returned to Utility Fund Reserves.

General Ledger Account Information*				
Org (Department)	Object	Account Description	Revenue + (-)	Expense + (-)
503030	47420	Capital Vehicles		\$ (350,000.00)
503030	47410	Machinery and Equipment		\$ 147,173.16
503030	47410	Machinery and Equipment		\$ 98,506.20
		Totals	\$ -	\$ (104,320.64)
		Net Impact on Fund Balance	\$ 104,320.64	

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



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Memo



To: UB Members, City Council Members, and Mayor Orman
From: Chris Earl, WRRF Manager
CC: Mike Bender, Preston Newbill
Date: UB 5/16/2023; CC 5/23/2023
RE: Budget Adjustment and Waiver of Bid for (4) Replacement RAS Pumps

.....

Staff requests Utility Board and City Council Members approve a motion to accept a budget adjustment and waiver of bid for (4) replacement RAS pumps. This was not a budgeted item. The current pumps in use have been in service for 39 years. They have been overhauled and repaired numerous times during that period. Life expectancy for RAS pumps is estimated at 10-15 years which we've far exceeded. The required number of repairs have accelerated over the past few years. The age of the equipment is becoming challenging for repair shops to identify and locate replacement parts. Additionally, the old equipment has declined in efficiency and starting to affect our ability to consistently return an accurate amount of Return Activated Sludge (RAS). The four pumps we are proposing to be replaced are a critical aspect of our treatment process. They are responsible for returning all of the activated sludge, or the microorganisms we use to treat, back to the start of the plant which is continually introduced to new incoming wastewater. While managing our microorganism population the ability to give a consistent and stable environment is absolutely paramount for us.

We would like to fund our pump replacement by moving the needed \$98,506.20 from the capital-vehicles account #47420 into capital-machinery & equipment account #47410. The Vacuum Trailer we had desired has quickly grown in cost far beyond the amount budgeted. The need has also diminished with the purchase of additional Vaccon Utility Trucks in the Sewer Rehab department. We have determined our need for the new RAS pumps far exceeds the need for a new Vacuum Trailer.

Utility Board approved 5-0.

Thank you for your consideration of this request,

Chris Earl, WRRF Manager

Xylem Inc.
4828 Parkway Plaza Blvd.
Charlotte, NC 28217

December 29, 2022

TO: Whom it may concern:

RE Xylem Brand Products

Please be advised that Jack Tyler Engineering, Inc. with offices in Little Rock, Ashdown, and Springdale, AR. is the only authorized Distributor and service Center for **Flygt, MultiTrobe, YSI, Godwin, and WEDECO** products manufactured by Xylem Inc. for the State of Arkansas. **Flygt, MultiTrobe** and **YSI** only for the following counties in Texas.

Lamar, Red River, Delta, Hopkins, Franklin, Titus, Morris, Cass, Rains, Camp, Wood, Upshur, Marion, Harrison, & Greg.

Their staff is properly trained to provide you with the best possible service available.

Thank you for your interest in Xylem Products, Controls and Services.

Please call if we can be of any further assistance.

Sincerely,



Chris Stanton
Channel Account Manager
Flygt & Flygt AC Products
chris.stanton@xylem.com



**JACK TYLER
ENGINEERING
INCORPORATED**

Jack Tyler Engineering, Inc.

6301 South University Blvd

Little Rock, AR 72209

Office: 501-562-2296

Toll Free: 800-562-2296

Tuesday, April 25, 2023

TO: Bentonville WWTP

SUBJECT: Flygt 3127 and 3153 Pumps

ATTN: Joshua Epling
417-389-7090
jepling@bentonvillear.com

QUOTATION: 04212023MDA Rev 2

Jack Tyler Engineering, Inc. is pleased to offer the following items for your consideration in the above referenced project. If you wish for us to supply any items not listed below, please inform us as soon as possible. Please continue reading below for our detailed scope of supply. We look forward to working with you.

Two (2) Flygt 3127 Pumps Only.....	(\$15,231.00 EA)	\$30,462.00
P#: 3127.060-0451	Freight Estimate (\$350.00 EA)	<u>\$700.00</u>
NP426-6 10/460/3 50' FLS FV		\$31,162.00
Curve Code 426		
6 inch Discharge		
10 HP, 460 V, 3 Ph Motor		
50 ft Submersible Cable		
FLS Leakage Sensor		
Flush Valve Ready		

Two (2) Flygt 3153 Pumps Only.....	(\$28,684.00 EA)	\$57,368.00
P#: 3153.185-0541	Freight Estimate (\$715.00 EA)	<u>\$1,430.00</u>
NP415-8 12/460/3 50' FLS FV		\$58,798.00
Curve Code 415		
8 inch Discharge		
12 HP, 460 V, 3 Ph Motor		
50 ft Submersible Cable		
FLS Leakage Sensor		
Flush Valve Ready		

Sales Tax of 9.5%.....\$8,546.20

Installation Performed by Others.

Continued...



**JACK TYLER
ENGINEERING
INCORPORATED**

Jack Tyler Engineering, Inc.

6301 South University Blvd

Little Rock, AR 72209

Office: 501-562-2296

Toll Free: 800-562-2296

FOB: DESTINATION

DELIVERY: 10-12 Weeks, ARO

TOTAL PRICE: \$98,506.20

Sales Tax of 9.5% included in price.

Jack Tyler Engineering, Inc. Terms and Conditions Apply

THANK YOU FOR REVIEWING OUR OFFERING. ANY ITEMS NOT SPECIFICALLY LISTED ABOVE WILL NOT BE SUPPLIED BY JACK TYLER ENGINEERING UNLESS AGREED UPON BY APPROVED WRITTEN NOTICE.

Respectfully Submitted,

Merak Dyer
Applications Engineer
Jack Tyler Engineering, Inc.



JACK TYLER ENGINEERING, INCORPORATED

6301 S UNIVERSITY AVENUE, LITTLE ROCK, ARKANSAS 72209
(501) 562-2296 • FAX (501) 562-4273 • ARKANSAS WATS 1-800-562-2296

STATEMENT OF TERMS AND CONDITIONS

TERMS/PAYMENTS: Our terms of payment are net cash 15 days from date of the invoice subject to

Seller's prior credit approval. If the Buyer shall fail to make any payments in accordance with the terms and conditions of sale, the Seller, in addition to its other rights and remedies, but not in limitation thereof, may, at its option, without prior notice, cancel this order as to any undelivered products or defer shipments or deliveries hereunder, or under any other agreement between Buyer and Seller, except upon Seller's receipt of cash before shipment or such security as Seller considers satisfactory. Seller reserves the right to impose an interest charge of 16% on the balance of each invoice not paid on its due date for the period from the due date to the date of receipt of payment by Seller. In the event Buyer's failure to make timely payments to Seller results in Seller incurring additional costs, including but not limited to collection expenses and attorneys' fees, said costs shall be added to the amount due Seller from Buyer. Buyer shall have no right to any discount or retainage and shall not withhold payment as a set-off on Seller's invoice in any amount. Visa, MasterCard, Discover, and American Express credit card purchases are accepted.

SHIPMENT: The date of shipment is subject to our receiving your order with complete information at our office, final approval of any prints or drawings as may be required, credit approval, and the acceptance of your order by the company. Freight Charges are not included in the quoted price.

EXPIRATION: Quotation expires 30 days from the date of proposal and, in the interim, is subject to change without notice.

TAXES: Unless otherwise stated in the proposal, the prices quoted herein are exclusive of all sales, use and similar taxes and, wherever applicable, such taxes will be added to the invoice as separate items.

RETURNS/REFUNDS: Items wished to be returned are subject to prior approval and must be accompanied by a Return Merchandise Authorization (RMA). Items returned without proper approval and/or paperwork will be returned to the customer at their expense. Returns past 30 days of initial receipt will not be accepted.

All returned items are subject to a restocking fee. The customer's credit will be equal to the credit Jack Tyler Engineering, Inc. receives from the vendor, minus original freight and freight back to the vendor. Please note that all items must be returned to JTEI, who will return the item to the vendor. Credit will only be issued once JTEI receives credit from the vendor.

SPECIAL NOTE:

THIS PROPOSAL IS BASED ON CURRENT PRICES. EQUIPMENT IS SUBJECT TO THE SAME PERCENTAGE INCREASE AS MADE BY OUR SUPPLIERS AND THE INVOICE WILL REFLECT PRICE IN EFFECT AT TIME OF SHIPMENT UNLESS SPECIFICALLY EXCEPTED. **WE WILL NOT ACCEPT RETAINAGE ON ANY OF OUR INVOICES!**

******* A \$50.00 minimum order charge will apply *******

WARRANTY:

"The products sold by Jack Tyler Engineering, Inc. hereunder are manufactured by others, and the only warranties that apply to these products are those of the manufacturer of the products which can be passed on by Jack Tyler Engineering, Inc. to its customers. No other warranty of any kind is given in connection with the sale of any of the above products, and JACK TYLER ENGINEERING, INC. MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR AS TO ANY OTHER MATTER RESPECTING THESE PRODUCTS. Jack Tyler Engineering, Inc. shall not be liable in connection with the sale of the above products for any incidental or consequential damages of any kind."

An electronic copy of the latest version is available online at www.jteng.com.

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE 2023 BUDGET; AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO AN AGREEMENT WITH JACK TYLER ENGINEERING, INC., FOR THE PURCHASE OF FOUR (4) RAS PUMPS FOR THE BENTONVILLE WATER RESOURCE RECOVERY FACILITY; WAIVING THE REQUIREMENT OF COMPETITIVE BIDDING; AND FOR OTHER PURPOSES.

WHEREAS, the City of Bentonville Water Resource Recovery Facility requests to purchase four (4) replacement RAS pumps to update existing equipment;

WHEREAS, Jack Tyler Engineering Inc. is the sole source distributor and therefore it is not practical or feasible to solicit competitive bidding; and

WHEREAS, a budget adjustment will be needed to appropriate three hundred fifty thousand dollars (\$350,000.00), budgeted for a vacuum trailer which is no longer needed, from a Capital Vehicle account into a Machinery and Equipment account with the remainder going back into Utility Fund Reserves.

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

Section 1: That the Mayor and City Clerk be and are hereby authorized to enter into an agreement with Jack Tyler Engineering Inc. for the purchase of a four (4) RAS replacement pumps in the amount of ninety-eight thousand five hundred six dollars and twenty cents (\$98,506.20);

Section 2: Because this purchase is being made through a sole source distributor, it would be neither practical nor feasible to advertise for competitive bidding so that requirement is herein waived;

Section 3: The 2023 Budget is amended to adjust three hundred fifty thousand dollars (\$350,000.00) from Account #503030-47420 – Capital Vehicles and appropriate as follows:

- a. Two hundred forty-five thousand six hundred seventy-nine dollars and thirty-six cents (\$245,679.36) into Account #503030-47410 – Machinery and Equipment; and
- b. One hundred four thousand three hundred twenty dollars and sixty-four cents (\$104,320.64) into Utility Fund Reserves.

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; and

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 _____, 2023.

APPROVED:

ATTEST:

STEPHANIE ORMAN, Mayor

KIRBY ROMINES, City Clerk



Agenda Item Form

Date of Council Meeting	5/23/2023
Department	Water Resource Recovery Facility
Submitted by	Chris Earl
Phone	(479) 696-0273

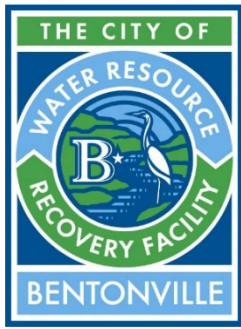
Item Type: (Check Applicable Item Type)					
☒ Budget Adjustment	☐ Change Order	☐ Informational	☒ Ordinance	☐ Resolution	☐ Bid Award
Recommendation/Suggested Action (Enter recommendation in space below):					
Ordinance for City Council approval to waive competitive bidding to purchase upgraded Mission RTUs from Bertrem Products, Inc. in the amount of \$142,173.16 and declare (63) Mission Communication RTU micro-processors (M110/M800) of the City's lift station alarm system as surplus. A budget adjustment was included in the previous item to appropriate the remaining unused budgeted funds from capital-vehicle to capital-machinery and equipment. Utility Board Approved 5-0.					

Estimated Cost	\$147,173.16
Is this Item Budgeted?	☐ Yes ☒ No
If no, please explain how item will be funded (briefly explain in space below) :	
These items would be funded transferring funds from Vehicle Capital fund 47420 into Machinery/Equipment fund 47410, approved in a previous item Budget Adjustment.	



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MEMO

To: Mayor Orman and City Council Members

CC: Mike Bender/Preston Newbill

From: Chris Earl, WRRF Manager

Meeting Date: Utility Board 5/16/2023 Council 5/23/2023 Ordinance

The total charge from **Bertrem Products, INC.(Sole Source Provider)** upgrade will be \$142,173.16 including tax and delivery. We would need to also use approximately \$5,000.00 of the remaining \$207,828.84 to procure dry contact relays, flex conduit and relay rails to complete this installation on all monitoring sites. For a total of \$147,173.16 funds needed for this project.

Currently the City of Bentonville's WRRF is utilizing Mission Communications in order to monitor all 61 Lift Stations and 2 RTU's (**remote terminal unit**) for the 24" gravity sewer in our collection system. At this time, we are using RTU microprocessors M110/M800 to operate, monitor, and collect data from these locations. That information is then transmitted via a website to our facility. The M110/M800 have limited abilities as to the number of motors, pumps, and data that we are able to collect.

Mission Communication has introduced the next generation of wireless monitoring MyDro150/MyDro850 RTU's which allows for much easier access to operate, monitor, and collect data. The Mission system includes all cellular data service, data storage, and on-call 24-7-365 technical support.

Declaring the sixty-three (63) Mission Communication RTU micro-processors (M110/M800) of the City of Bentonville's lift station alarm system as surplus results in a 20% discount towards the purchase of new RTU MyDRO units. The trade in value is \$28,434.67 value towards the purchase of the new RTU MyDro units.

Utility Board Approved 5-0.

Thank you for this consideration.



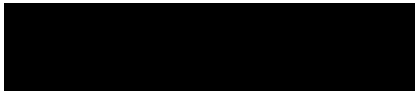
Memo:

March 2023

To whom it may concern:

This memo confirms that Bertrem Products is the Exclusive Distributor for Mission Communications' products and services in Oklahoma and Western Arkansas. If you require further information, feel free to give me a call or email.

Regards,



Eddie Stewart
Midwest Regional Manager
Email: eddies@123mc.com
Mobile: 913-787-1721
Office: 877.993.1911



BERTREM PRODUCTS, INC.

Engineered Products for Process Control

Quote 04/14/2023

Bentonville Wastewater
1901 Northeast A Street
Bentonville, AR 72712

QTY	Item	Description		Unit Price	Price Level	Total
1	RM852	RTU – Retro-Fit MyDro Tellit LTE for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,850.00	MSRP	\$2,850.00
1	Legacy 800 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	Crystal Bridges 800	-\$419.00	MSRP	-\$419.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4–channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	Crystal Bridges south 110	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4–channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)	Switch with Autumn Hills later	\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #01 McKisic card 1	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4–channel counter via RS485)		\$305.00	MSRP	\$305.00
1	OP400*	Sensor — AC Current Switch (Strap-on, nylon enclosure, 6 ft twisted pair wire, red LED)		\$37.50	MSRP	\$37.50
1	RM852	RTU – Retro-Fit MyDro Tellit LTE for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,850.00	MSRP	\$2,850.00
1	Legacy 110 100%	100% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the first year of equipment purchase.	LS #01 McKisic card 2	-\$1,295.00	MSRP	-\$1,295.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4–channel counter via RS485)		\$305.00	MSRP	\$305.00
6	OP400*	Sensor — AC Current Switch (Strap-on, nylon enclosure, 6 ft twisted pair wire, red LED)		\$37.50	MSRP	\$225.00
12	SP1-Upgrade	Annual Service-m150-850 prorata		\$18.00	MSRP	\$216.00
1	RM852	RTU – Retro-Fit MyDro Tellit LTE for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,850.00	MSRP	\$2,850.00
1	Legacy 110 100%	100% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the first year of equipment purchase.	LS #02 South	-\$1,295.00	MSRP	-\$1,295.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4–channel counter via RS485)		\$305.00	MSRP	\$305.00
12	SP1-Upgrade	Annual Service-m150-850 prorata		\$18.00	MSRP	\$216.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #03 102	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4–channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #04 Lexington	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4–channel counter via RS485)		\$305.00	MSRP	\$305.00

1	RM852	RTU – Retro-Fit MyDro Tellit LTE for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,850.00	MSRP	\$2,850.00
1	Legacy 110 100%	100% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the first year of equipment purchase.	LS #05 North A	-\$1,295.00	MSRP	-\$1,295.00



BERTREM PRODUCTS, INC.

Engineered Products for Process Control

1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
6	OP400*	Sensor — AC Current Switch (Strap-on, nylon enclosure, 6 ft twisted pair wire, red LED)		\$37.50	MSRP	\$225.00
12	SP1-Upgrade	Annual Service-m150-850 prorata		\$18.00	MSRP	\$216.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #06 Parkview	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #08 Woods Creek	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #09 Rice Rd	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #10 Krystal Heights	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #11 Stonehenge	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #12 Blueberry	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #13 Beau Terre South	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #14 Harbour Churchwell	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #15 Willow Banks	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00



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1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #16 AR National Bank	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #17 Salvation Army	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #18 Hanover III	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #19 Marina	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #21 Meadow Wood	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #22 Orchard Park	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #23 Vaughn LS	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #24 Firestone	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #25 Medical Center	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #27 Wal-Mart Dist.	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #28 Autumn Wood	-\$259.00	MSRP	-\$259.00



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1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00

1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #29 Beau Terre North	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #30 Abby	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #31 Straube	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #32 Nightingale	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #33 Kensington	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #34 Saddlebrook	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #35 Kingsbury	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #36 Phillips Park	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #37 College Place	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #38 Windwood	-\$259.00	MSRP	-\$259.00



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1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #39 Allencroft	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00

1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #40 Fairwinds	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #41 Creekstone	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #42 Lockmore Club	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #43 Briar Chase	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #44 White Oak Trail	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #45 Chickadee	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #46 Windmill Rd	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #46 Windmill Rd	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #47 Stoneburrow	-\$259.00	MSRP	-\$259.00



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1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #48 Wildwood	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #49 Kerelow Castle	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00

1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #50 Stonegate	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #51 Morning Star	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #52 Oak Lawn Hills	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #53 Thornbrook	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #54 Elm Tree	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #55 Gramercy	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #56 Angel Falls	-\$259.00	MSRP	-\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #57 Central Park School	-\$259.00	MSRP	-\$259.00



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1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #58 Highland Park	\$259.00	MSRP	\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #59 Brighton Cottages	\$259.00	MSRP	\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
1	RM152	RTU – Retro-Fit MyDro for Wireless Real-Time Alarm System – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)		\$2,050.00	MSRP	\$2,050.00
1	Legacy 110 20%	20% Trade-in Value for RTU or Expansion Board for Upgrade to the MyDro Series. This trade-in value is available in the fifth year of equipment purchase.	LS #61 Edgar Estates	\$259.00	MSRP	\$259.00
1	OP750	Safe Module Plus — Pulse Input, relay output, float connector (4-channel counter via RS485)		\$305.00	MSRP	\$305.00
0				\$0.00	MSRP	\$0.00

Bentonville Wastewater (AR) requests that Mission extend zero (0%) interest terms of 25% (+S&H) down in the amount of (\$36,229.54) 30 days ARO and a final installment of (\$105,943.62) due February 29th, 2024. Please make checks payable to Mission Communications, LLC For your convenience Mission accepts credit cards. Card payments less than \$3,000 received within (7) days of the invoice date may avoid the 3% credit card processing fee. If you have any questions concerning this invoice please contact our Accounts Receivable team, 877-993-1911 option 5, ar@123mc.com	Subtotal		\$128,923.50
	Freight	\$15.00	\$915.00
	Tax	9.50%	\$12,334.66
	Total		\$142,173.16

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO AN AGREEMENT WITH BERTREM PRODUCTS, INC., FOR THE PURCHASE OF AN UPGRADED ALARM SYSTEM FOR THE BENTONVILLE WATER RESOURCE RECOVERY FACILITY LIFT STATIONS, IN THE AMOUNT OF ONE HUNDRED FORTY-SEVEN THOUSAND ONE HUNDRED SEVENTY-THREE DOLLARS AND SIXTEEN CENTS (\$147,173.16); WAIVING THE REQUIREMENT OF COMPETITIVE BIDDING; DECLARING CERTAIN PROPERTY AS SURPLUS; AND FOR OTHER PURPOSES.

WHEREAS, the City of Bentonville Water Resource Recovery Facility is requesting to upgrade the alarm system and declare sixty-three (63) Mission Communication RTU micro-processors (M110/M800) of the City's lift station alarm system as surplus;

WHEREAS, Bertrem Products, Inc. is the current provider for the installed alarm system and therefore it is not practical or feasible to solicit competitive bidding; and

WHEREAS, the previously approved budget adjustment, appropriating two hundred forty-five thousand six hundred seventy-nine dollars and thirty-six cents (\$245,679.36), funds both this purchase and the RAS pumps purchase.

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

Section 1: That the Mayor and City Clerk be and are hereby authorized to enter into an agreement with Bertrem Products, Inc., for the purchase of an upgraded alarm system for the Bentonville Water Resource Recovery Facility Lift Stations, in the amount of one hundred forty-seven thousand one hundred seventy-three dollars and sixteen cents (\$147,173.16);

Section 2: Because this upgrade is being made through a current provider, 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; and

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 _____, 2023.

APPROVED:

STEPHANIE ORMAN, Mayor

ATTEST:

KIRBY ROMINES, City Clerk



Agenda Item Form

Date of City Council Meeting	5/23/2023
Department	Water Resource Recovery Facility
Submitted by	Chris Earl
Phone	479-696-0273

Item Type: (Check Applicable Item Type)					
☐ Budget Adjustment	☐ Change Order	☐ Informational	☐ Ordinance	☒ Resolution	☐ Bid Award
Recommendation/Suggested Action (Enter recommendation in space below):					
Resolution for City Council approval to enter into an agreement with Denali Water Solutions, LLC for the legal transportation and documented disposal of mechanically dewatered, Class B biosolids produced at the wastewater treatment plant, at a per unit price. Denali was the sole submission received. No Budget Adjustment is needed. Utility Board approved 5-0.					

Estimated Cost	80,000.00
Is this Item Budgeted?	☒ Yes ☐ No
If no, please explain how item will be funded (briefly explain in space below) :	



RE: Resolution to allow Denali to transport WRRF biosolids

Chris Earl, WRRF Manager

**RFP-23-30-Legal Transportation and Documented Disposal of Mechanically Dewatered Class B
Biosolids Tabulation of Submissions**

Submission Deadline Date & Time: April 20, 2023, 4:00 PM

Evaluation Results Tabulation Date: May 8, 2023

Submission Number	Submitter Name	Submitter Company Name	Submission Requirements Met (Y/N)
1	Jeffrey J. LeBlanc	Denali Water Solutions LLC	Y

Ranking Criteria:

1. Response: How complete, thorough and responsive the Proposer is to the Request for Proposal and documents.	20 points
2. Qualifications: Experience, Competence and Capacity: - Proposer's experience, competence, and capacity for performance of the services. - The Proposer should take special care to convey to the City their ability to meet, or exceed, all requirements as stated herein and that are standard to the services described herein. Proposers should use this opportunity to convey to the City that they have the capacity for the disposal of the Class B biosolids at the approximate volumes stated herein. - Proposer's should provide past experience, including but not limited to: - Services provided within the last three (3) years, including information about the frequency of the service. - References for whom the Proposer has provided the same or similar services. - Previous evaluations/performance with the City will be a significant factor. If not available, past performance with others will be used.	20 points
3. Method of Doing Work: The Proposal must set forth the proposed method of doing work, as described herein (Scope of Work and other sections) and as standard to performing the services described in this Request for Proposals.	25 points
4. Disposal Capacity: The capacity and ability that the Proposer has to realistically meet the transportation and disposal requirements, as outlined herein.	20 points
5. Price: - The Proposed Cost of Services, as described herein. - The Proposed Cost of Services must only be conveyed by PER WET TON. Deviation from using this unit of measure (per wet ton) may be considered failure to be responsive and the Proposal may be rejected.	15 points

Tabulation:

Evaluation Committee Member Ratings (total ranking for all criteria - rated out of 100)	Submitter Name	
	Denali Water Solutions LLC	
Chris Earl	93/100	
Len Brzozkiewicz	95/100	
Matt Webster	95/100	
Total points	283/300	

Denali Water Solutions LLC Averaged Score: 94.33

RESOLUTION NO. _____

A RESOLUTION AWARDED BID RFP-23-30 TO DENALI WATER SOLUTIONS, LLC., FOR TRANSPORTATION AND DISPOSAL OF BIOSOLIDS ON A PER UNIT PRICE, IN AN APPROXIMATE AMOUNT OF EIGHTY THOUSAND DOLLARS (\$80,000.00); AND FOR OTHER PURPOSES.

WHEREAS, Denali Water Solutions, LLC. was the sole submission for bid RFP-23-30;

WHEREAS, this contract covers the legal transportation and documented disposal of mechanically dewatered, Class B biosolids; and

WHEREAS, this will be paid with budgeted funds.

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 Denali Water Solutions, LLC. for transportation and disposal of Biosolids for the Water Resource Recovery Facility on a per unit price;

Section 2: The estimated contract cost is eighty thousand dollars (\$80,000.00);

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 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 _____, 2023.

APPROVED:

STEPHANIE ORMAN, MAYOR

ATTEST:

KIRBY ROMINES, CITY CLERK



Agenda Item Form

Date of City Council Meeting	5/23/2023
Department	Water Resource Recovery Facility
Submitted by	Chris Earl
Phone	479-696-0273

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-23-36 to Brenntag Mid-South for Praestol 279 FLX Cationic Water-Soluble Polymer, at a delivered per liquid pound price. This was the sole submission received. No Budget Adjustment is needed. Utility Board approved 5-0.					

Estimated Cost	95,000.00
Is this Item Budgeted?	☒ Yes ☐ No
If no, please explain how item will be funded (briefly explain in space below) :	



Memo



To: UB Members/Council Members/Mayor Orman
From: Chris Earl, WRRF Utilities Manager
CC: Mike Bender, Preston Newbill
Date: UB 5/16/2023 Council 5/23/2023
RE: Bid Award for Brenntag Mid-South for Solids Production

.....

Bid Award to Brenntag Mid-South Bid Submission for IFB-23-36 Praestol 279 FLX Cationic Water-Soluble Ploymer for a delivered price of \$2.70 per liquid pound. Polymer is used to assist in the coagulation of solids before the dewatering process in wastewater treatment. There was only one (1) bid for this bid submission.

Utility Board approved 5-0

Thank you for this consideration.

**CITY OF BENTONVILLE, ARKANSAS PURCHASING DEPARTMENT****FORMAL SEALED BID TABULATION**

Date of Bid Opening:	5/2/23	Time of Bid Opening:	1:00 PM	Solicitation ID Number:	IFB-23-36
Solicitation Title: Polymer					
Bidder:			Brenntag Mid-South		
Line Item	Quantity and Unit of Measure	Description	Unit Price (Per Pound Cost)		
1	1 Pound	Praestol 279 FLX cationic water-soluble polymer	\$2.70		
Total Bid Price			\$2.70		
purchasing@bentonvillear.com - (479) 271-3115					

RESOLUTION NO. _____

A RESOLUTION AWARDED BID IFB-23-36 TO BRENNTAG MID-SOUTH, FOR WATER-SOLUBLE POLYMER NEEDED FOR THE WATER RESOURCE RECOVERY FACILITY, ON AN AS-NEEDED BASIS, IN AN APPROXIMATE AMOUNT OF NINETY-FIVE THOUSAND DOLLARS (\$95,000.00); AND FOR OTHER PURPOSES.

WHEREAS, Brenntag Mid-South was the sole submission for bid IFB-23-36;

WHEREAS, this agreement covers the delivery of Praestol 279 FLX cationic water-soluble polymer to assist in the dewatering process; and

WHEREAS, this will be paid with budgeted funds in the approximate amount of ninety-five thousand dollars (\$95,000.00).

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 an agreement with Brenntag Mid-South for the delivery of water-soluble polymer for the Water Resource Recovery Facility;

Section 2: The estimated contract cost is ninety-five thousand dollars (\$95,000.00);

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 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 _____, 2023.

APPROVED:

STEPHANIE ORMAN, MAYOR

ATTEST:

KIRBY ROMINES, CITY CLERK



Agenda Item Form

Date of City Council Meeting	5/23/2023
Department	Human Resources
Submitted by	Machele Bowen
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 a change to the pay plan to upgrade one Accounting Specialist II position to an Accountant position. There is no additional headcount or budget adjustment associated with this position.					

Estimated Cost	
Is this Item Budgeted?	☒ Yes ☐ No
If no, please explain how item will be funded (briefly explain in space below) :	





Memorandum

To: City Council, Mayor Orman

From: Machele Bowen, Human Resource Manager

Date: May 23, 2023

Subject: Existing Position Upgrade from Accounting Specialist II to Accountant –
Projects & Capital Assets

1. The Accounting department currently has an open Accounting Specialist II position (Grade 17) that we recommend upgrading to an Accountant position (Grade 33) responsible for Project & Capital Assets.
2. This will allow for proper financial tracking of projects and accurate capital asset reporting. This position will also be responsible for monthly bond reconciliation, financial statement reviews, and monthly balance sheet reconciliations.
3. The Accounting Specialist II position has been vacant since January 2023 this will be a budget neutral adjustment which results in no additional cost.
4. This position was slated to be requested in the 2024 budget period.

ORDINANCE NO. _____

**AN ORDINANCE AMENDING THE PAY PLAN FOR THE CITY OF BENTONVILLE
ACCOUNTING DEPARTMENT TO UPGRADE THE POSITION OF ACCOUNTING
SPECIALIST II TO ACCOUNTANT; PROVIDING FOR THE EMERGENCY CLAUSE; AND
FOR OTHER PURPOSES.**

WHEREAS, the Accounting Department has an open Accounting Specialist II position that has been vacant since January, 2023;

WHEREAS, the Department requests this position upgrade to allow for oversight of projects and capital assets;

WHEREAS, an Accountant level position can properly track the financials for projects, capital asset reporting, monthly bond reconciliations, financial statement review, and monthly balance sheet reconciliations; and

WHEREAS, a budget adjustment is not required for this upgrade.

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 the following:

Position Upgrade:

Remove Accounting Specialist II	Grade 17
Add Accountant	Grade 33

Section 2 - Emergency Clause: The need to make this change is immediate, so as to fill this position and not delay implementation, an emergency is hereby declared to exist, and this Ordinance shall be in full force and effect from the date of its passage and approval;

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 _____, 2023.

APPROVED:

STEPHANIE ORMAN, Mayor

Attest:

KIRBY ROMINES, City Clerk



Agenda Item Form

Date of City Council Meeting	5/23/2023
Department	Police
Submitted by	Chief Ray Shastid
Phone	(479) 271-3170

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 the 2023 Pay Plan and approving a budget adjustment in the amount of \$985,168.44 for the Bentonville Police Department pay adjustment. A budget adjustment is required for salary increases.					

Estimated Cost	\$985,168.44
Is this Item Budgeted?	☐ Yes ☒ No
If no, please explain how item will be funded (briefly explain in space below) :	
General Fund Reserves	





Budget Adjustment Request

Date of City Council Meeting	5/23/2023
Department	Police
Submitted by	Chief Ray Shastid
Phone	(479) 271-3170

Purpose of Budget Adjustment (Enter purpose in space below):
Budget adjustment in the amount of \$985,168.44 to recognize the pay adjustment and amended pay plan proposed by the Bentonville Police Department.

General Ledger Account Information*				
Org (Department)	Object	Account Description	Revenue + (-)	Expense + (-)
102010	41010	Full Time Salaries/Wages		\$ 539,188.57
102010	41310	Overtime Wages		\$ 80,769.23
102010	41420	Misc Add Pay		\$ 150,000.00
102010	41510	FICA and Medicare Expense		\$ 52,722.93
102010	41810	Retirement - APERS		\$ 5,149.40
102010	41820	LOPFI		\$ 157,338.31
		Totals	\$ -	\$ 985,168.44
		Net Impact on Fund Balance	\$ (985,168.44)	
*Final Account Number will be determined by Accounting Department after approval and purchase				





MEMORANDUM

Police Department

TO: City Council, Mayor Orman
FROM: Ray Shastid, Chief of Police
DATE: May 23, 2023
SUBJECT: Police Department Salary Adjustment

Public Safety, specifically law enforcement, continues to face numerous challenges nationally and at a local level in recruiting and retention. The Bentonville Police Department has continually been resilient in how we overcome these challenges.

In 2022, Police Departments in the area began an extensive review of their pay plans with Springdale Police Department being the first to provide a substantial increase. The Springdale City Council voted on a resolution to add \$2.29 million to the 2023 budget with a starting salary of \$53,000. Other departments followed with Ft. Smith and Fayetteville approving similar increases.

The City of Bentonville Human Resources and Accounting Department assisted the Bentonville Police Department with a review of salaries specific to police departments in this area. Using the data collected by the JER HR Group from February 2023, this would move our entry officer pay from \$19.67 hr (\$40,913.60) to \$24.00 (\$49,920.00). Additional pay grades modifications were made, along with adjustments to current employees to avoid compression.

Staff is asking the City Council to approve a budget adjustment in the amount of \$985,168.44 and to amend the current Bentonville Police Department pay plan. The pay adjustment would go into effect July 3, 2023.

This pay adjustment and amendment to the pay plan will allow the Bentonville Police Department to remain competitive in a challenging profession. Furthermore, this ensure we are recruiting and retaining the most professional and qualified police officers for the City of Bentonville.

Attachment:

-Agency comparison sheet with current and proposed pay scale

2023 Public Safety Pay Plan Study

City	Police Officer		Police Corporal		Police Sergeant		Police Lieutenant		Police Captain		Police Chief		Telecommunicators	
	Min	Max	Min	Max	Min	Max	Min	Max	Min	Max	Min	Max	Min	Max
Bentonville	\$40,914	\$66,622	\$49,462	\$73,278	\$54,600	\$80,579	\$65,894	\$99,154	\$71,802	\$114,774	\$90,147	\$144,206	\$17.84	\$27.63
Rogers	\$53,090	\$71,611	\$61,169	\$86,105	\$70,594	\$101,622	\$92,136	\$119,548	\$85,488	\$133,557	\$108,389	\$169,354	\$15.21	\$23.76
Springdale	\$53,087	\$76,313	\$62,346	\$91,742	\$72,213	\$106,265	\$85,545	\$128,297	\$77,334	\$115,981	\$95,202	\$142,813	\$16.86	\$25.24
Jonesboro	\$44,558	\$58,675			\$56,832	\$68,225	\$66,669	\$79,596	\$72,425	\$82,618	\$99,549	\$110,157	\$15.21	\$23.76
Lawrence	\$50,548	\$80,203			\$71,871	\$119,775	\$86,906	\$137,514	\$97,739	\$141,710	\$138,819	\$194,355	\$20.17	\$29.25
Fayetteville	\$50,447	\$72,449	\$59,240	\$87,161	\$68,608	\$100,954	\$81,273	\$121,899	\$80,371	\$132,267	\$105,664	\$157,872	\$18.73	\$27.99
Average	\$48,774	\$70,979	\$58,054	\$84,572	\$65,786	\$96,237	\$79,737	\$114,335	\$80,860	\$120,151	\$106,295	\$153,126	\$17.34	\$26.27

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE 2023 PAY PLAN FOR THE BENTONVILLE POLICE DEPARTMENT; PROVIDING ADDITIONAL PAY TO COMPENSATE EMPLOYEES TO MAINTAIN COMPETITIVE SALARIES; AND FOR OTHER PURPOSES.

WHEREAS, the Bentonville Police Department is requesting amending the 2023 Pay Plan to maintain competitive salaries;

WHEREAS, based on the review of salaries specific to surrounding Police Departments, the Bentonville Police Department recommends moving entry officer pay from nineteen dollars and sixty-seven cents (\$19.67) to twenty-four dollars (\$24.00) per hour along with pay grade modifications and adjustments to avoid compression; and

WHEREAS, the Bentonville Police Department recommends a budget adjustment in the amount of nine hundred eighty-five thousand one hundred sixty-eight dollars and forty-four cents (\$985,168.44).

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

Section 1: The Pay Plan for the Bentonville Police Department should be and is hereby amended to include additional pay to maintain competitive salaries as set forth in the attached Exhibit A;

Section 2: The 2023 Budget is adjusted to appropriate monies from General Fund Reserves as shown below:

Org (Department)	Object	Account Description	Revenue + (-)	Expense + (-)
102010	41010	Full Time Salaries/Wages		\$ 539,188.57
102010	41310	Overtime Wages		\$ 80,769.23
102010	41420	Misc Add Pay		\$ 150,000.00
102010	41510	FICA and Medicare Expense		\$ 52,722.93
102010	41810	Retirement - APERS		\$ 5,149.40
102010	41820	LOPFI		\$ 157,338.31
		Totals	\$ -	\$ 985,168.44
		Net Impact on Fund Balance	\$ (985,168.44)	

Section 3 - Severability Provision: If any part of this Ordinance 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 Ordinance are repealed to the extent of such conflict.

PASSED AND APPROVED this _____ day of _____, 2023.

APPROVED:

STEPHANIE ORMAN, Mayor

Attest:

KIRBY ROMINES, City Clerk

CITY OF BENTONVILLE
2023 POLICE DEPARTMENT PAY RANGES

GRADE	JOB TITLE		Proposed MIN	Current MIN	Proposed MID	Current MID	Proposed MAX	Current MAX
60A	TELECOMMUNICATOR I (TRAINING) HOURLY		18.80	17.84	18.80	17.84	18.80	17.84
	ANNUAL		39,104	37,107	39,104	37,107	39,104	37,107
60B	TELECOMMUNICATOR II	HOURLY	19.90	18.80	22.47	21.92	25.04	25.04
	ANNUAL		41,392	\$39,104	46,738	45,594	52,083	52,083
60C	TELECOMMUNICATOR III	HOURLY	22.30	19.75	25.15	23.69	27.99	27.63
	ANNUAL		46,384	41,080	52,302	49,275	58,219	57,470
61	TELECOMMUNICATOR SHIFT SUPV. HOURLY		23.80	22.03	29.40	27.25	35.00	32.46
61	TRAINER / QA COORDINATOR	ANNUAL	49,504	45,822	61,152	56,670	72,800	67,517
62	TELECOMMUNICATION MANAGER	HOURLY	32.87	27.42	39.60	35.18	49.10	42.94
	ANNUAL		68,370	57,034	82,368	73,174	102,128	89,315
40	POLICE OFFICER I	HOURLY	24.00	19.67	25.08	24.39	26.15	29.11
	ANNUAL		49,920	40,914	52,156	50,731	54,392	60,549
41	POLICE OFFICER II	HOURLY	26.40	21.61	30.70	26.82	35.00	32.03
	ANNUAL		54,912	44,949	63,856	55,786	72,800	66,622
42	POLICE CORPORAL	HOURLY	30.07	23.78	35.56	29.51	41.05	35.23
	ANNUAL		62,546	49,462	73,965	61,370	85,384	73,278
43	POLICE SERGEANT	HOURLY	34.58	26.25	41.13	32.50	47.67	38.74
	ANNUAL		71,926	54,600	85,540	67,590	99,154	80,579
44	POLICE LIEUTENANT	HOURLY	39.07	31.68	47.71	39.68	56.34	47.67
	ANNUAL		81,266	65,894	99,226	82,524	117,187	99,154
45	POLICE CAPTAIN	HOURLY	43.73	34.52	52.87	44.85	62.01	55.18
	ANNUAL		90,958	71,802	109,970	93,288	130,892	114,774
46	RESERVED FOR FUTURE USE	HOURLY	50.28	36.60	57.77	47.58	65.25	58.56
	ANNUAL		104,582	76,128	120,151	98,966	135,720	121,805
47	POLICE CHIEF	HOURLY	50.08	43.34	61.38	56.34	72.67	69.33
	ANNUAL		104,166	90,147	127,660	117,177	151,154	144,206

STATE CERTIFICATE PAY/LONGEVITY:

Basic Certificate	None	
General Certificate	\$75.00	GN
Intermediate Certificate	\$100.00	IN
Advanced Certificate	\$150.00	AD
Senior Certificate	\$225.00	SN
Chief Level I Certificate	\$45.00	C1
Chief Level II Certificate	\$60.00	C2
Chief Level III Certificate	\$75.00	C3
Field Training Officer	\$30.00	FT
CID Stand-By Pay/\$30 a day	\$30.00	None

HAZEMAT/SPECIAL DUTY PAY:

K-9 Officer	\$115.00	K9
Bomb Squad	\$150.00	BC
Special Response Team	\$100.00	BT
HAZMAT Team Specialist/Tech	\$75.00	HM

COLLEGE/BI-LINGUAL PAY:

Associates Degree Add Pay	\$35.00	DA
Bachelors Degree Add Pay	\$100.00	DB
Master Degree Add Pay	\$150.00	DM
Bi-Lingual Add Pay	\$100.00	BL

Animal Services Pay:

ACO Advanced Certificate	\$45.00	AA
ACO Senior Certificate	\$60.00	AS



Agenda Item Form

Date of City Council Meeting	5/23/2023
Department	Police
Submitted by	Ray Shastid- Chief
Phone	(479) 271-3170

Item Type: (Check Applicable Item Type)					
☒ Budget Adjustment	☐ Change Order	☐ Informational	☐ Ordinance	☒ Resolution	☐ Bid Award
Recommendation/Suggested Action (Enter recommendation in space below):					
Resolution recognizing a budget adjustment in the amount of \$1,236.48 for a donation from the Rotary Club of Bentonville. Budget adjustment needed for recognizing revenue to expense account.					

Estimated Cost	\$1,236.48
Is this Item Budgeted?	☐ Yes ☒ No
If no, please explain how item will be funded (briefly explain in space below) :	





Budget Adjustment Request

Date of City Council Meeting	5/23/2023
Department	Police
Submitted by	Ray Shastid-Chief
Phone	(479) 271-3170

Purpose of Budget Adjustment <i>(Enter purpose in space below):</i> Resolution recognizing a budget adjustment in the amount of \$1,236.48 for a donation from the Rotary Club of Bentonville and transfer funds from the miscellaneous donation account (102010-37010) to the miscellaneous expense account (102010-42830).

General Ledger Account Information*				
Org (Department)	Object	Account Description	Revenue + (-)	Expense + (-)
102010	37010	Miscellaneous Donation	\$ 1,236.48	
102010	42830	Miscellaneous Expense		\$ 1,236.48
		Totals	\$ 1,236.48	\$ 1,236.48
		Net Impact on Fund Balance	\$ -	

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



www.bentonvillear.com

PLEASE RECYCLE



RESOLUTION NO. _____

**A RESOLUTION AMENDING THE 2023 BUDGET TO RECOGNIZE A
DONATION FROM THE ROTARY CLUB OF BENTONVILLE, IN THE
AMOUNT OF ONE THOUSAND TWO HUNDRED THIRTY-SIX DOLLARS
AND FORTY-EIGHT CENTS (\$1,236.48); APPROPRIATING THE SAME; AND
FOR OTHER PURPOSES.**

WHEREAS, the Rotary Club of Bentonville has generously donated in support of the Bentonville Police Department;

WHEREAS, a donation of one thousand two hundred thirty-six dollars and forty-eight cents (\$1,236.48) was made and will be used to purchase additional bike equipment; and

WHEREAS, a budget adjustment will be needed recognizing revenue and appropriate into an expense account;

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

Section 1: The 2023 Budget is adjusted to recognize one thousand two hundred thirty-six dollars and forty-eight cents (\$1,236.48) of donations into Account #102010-37010 – Miscellaneous Donations and appropriating the same to Account #102010-42830 – Miscellaneous Expense;

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 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 this _____ day of _____, 2023.

APPROVED:

ATTEST:

STEPHANIE ORMAN, MAYOR

KIRBY ROMINES, CITY CLERK



Agenda Item Form

Date of City Council Meeting	5/23/2023
Department	Police Department
Submitted by	Ray Shastid- Chief of Police
Phone	(479) 271-3170

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 declare the Bentonville Police Department's Computer Voice Stress Analyzer (CVSA) computer (Dell Latitude 5480; MFG YR 2017; S/N CKQ4GH2) as surplus and make it available as part of the offered trade-in program by NITV Federal Services. No budget adjustment is needed.					

Estimated Cost	
Is this Item Budgeted?	☐ Yes ☐ No
If no, please explain how item will be funded (briefly explain in space below) :	





MEMORANDUM

Police Department

TO: City Council, Mayor Orman
FROM: Ray Shastid, Chief of Police
DATE: May 23, 2023
SUBJECT: Surplus Property- Trade In

The Bentonville Police Department is requesting to declare our current Computer Voice Stress Analyzer (CVSA) computer as surplus (Dell Latitude 5480; MFG YR 2017; S/N CKQ4GH2). The recommended schedule is to upgrade the system every five years. Following surplus approval by the city council, the computer would be part of the offered trade-in program by NITV Federal Services to reduce the cost from \$10,999.00 to \$7,795.00.

The agency is responsible for the secure protected shipping of the Trade -in (old CVSA) back to NITVFS, as soon as you receive the new system (CVSA III). Delaying the return may result in reversing the price to its original cost of \$10995.00. NITV Federal Services covers the cost of shipping the new system; the agency bears the cost of shipping the Trade-in.

This system is used for the police department pre-employment hiring process for all officers, along with criminal investigations and internal affairs investigations. This is a budgeted item.



FEDERAL SERVICES

Trade In Policy:

The Trade -in Offer policy is that we reduce the cost of the CVSA from **\$10995 to \$7795**. The agency is responsible for the secure protected shipping of the Trade -in (old CVSA) back to NITVFS, as soon as you receive the new system (CVSA III). Delaying the return may result in reversing the price to its original cost of \$10995.00. We bear the cost of shipping your new system; the agency bears the cost of shipping the Trade -in to us. The trade in is expected to be returned to us within a (one) week. Inside the box of the new instrument, you will find our **Trade -In** form to be used when returning your older instrument to NITV Federal Services.

Thank you very much,

[Redacted Signature]
Lourdes Humble | Chief Operating Officer | NITV Federal Services
11400 Fortune Circle, West Palm Beach, FL 33414
Tel: (561) 798-6280 | Fax: (561) 798-1594 | Toll Free 888-266-7263
www.cvsal.com ; Email: Lourdes@cvsal.com



Computer Voice Stress Analyzer III® (CVSA III®)

To Whom It May Concern:

The patented Computer Voice Stress Analyzer III® (CVSA III®) Instrument detects, measures, and graphically displays specific stress-related components of the human voice which are associated with the psychological stress of the speaker. The CVSA III® specifications will meet or exceed those listed below:

Software Features:

The CVSA III® Instrument, with the patented FACT® Plus Scoring System, uses advanced algorithmic and machine learning processes to recognize, evaluate, categorize and quantify voice output graphs. The FACT® Plus evaluates CVSA III® charts as "Deception Indicated" or "No Deception Indicated." The CVSA III® is a completely new version of the CVSA®, not an "update", with numerous innovative enhancements and user/software upgrades which truly make it the 21st Century Truth Verification Instrument of choice for law enforcement and government agencies. The CVSA III® comes with a NITV Federal Services-supported Limited Lifetime Software Warranty.

Instrument Features:

1. Dell Rugged 14 notebook, Factory Custom Configuration -model 5430
2. Intel Core Processor 11th Gen Intel i5-1135G7, (2.40 GHz,2.41 GHz)
3. 8 GB (7.74 GB usable) DDR4 Memory, 1x8GB,3200 MHz -non-ECC
4. 64-bit Operating System, x64-based processor Intel Integrated HD Graphics 500 -Integrated Intel Iris Xe Graphics
5. 256 GB Hard Drive-M.2 PCIe NVMe Class 35 Solid State Drive
6. Sealed Internal Keyboard
7. Intel Dual Band 8260 (802.11ac)
8. 14-inch HD Display
9. 14" non-touch 400 nits WVA FHD
10. Windows 10 LTSC - CVSA III Custom Configuration, Microsoft Approved/Licensed, 64-bit
11. Height:1.32 in, Width:13.38 in, Depth: 8.66 in
12. Dell Custom Factory Integration (CFI) and all-inclusive Dell Support
13. Dell Hardware Warranty – 3 years*
14. Dell Pro-Support: Next Business Day Onsite Service – 3 years*
15. Dell Pro-Support: Keep Your Hard Drive – 3 years*
16. Dell Pro-Support: Accidental Damage Protection – 3 years*
17. Dell Pro-Support: 7x24 Technical Support – 3 years*
18. USB Microphone System for CVSA®
19. CVSA® Software and Technical Support – Unlimited

**(The Dell-CVSA® All-Inclusive Hardware Warranty, with the coverage listed above is included in the purchase price)*

Updated 8/2022



RESOLUTION NO. _____

**A RESOLUTION DECLARING CERTAIN PROPERTY BELONGING TO THE
CITY OF BENTONVILLE POLICE DEPARTMENT AS SURPLUS PROPERTY;
AUTHORIZING ITS DISPOSAL; AND FOR OTHER PURPOSES.**

WHEREAS, the Bentonville Police Department has determined that Computer Voice Stress Analyzer (CVSA), specifically a Dell Latitude 5480 (Serial Number – CKQ4GH2) should be declared surplus property;

WHEREAS, the recommended schedule is to upgrade the system every five years;

WHEREAS, upon being approved and declared as surplus, this computer will be traded to NITV Federal Services;

WHEREAS, the received credit will be applied towards the trade-in program, reducing the cost from ten thousand nine hundred ninety-nine dollars (\$10,999.00) to seven thousand seven hundred ninety-five dollars (\$7,795.00); and

WHEREAS, declaring this computer as surplus to allow such a trade-in represents a responsible and safe disposition of public safety equipment.

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

Section 1: The Bentonville Police Department may dispose of a Computer Voice Stress Analyzer (CVSA), specifically a Dell Latitude 5480 (Serial Number – CKQ4GH2) which is declared surplus;

Section 2: A record of all items that are disposed of shall be maintained;

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 AND APPROVED THIS _____ DAY OF _____, 2023.

APPROVED:

STEPHANIE ORMAN, MAYOR

ATTEST:

KIRBY ROMINES, CITY CLERK



Agenda Item Form

Date of City Council Meeting	5/23/2023
Department	Police
Submitted by	Ray Shastid- Chief of Police
Phone	(479) 271-3170

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 Budget Adjustment recognizing an insurance payment for a totaled police department vehicle from the Arkansas Municipal League (ARML) in the amount of \$27,425.00 and declaring the totaled vehicle as surplus property. A Budget Adjustment is needed to accept the insurance payment.

Estimated Cost	
----------------	--

Is this Item Budgeted?	☐ Yes ☒ No
------------------------	---

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

Budget Adjustment to accept an insurance payment for a totaled vehicle.





Budget Adjustment Request

Date of City Council Meeting	5/23/2023
Department	Police
Submitted by	Ray Shastid-Chief
Phone	(479) 271-3170

Purpose of Budget Adjustment <i>(Enter purpose in space below):</i>
To accept settlement from ARML for 2018 Chevrolet Tahoe (Unit #2010-121; VIN #1GNLCDEC3JR237469) that was totaled.

General Ledger Account Information*				
Org (Department)	Object	Account Description	Revenue + (-)	Expense + (-)
102010	37520	Miscellaneous Income	\$ 27,425.00	
		Totals	\$ 27,425.00	\$ -
		Net Impact on Fund Balance	\$ 27,425.00	

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



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PLEASE RECYCLE



RESOLUTION NO. _____

A RESOLUTION AMENDING THE 2023 BUDGET TO RECOGNIZE INSURANCE SETTLEMENT FUNDS IN THE AMOUNT OF TWENTY-SEVEN THOUSAND FOUR HUNDRED TWENTY-FIVE DOLLARS (\$27,425.00); DECLARING CERTAIN PROPERTY BELONGING TO THE CITY OF BENTONVILLE POLICE DEPARTMENT AS SURPLUS PROPERTY; AUTHORIZING ITS DISPOSAL; AND FOR OTHER PURPOSES.

WHEREAS, a Police Department vehicle identified as a 2018 Chevrolet Tahoe Police Pursuit Vehicle (Unit #2010-121 / VIN 1GNLCDEC3JR237469) was involved in a collision on March 6, 2023 and is considered a total loss by Arkansas Municipal League Vehicle Insurance;

WHEREAS, said vehicle should be deemed surplus, and will be transferred to the League pursuant to the insurance settlement;

WHEREAS, the City will receive twenty-seven thousand four hundred twenty-five dollars (\$27,425.00) as a settlement; and

WHEREAS, this Resolution is in accordance with Ark. Code Ann. § 14-54-302.

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

Section 1: The Bentonville Police Department may dispose of one (1) 2018 Chevrolet Tahoe Police Pursuit Vehicle (Unit #2010-121 / VIN 1GNLCDEC3JR237469) as surplus;

Section 2: A record of all items that are disposed of shall be maintained;

Section 3: The 2023 Budget is adjusted to recognize twenty-seven thousand four hundred twenty-five dollars (\$27,425.00) into Account #102010-37520 – Miscellaneous Income;

Section 4 - 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 5 - 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 _____, 2023.

APPROVED:

STEPHANIE ORMAN, Mayor

ATTEST:

KIRBY ROMINES, City Clerk



Agenda Item Form

Date of City Council Meeting	5/23/2023
Department	Police
Submitted by	Chief Ray Shastid
Phone	(479) 271-3170

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 in the amount of \$16,147.50 to recognize the final 3 officers that were eligible for the full-time Law Enforcement Officer Salary Stipend (Act 224 of 2022). These funds have been dispersed to the City of Bentonville by the Department of Finance and Administration on May 5, 2023 and consist of a \$5,000.00 payment and an additional \$382.50 per officer for Medicare and Social Security taxes. Note: each department within the State is responsible providing all documents to the Commission of Law Enforcement Standards and Training (CLEST) to verify officers meet eligibility requirements. This is not a budgeted item.					

Estimated Cost	\$16,147.50
Is this Item Budgeted?	☐ Yes ☒ No
If no, please explain how item will be funded (briefly explain in space below) :	
This is a stipend for full-time law enforcement officers that meet certain eligibility requirements approved under ACT 224 with the State.	





Budget Adjustment Request

Date of City Council Meeting	5/23/2023
Department	Police
Submitted by	Chief Ray Shastid
Phone	(479) 271-3170

Purpose of Budget Adjustment <i>(Enter purpose in space below):</i>
Budget adjustment in the amount of \$16,147.50 to recognize the final 3 officers that were eligible for the full-time Law Enforcement Officer Salary Stipend (Act 224 of 2022). These funds have been dispersed to the City of Bentonville by the Department of Finance and Administration on May 5, 2023 and consist of a \$5,000.00 payment and an additional \$382.50 per officer for Medicare and Social Security taxes.

General Ledger Account Information*				
Org (Department)	Object	Account Description	Revenue + (-)	Expense + (-)
102010	33411	State Operating Grant	\$ 16,147.50	
102010	41010	Full Time Salary and Wages		\$ 15,000.00
102010	41510	FICA and Medicare Expense		\$ 1,147.50
		Totals	\$ 16,147.50	\$ 16,147.50
		Net Impact on Fund Balance	\$ -	
*Final Account Number will be determined by Accounting Department after approval and purchase				



RESOLUTION NO. _____

A RESOLUTION AMENDING THE 2023 BUDGET FOR THE PURPOSE OF RECEIVING AND EXPENDING THE FIVE THOUSAND DOLLAR (\$5,000.00) STIPEND FOR THREE (3) FULL-TIME LAW ENFORCEMENT OFFICERS; AND FOR OTHER PURPOSES.

WHEREAS, the Arkansas General Assembly passed Act 224 of 2022 during the 2022 Fiscal Session;

WHEREAS, through passage of Act 224 of 2022, the Arkansas General Assembly appropriated fifty million dollars (\$50,000,000.00) to provide a one-time salary stipend for eligible full-time law enforcement officers;

WHEREAS, “eligible full-time law enforcement officer” is specifically defined under Act 224 and the city/town does not have discretion to change the definition;

WHEREAS, each eligible full-time law enforcement officer is entitled to a one-time salary stipend of five thousand dollars (\$5,000.00) with employee payroll deductions applied as required by law; and

WHEREAS, the City Council of the City of Bentonville, Arkansas has determined that the City’s 2023 budget should be amended for the purpose of receiving the revenue for the one-time salary stipend funding from the State of Arkansas and expending the one-time salary stipend to eligible full-time law enforcement officers.

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

Section 1: The City of Bentonville 2023 Budget should be and the same is hereby amended for the purpose of accepting and appropriating funds granted in accordance with the Law Enforcement Officer Salary Stipend (Act 224 of 2022) as set forth below:

General Ledger Account Information*				
Org (Department)	Object	Account Description	Revenue + (-)	Expense + (-)
102010	33411	State Operating Grant	\$ 16,147.50	
102010	41010	Full Time Salary and Wages		\$ 15,000.00
102010	41510	FICA and Medicare Expense		\$ 1,147.50
		Totals	\$ 16,147.50	\$ 16,147.50
		Net Impact on Fund Balance	\$ -	
*Final Account Number will be determined by Accounting Department after approval and purchase				

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 _____, 2023.

APPROVED:

STEPHANIE ORMAN, Mayor

ATTEST:

KIRBY ROMINES, City Clerk



Agenda Item Form

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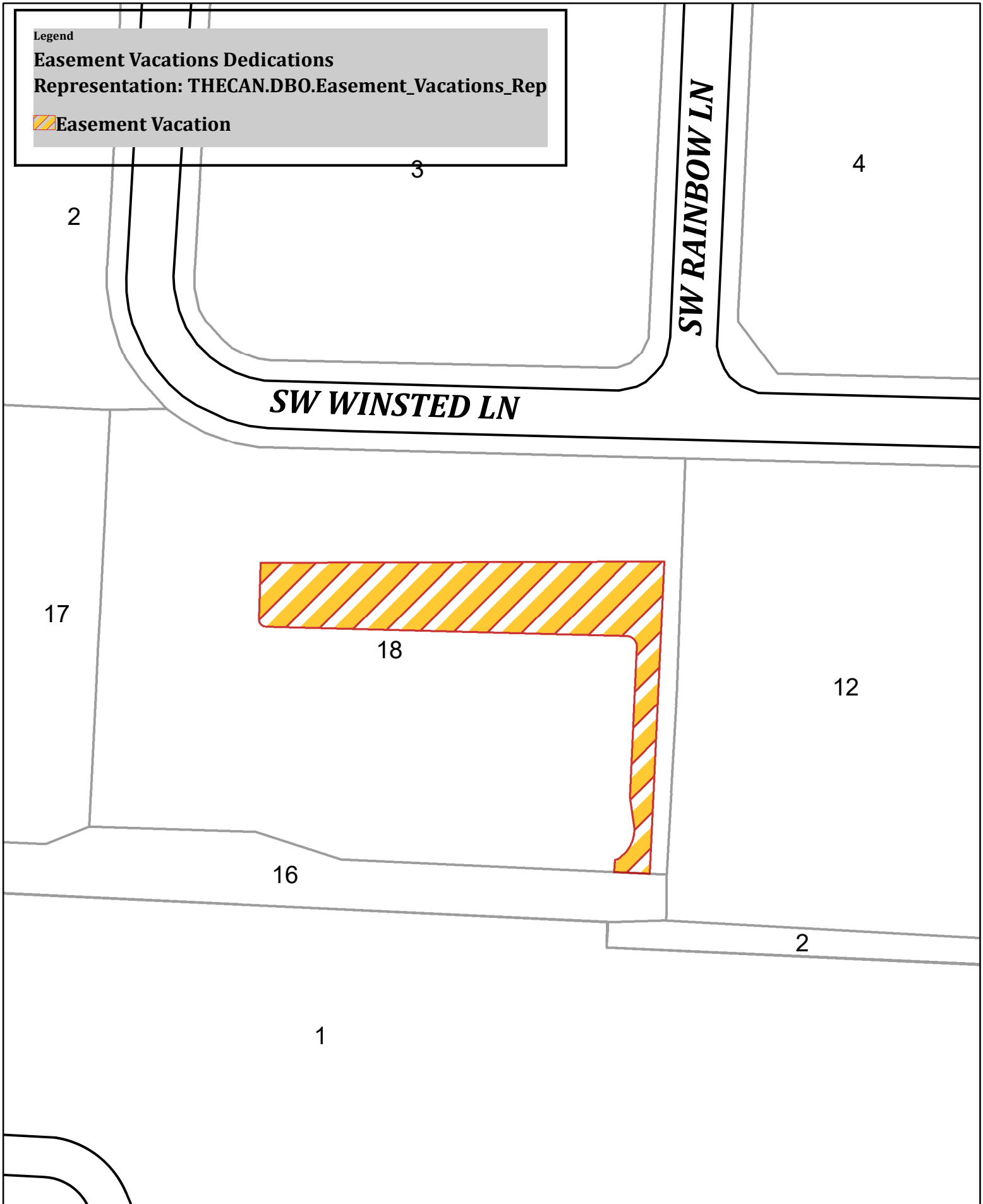
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Legend

Easement Vacations Dedications

Representation: THECAN.DBO.Easement_Vacations_Rep

 Easement Vacation

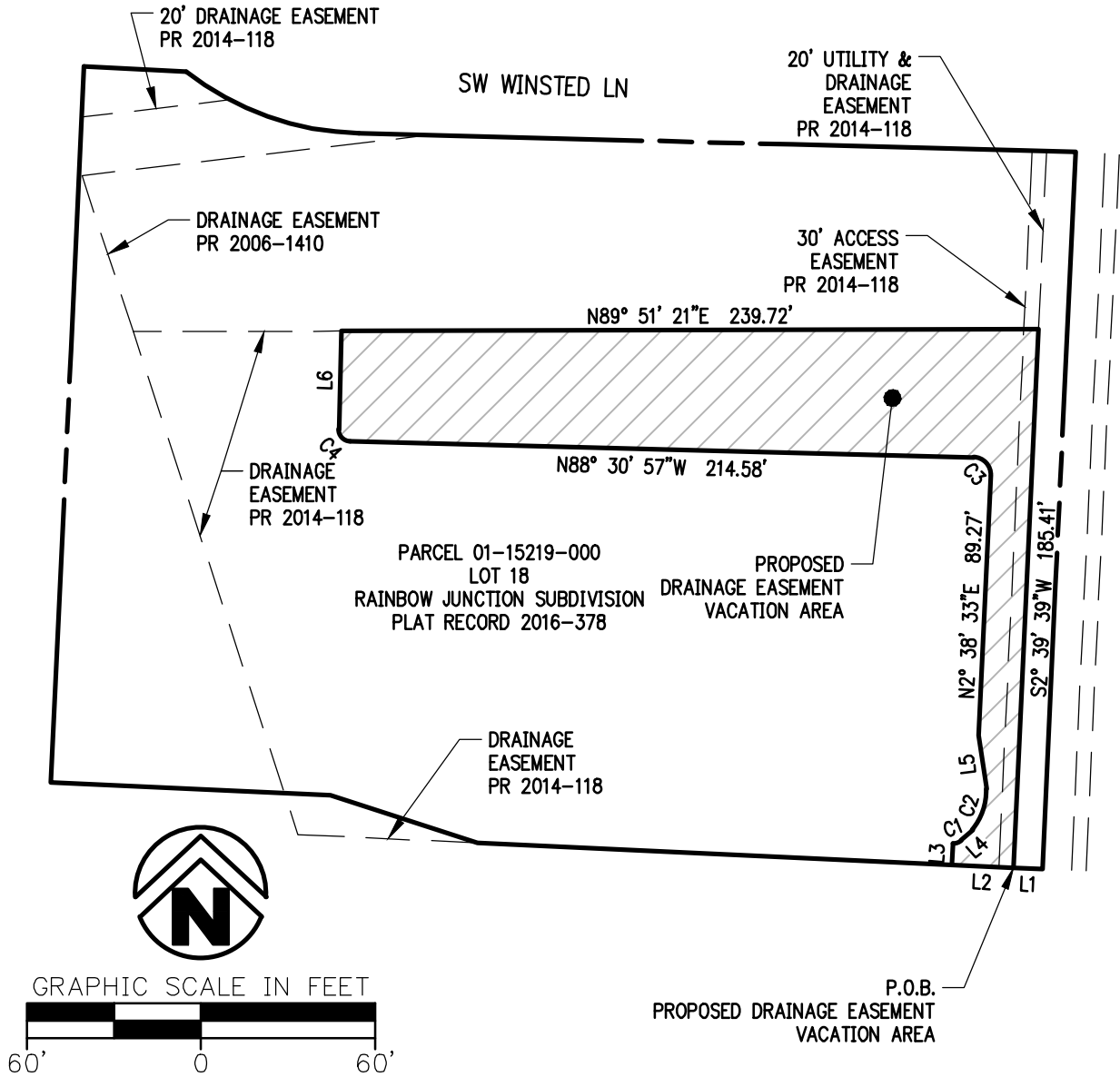


VAC23-0008
Proposed Easement Vacation
SW Winsted Lane

1 inch = 72 feet



EASEMENT/VICINITY MAP



PARCEL LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	10.00'	N87° 21' 18"W
L2	21.15'	N87° 21' 18"W
L3	7.41'	N2° 38' 42"E
L4	5.25'	N47° 24' 17"E
L5	18.75'	N8° 05' 57"W
L6	33.91'	N1° 29' 03"E

CURVE TABLE					
CURVE #	LENGTH	RADIUS	DELTA	CHORD DIRECTION	CHORD LENGTH
C1	3.12'	4.00'	44°45'35"	N69° 47' 04"E	3.05'
C2	15.19'	20.87'	41°42'10"	N18° 59' 44"E	14.85'
C3	9.55'	6.00'	91°09'39"	N42° 56' 08"W	8.57'
C4	6.28'	4.00'	90°00'00"	N43° 30' 57"W	5.66'

NOTE:

THIS EASEMENT/VICINITY MAP IS A GRAPHICAL REPRESENTATION OF THE EASEMENT VACATION DESCRIPTION, AND DOES NOT CONSTITUTE A BOUNDARY SURVEY.

PROJECT NO.:

21111700

DRAWN BY:

KM

DATE:

04/18/2023

SHEET:

1 OF 1

CHECKED:

901 N. 47th St., Suite 400
Rogers, Arkansas 72756



Crafton Tull
architecture | engineering | surveying

479.636.4838 t 479.631.6224 f

www.craftontull.com

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ORDINANCE NO _____

AN ORDINANCE VACATING A DRAINAGE EASEMENT LOCATED AT LOT 18 OF RAINBOW JUNCTION-BENTONVILLE SUBDIVISION TO THE CITY OF BENTONVILLE, ARKANSAS, BENTON COUNTY ARKANSAS (VAC23-0008).

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

PART OF LOT 18 OF RAINBOW JUNCTION SUBDIVISION AS PER PLAT RECORD 2016-378 IN THE OFFICE OF THE CIRCUIT CLERK AND EX-OFFICIO RECORDER OF BENTON COUNTY ARKANSAS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 18;
THENCE ALONG THE SOUTH LINE THEREOF N87°21'18"W 10.00 FEET POINT OF BEGINNING;
THENCE CONTINUING ALONG SAID SOUTH LINE N87°21'18"W 21.15 FEET;
THENCE LEAVING SAID SOUTH LINE N02°38'42"E 7.41 FEET;
THENCE 3.12 FEET ALONG A CURVE TO THE LEFT WITH A RADIUS OF 4.00 FEET AND A LONG CHORD OF N69°47'04"E 3.05 FEET;
THENCE N47°24'17"E 5.25 FEET;
THENCE 15.19 FEET ALONG A CURVE TO THE LEFT WITH A RADIUS OF 20.87 FEET AND A LONG CHORD OF N18°59'44"E 14.85 FEET;
THENCE N08°05'57"W 18.75 FEET;
THENCE N02°38'33"E 89.27 FEET;
THENCE 9.55 FEET ALONG A CURVE TO THE LEFT WITH A RADIUS OF 6.00 FEET AND A LONG CHORD OF N42°56'08"W 8.57 FEET;
THENCE N88°30'57"W 214.58 FEET;
THENCE 6.28 FEET ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 4.00 FEET AND A LONG CHORD OF N43°30'57"W 5.66 FEET;
THENCE N01°29'03"E 33.91 FEET TO THE NORTH LINE OF A DRAINAGE EASEMENT AS SHOWN ON PLAT RECORD 2014-118;
THENCE ALONG SAID NORTH LINE N89°51'21"E 239.72 FEET TO THE WEST LINE OF A 20 FOOT WIDE UTILITY AND DRAINAGE EASEMENT AS SHOWN ON PLAT RECORD 2014-118;
THENCE ALONG SAID WEST LINE S02°39'39"W 185.41 FEET TO THE POINT OF BEGINNING, CONTAINING 0.27 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 drainage easement.

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

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

PART OF LOT 18 OF RAINBOW JUNCTION SUBDIVISION AS PER PLAT RECORD 2016-378 IN THE OFFICE OF THE CIRCUIT CLERK AND EX-OFFICIO RECORDER OF BENTON COUNTY ARKANSAS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 18;
THENCE ALONG THE SOUTH LINE THEREOF N87°21'18"W 10.00 FEET POINT OF BEGINNING;
THENCE CONTINUING ALONG SAID SOUTH LINE N87°21'18"W 21.15 FEET;
THENCE LEAVING SAID SOUTH LINE N02°38'42"E 7.41 FEET;
THENCE 3.12 FEET ALONG A CURVE TO THE LEFT WITH A RADIUS OF 4.00 FEET AND A LONG CHORD OF N69°47'04"E 3.05 FEET;
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THENCE N08°05'57"W 18.75 FEET;
THENCE N02°38'33"E 89.27 FEET;
THENCE 9.55 FEET ALONG A CURVE TO THE LEFT WITH A RADIUS OF 6.00 FEET AND A LONG CHORD OF N42°56'08"W 8.57 FEET;
THENCE N88°30'57"W 214.58 FEET;
THENCE 6.28 FEET ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 4.00 FEET AND A LONG CHORD OF N43°30'57"W 5.66 FEET;
THENCE N01°29'03"E 33.91 FEET TO THE NORTH LINE OF A DRAINAGE EASEMENT AS SHOWN ON PLAT RECORD 2014-118;
THENCE ALONG SAID NORTH LINE N89°51'21"E 239.72 FEET TO THE WEST LINE OF A 20 FOOT WIDE UTILITY AND DRAINAGE EASEMENT AS SHOWN ON PLAT RECORD 2014-118;
THENCE ALONG SAID WEST LINE S02°39'39"W 185.41 FEET TO THE POINT OF BEGINNING, CONTAINING 0.27 ACRES, MORE OR LESS.

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

Section 3: This Ordinance shall take effect and be in force from and after its passage. The above and foregoing Ordinance was passed, approved, and adopted the ____ day of

_____, 2023 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	5/23/2023
Department	ENGINEERING
Submitted by	TRACY BILLINGS
Phone	(479) 696-0229

Item Type: (Check Applicable Item Type)

☐ Budget Adjustment

☐ Change Order

☐ Informational

☒ Ordinance

☐ Resolution

☐ Bid Award

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

Public hearing and ordinance vacating a Utility Easement Vacation requested for Lot 3 of Cross Creek Subdivision Phase 2 (VAC23-0009).

Estimated Cost

Is this Item Budgeted?

☐ Yes

☐ No

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



www.bentonvillear.com
PLEASE RECYCLE



Legend

 Proposed Easement Vacation

 Proposed Outbuilding



***Proposed Easement Vacation
2604 NW 6th Street***

1 inch = 30 feet



ORDINANCE NO _____

**AN ORDINANCE VACATING A UTILITY EASEMENT LOCATED AT LOT 3
OF CROSS CREEK SUBDIVISION PHASE 2 TO THE CITY OF BENTONVILLE,
ARKANSAS, BENTON COUNTY ARKANSAS (VAC23-0009).**

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

A vacation of part of an easement which is shown on Lot 3 Cross Creek Subdivision Phase II and recorded on Book P-1 Page 747 and filed for record at the Benton County Clerk's Office, Benton County, Arkansas and more particularly described as follows:

Beginning at the Northeast Corner of Lot 3 Cross Creek Subdivision Phase II.

Thence along the East side of said Lot 3, S47°39'27"W, 28.40';
Thence leaving said East side of Lot 3, N87°34'49"W, 31.97';
Thence N47°30'44"E, 28.33';
Thence S87°34'49"E, 32.07' to the Point of Beginning.

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

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

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

A vacation of part of an easement which is shown on Lot 3 Cross Creek Subdivision Phase II and recorded on Book P-1 Page 747 and filed for record at the Benton County Clerk's Office, Benton County, Arkansas and more particularly described as follows:

Beginning at the Northeast Corner of Lot 3 Cross Creek Subdivision Phase II.

Thence along the East side of said Lot 3, S47°39'27"W, 28.40';
Thence leaving said East side of Lot 3, N87°34'49"W, 31.97';
Thence N47°30'44"E, 28.33';
Thence S87°34'49"E, 32.07' to the Point of Beginning.

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

Section 3: This Ordinance shall take effect and be in force from and after its passage. The above and foregoing Ordinance was passed, approved, and adopted the _____ day of _____, 2023 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



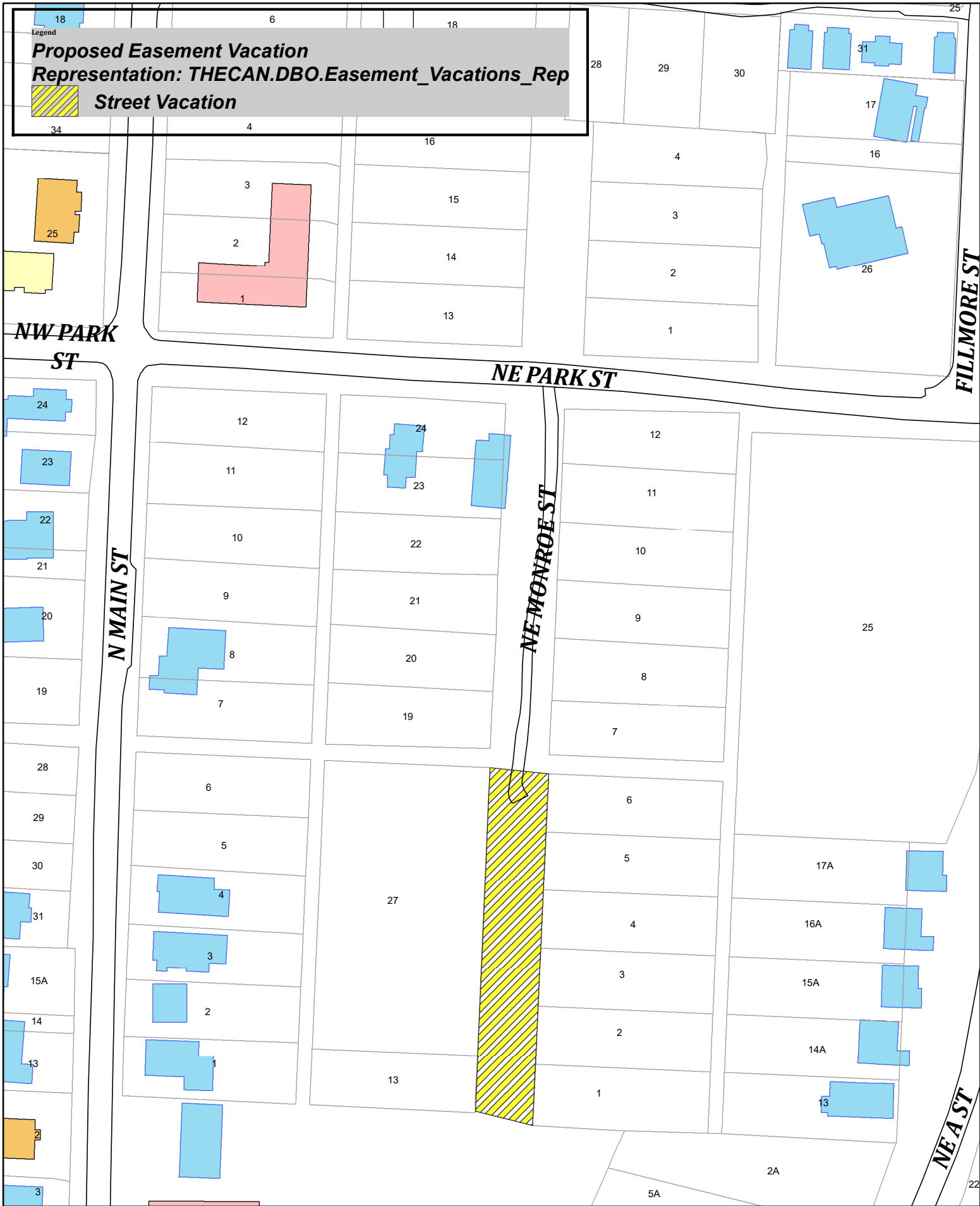
Agenda Item Form

Date of City Council Meeting	5/23/2023
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 June 13, 2023 for a Right of Way Vacation requested for Lots 1 - 6, Block 9 of W.A. Burk's Addition (VAC23-0010).					

Estimated Cost	
Is this Item Budgeted?	☐ Yes ☐ No
If no, please explain how item will be funded (briefly explain in space below) :	





VAC23-0010
Sterns, Stefan & Peyton
928 N. Main Street
(ROW Vacation) 152

1 inch = 104 feet



RESOLUTION NO. _____

IN THE CITY COUNCIL FOR THE CITY OF BENTONVILLE, ARKANSAS:

WHEREAS, a petition was duly filed with the City Council of Bentonville, Arkansas by Sand Creek requesting a utility easement vacation (VAC23-0010) within the City of Bentonville, Arkansas be vacated, which said right of way easement is described as follows:

Part of the 50' platted street right-of-way located between Block 5 and Block 9 in W.A. Burk's Addition as shown on Plat Record Book 'A' Page 81 & 119, and recorded at the Benton County Clerk's Office, Benton County, Arkansas. and being more particularly described as follows:

A 50' Platted Street Right-of-Way lying between Lots 1, 2, 3, 4, 5, 6, of Block 9, and Lot 13, Block 5, and Lot 27, (formerly Lots 14 through 18) of Block 5, as shown on Plat Record Book/Page L202308310, all in W.A. Burk's Addition as recorded in the Benton County Clerk's Office, Benton County, Arkansas.

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

NOW, THEREFORE, BE IT RESOLVED, by the City of Bentonville, Arkansas, that the petition to close the above described right of way easement is set for a hearing June 13, 2023 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 _____, 2023 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	5/23/2023
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 authorizing the Mayor and City Clerk to enter into a professional services agreement with Crossland Construction, in the amount of \$16,500.00, to provide preconstruction services for the development of the parks maintenance facility. No budget adjustment is needed.					

Estimated Cost	\$16,500
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 Operations Manager
Date: May 10, 2023
Re: Resolution for contracting with Crossland Construction for Phase 1
Preconstruction Management of the future Parks Maintenance Facility.

Staff requests City Council approval for a Resolution authoring the Mayor and City Clerk to enter into a professional services agreement with Crossland Construction to provide preconstruction services for the development of the future Parks Maintenance Facility Project for an amount not to exceed \$16,500. Upon contract execution Crossland Construction will collaborate with the project designer Hight Jackson Associates 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 new Parks Maintenance Facility will replace the existing aged out maintenance structures and significantly increase storage volume, improve site use and offer safe and enhanced employee workspace.

If you have any questions regarding this item, please call me at 479.271.3190 or email smendenhall@bentonvillear.com.

Attachments:
Agreement with Crossland Construction

DRAFT 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 «23rd» day of «May» in the year «2023»
(In words, indicate day, month, and year.)

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

«City of Bentonville» « »
«305 SW A Street» « »
«Bentonville, AR 72712» « »
«Client Representative: Scott Mendenhall» « »

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

«Crossland Construction Company, Inc.» « »
«1800 S. 52nd Street, Ste 410» « »
«Rogers, AR 72758» « »
« »

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

«Bentonville Parks Maintenance Building» « »
« »
« »

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

«Hight Jackson Associates, PA» « »
«5201 Village Pkwy, Ste 300» « »
«Rogers, AR 72758» « »
« »

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.

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.

ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

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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.)

«Per City of Bentonville RFQ-23-20 Documents Dated 1/29/2023 »

§ 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.)

« Per City of Bentonville RFQ-23-20 Documents Dated 1/29/ »

§ 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.)

«TBD »

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

- .1 Design phase milestone dates, if any:

«TBD »

- .2 Construction commencement date:

«TBD »

- .3 Substantial Completion date or dates:

«TBD »

- .4 Other milestone dates:

«TBD »

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

«NA »

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

«NA »

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

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

« »

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

«Scott Mendenhall »
«City of Bentonville »
«Parks Maintenance Manager »
«401 NE Moberly Ln »
«Bentonville, AR 72712 »
«479-271-3109 »

§ 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.)

« TBD »

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

.1 Geotechnical Engineer:

«TBD »« »

« »

« »

« »

« »

.2 Civil Engineer:

«TBD »« »

« »

« »

« »

« »

.3 Other, if any:

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

« TBD »

§ 1.1.11 The Architect's representative:

(List name, address, and other contact information.)

«TBD »

« »

« »

« »

« »

« »

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:

(List name, address, and other contact information.)

«TBD »

« »

« »

« »

« »

« »

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:

(List any Owner-specific requirements to be included in the staffing plan.)

«NA »

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:

(List any Owner-specific requirements for subcontractor procurement.)

«NA »

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

« »

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

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

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

§ 2.3 General Conditions

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

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

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. ~~The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager.~~ The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction

Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

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

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 Subject to limitations on the Construction Manager's obligations set forth herein and in the A201-2017, The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. Subject to limitations on the Construction Manager's obligations set forth herein and in the A201-2017, The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

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

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The 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 in order to maintain the last Owner-approved Project budget.

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

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

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

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

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

§ 3.1.11 Subcontractors and Suppliers

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

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

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

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. ~~Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.~~

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 Other Preconstruction Services

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

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

« »

§ 3.2 Guaranteed Maximum Price Proposal

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

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and

reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; identification of any portion of the Work that the Construction Manager proposes to perform with its own personnel for a stipulated sum, with the scope of such portion of the Work defined by reference to specific bid packages, or otherwise; the proposed stipulated sum or periodic fixed rate for overhead or general expenses, including general conditions and project requirements; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

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

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

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

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

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, ~~whether or not yet~~ and effective, at the time the Guaranteed Maximum Price Amendment is executed. In the event a sales, consumer, use, or similar tax for the Work provided by the Construction Manager is enacted and becomes effective during the course of the Project, the parties shall execute a change order to address the increased cost.

§ 3.3 Construction Phase

§ 3.3.1 General

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

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

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

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

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 4.3 Architect

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

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

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

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

«\$16,500 Lump Sum »

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

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

« »

Individual or Position

Rate

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

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within « Six » (« 6 ») months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

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

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid « Forty Five » (« 45 ») days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

« Seven Percent » % « 7.0% »

§ 5.3 Payment Instructions

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

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

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

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

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

§ 6.1.2 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

« 3.5% »

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

« \$0-\$50K=10%, \$50K-\$100K=7%, \$100K-\$500K=5%, Over \$500K=3.5% »

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

« Ten Percent »

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

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

«NA»

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

« »

§ 6.2 Guaranteed Maximum Price

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

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

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

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

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

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

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

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

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

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

§ 7.2 Labor Costs

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

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

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

«To be identified in the GMP Amendment »

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

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

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

§ 7.3 Subcontract Costs; Cost of Work Self-Performed for a Fixed-Price

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement. Amounts billed for completed portions of the Work that the Construction Manager is to perform with its own personnel for a stipulated sum, as set forth in the GMP Amendment, or otherwise approved by the Owner.

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

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

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

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

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

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

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

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

§ 7.5.6 Costs for overhead and general expenses at the stipulated sum, or at the periodic rate, stated in the GMP Amendment, or as otherwise approved by the Owner.

§ 7.6 Miscellaneous Costs

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

§ 7.6.1.1 Costs for self-insurance, for either including but not limited to full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

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

§ 7.6.1.3 Costs for subcontractor default insurance, with the Owner's prior approval.

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

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

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

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

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

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

§ 7.6.7 Costs of document reproductions and delivery charges.

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

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

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

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

§ 7.7 Other Costs and Emergencies

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

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

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

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

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

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; ~~and~~
- .9 Costs for services incurred during the Preconstruction Phase; ~~and~~
- .10 With respect to costs incurred in performing portions of the Work that the Construction Manager is to perform with its own personnel for a stipulated sum, costs in excess of such stipulated sum.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted subject to the last sentence of Section 9.1 above, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

§ 9.3 The Construction Manager shall provide for the allocation of responsibilities for safety programs among the Subcontractors and verify that such assignment of responsibilities are included as requirements in all Subcontracts.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law. This paragraph does not apply to records and accounts maintained by the Construction Manager for purposes of internal cost accounting with respect to portions of the Work performed by Construction Manager using its own personnel for a stipulated sum.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

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

« »

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the « Last » day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the « Fifteenth » day of the « Following- » month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than « Fifteen » (« 15 ») days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

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

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

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

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

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

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

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

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

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

- ~~.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and~~
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

« 5% »

§ 11.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

« Pre-Engineered Metal Building Supply »

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

« »

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

« »

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

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

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

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

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

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

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

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

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201-2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201-2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201-2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

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

« »

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

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

« Seven Percent » % « 7.0 »

§ 11.4 Payment Instructions

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

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

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

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

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

« »
« »
« »
« »

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

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

[☐] Litigation in a court of competent jurisdiction

[☐] Other: (Specify)

« »

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

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

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

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, ~~purchase orders and rental agreements~~, entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

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

§ 13.2.1 Termination

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

§ 13.2.2 Termination by the Owner for Cause

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

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager'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;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 ~~The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1.~~ To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

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

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

<< >>

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

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

§ 14.3.1.1 Commercial General Liability with policy limits of not less than « **TWO MILLION DOLLARS** » (\$ « **2,000,000.00** ») for each occurrence and « **FOUR MILLION DOLLARS** » (\$ « **4,000,000.00** ») 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 not less than « **TWO MILLION DOLLARS** » (\$ « **2,000,000.00** ») each accident, « **TWO MILLION DOLLARS** » (\$ « **2,000,000.00** ») each employee, and « **TWO MILLION DOLLARS** » (\$ « **2,000,000.00** ») policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than « **FIVE MILLION DOLLARS** » (\$ « **5,000,000.00** ») per claim and « **FIVE MILLION DOLLARS** » (\$ « **5,000,000.00** ») 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
<u>N/A</u>	

§ 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 policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

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

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

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

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

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

« »

§ 14.5 Other provisions:

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™-2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .5 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

<< >>

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

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

<< >>

[<< >>] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

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

<< >>

This Agreement is entered into as of the day and year first written above.

OWNER (Signature)

<< >> <>

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

<< Jason D. Miller >> << VP – Division Manager >>

(Printed name and title)

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



DRAFT AIA Document A133™ - 2019

Exhibit B

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the «23rd » day of «May » in the year «2023 »
(In words, indicate day, month and year.)

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

« Bentonville Parks Maintenance Building »
« »

THE OWNER:
(Name, legal status, and address)

«City of Bentonville »« »
«305 SW A Street »
«Bentonville, AR 72712 »
«Client Representative: Scott Mendenhall »
«»«»
«»

THE CONSTRUCTION MANAGER:
(Name, legal status, and address)

«Crossland Construction Company, Inc. »« »
«1800 S. 52nd Street, Ste 410 »
«Rogers, AR 72758 »
«»«»
«»

TABLE OF ARTICLES

- B.1 GENERAL**
- B.2 OWNER'S INSURANCE**
- B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS**
- B.4 SPECIAL TERMS AND CONDITIONS**

ARTICLE B.1 GENERAL

The Owner and Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™-2017, General Conditions of the Contract for Construction.

ARTICLE B.2 OWNER'S INSURANCE

§ B.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article B.2 and, upon the Construction Manager's request, provide a copy of the property insurance policy or policies required by

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.

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

This document is intended to be used in conjunction with AIA Document A201™-2017, General Conditions of the Contract for Construction. Article 11 of A201™-2017 contains additional insurance provisions.

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Section B.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ B.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

§ B.2.3 Required Property Insurance

§ B.2.3.1 Unless this obligation is placed on the Construction Manager pursuant to Section B.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ B.2.3.1.1 **Causes of Loss.** The insurance required by this Section B.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

(Indicate below the cause of loss and any applicable sub-limit.)

Cause of Loss	Sub-Limit
N/A	N/A

§ B.2.3.1.2 **Specific Required Coverages.** The insurance required by this Section B.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Construction Manager's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage	Sub-Limit
N/A	N/A

§ B.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section B.2.3.1 or, if necessary, replace the insurance policy required under Section B.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ B.2.3.1.4 **Deductibles and Self-Insured Retentions.** If the insurance required by this Section B.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ B.2.3.2 **Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ B.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of

the General Conditions, “all-risks” property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ B.2.4 Optional Extended Property Insurance.

The Owner shall purchase and maintain the insurance selected and described below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

- [☐] **§ B.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner’s property, or the inability to conduct normal operations due to a covered cause of loss.

« 5% of contract value (if applicable) »

- [☐] **§ B.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

« N/A (included in Construction Manager’s Policy) »

- [☐] **§ B.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

« N/A (included in Construction Manager’s Policy) »

- [☐] **§ B.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

« N/A (included in Construction Manager’s Policy) »

- [☐] **§ B.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

« N/A (included in Construction Manager’s Policy) »

- [☐] **§ B.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured’s business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

« N/A (included in Construction Manager’s Policy) »

- [☐] **§ B.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

« N/A (included in Construction Manager’s Policy, 5%) »

§ B.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

- [☐] **§ B.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information.
(Indicate applicable limits of coverage or other conditions in the fill point below.)

« N/A »

- [☐] **§ B.2.5.2 Other Insurance**
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage

N/A

Limits

N/A

ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

§ B.3.1 General

§ B.3.1.1 Certificates of Insurance. The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured on the Construction Manager's Commercial General Liability and excess or umbrella liability policy or policies.

~~**§ B.3.1.2 Deductibles and Self-Insured Retentions.** The Construction Manager shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Construction Manager.~~ **RESERVED**

§ B.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

§ B.3.2 Construction Manager's Required Insurance Coverage

§ B.3.2.1 The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:
(If the Construction Manager is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

« »

§ B.3.2.2 Commercial General Liability

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than « TWO MILLION DOLLARS » (\$ « 2,000,000.00 ») each occurrence, « FOUR MILLION DOLLARS » (\$ « 4,000,000.00 ») general aggregate, and « FOUR MILLION DOLLARS » (\$ « 4,000,000.00 ») aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Construction Manager's indemnity obligations under Section 3.18 of the General Conditions.

§ B.3.2.2.2 The Construction Manager's Commercial General Liability policy under this Section B.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 ~~Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.~~ RESERVED.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ B.3.2.3 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.

§ B.3.2.4 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 such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3, 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.

§ B.3.2.5 Workers' Compensation at statutory limits.

§ B.3.2.6 Employers' Liability with policy limits not less than « TWO MILLION DOLLARS » (\$ « 2,000,000.00 ») each accident, « TWO MILLION DOLLARS » (\$ « 2,000,000.00 ») each employee, and « TWO MILLION DOLLARS » (\$ « 2,000,000.00 ») policy limit.

§ B.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than « FIVE MILLION DOLLARS » (\$ « 5,000,000.00 ») per claim and « FIVE MILLION DOLLARS » (\$ « 5,000,000.00 ») in the aggregate.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than « FIVE MILLION DOLLARS » (\$ « 5,000,000.00 ») per claim and « FIVE MILLION DOLLARS » (\$ « 5,000,000.00 ») in the aggregate.

§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than « FIVE MILLION DOLLARS » (\$ « 5,000,000.00 ») per claim and « FIVE MILLION DOLLARS » (\$ « 5,000,000.00 ») in the aggregate.

§ B.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than « N/A » (\$ « N/A ») per claim and « N/A » (\$ « N/A ») in the aggregate.

§ B.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than « ONE MILLION DOLLARS » (\$ « 1,000,000.00 ») per claim and « ONE MILLION DOLLARS » (\$ « 1,000,000.00 ») in the aggregate.

§ B.3.3 Construction Manager's Other Insurance Coverage

§ B.3.3.1 Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Construction Manager is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

« N/A »

§ B.3.3.2 The Construction Manager shall purchase and maintain the following types and limits of insurance in accordance with Section B.3.3.1.

(Select the types of insurance the Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

[☒] § B.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

(Where the Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section B.2.3, indicate such differences in the space below.

Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

« »

[☐] § B.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate, for Work within fifty (50) feet of railroad property.

[« **N/A** »] § B.3.3.2.3 **Asbestos Abatement Liability Insurance**, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

[« **INCLUDED IN BUILDERS RISK** »] § B.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an “all-risks” completed value form.

[« »] § B.3.3.2.5 Property insurance on an “all-risks” completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.

[« **N/A** »] § B.3.3.2.6 **Other Insurance**
(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage

Limits

§ B.3.4 Performance Bond and Payment Bond

The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:
(Specify type and penal sum of bonds.)

Type

Payment Bond

Performance Bond

Penal Sum (\$0.00)

Full Agreement Amount

Full Agreement Amount

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

« »

DRAFT AIA[®] Document A201[™] – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

« Bentonville Parks Maintenance Building Sample Project »

«>>

THE OWNER:

(Name, legal status and address)

« City of Bentonville »«>> »

« 305 SW A Street »

« Bentonville, AR 72712 »

« Client Representative: Scott Mendenhall »

«>>«<<»

«<<»

THE ARCHITECT:

(Name, legal status and address)

« Hight Jackson Associates, PA »«>> »

« 5201 Village Pkwy, Ste 300 »

« Rogers, AR 72758 »

«>>«<<»

«<<»

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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.

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

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

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

§ 1.7 Digital Data Use and Transmission

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

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or

relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

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

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

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

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

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as

the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, ~~and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.~~

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21~~14~~ days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

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

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. ~~If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.~~

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and

similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will

specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 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, unless otherwise specified in the Contract Documents. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

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

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, ~~or for substantiating instructions for installation or performance of equipment or systems unless otherwise specified by the Contract Documents~~, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term “Subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term “Subcontractor” does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term “Sub-subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor’s Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor’s Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, ~~and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents.~~ Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and

- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by Owner, 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. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 If, during the performance of the Work, material costs and/or project equipment costs significantly increase(s), through no fault of the Contractor, the Contract Price shall be equitably adjusted by an amount reasonably necessary to cover the significant price increase. As used herein, a significant price increase shall mean any increase cost of materials and/or Project equipment for the Project exceeding ____ % of the original Contract price from the date of the Contract execution. For the purposes of determining an adjustment under this section, the expected total price of all materials and equipment price for this Project as of the date of contract execution is \$ _____. Such adjustment of the Contract price shall be made through a Change Order on or before Contractor submits the final pay application. Such price increase shall be documented through quotes, invoices, or receipts. Notwithstanding anything herein to the contrary, Contractor shall submit such documentation and request on or before such date and Contractor shall not be considered to have diminished or waived any Claims or rights in regard to the timeliness of the submission of such information or request except to the extent such increase has already been paid by Owner pursuant to a previous Change Order. However, such increased amount shall be used in the calculation of whether a significant price increase has occurred, so that the total amounts of all change orders/increases arising from materials and/or equipment price escalation, are added together and divided by the original Contract price to determine the percentage of price increase. Where the delivery of material or equipment is delayed, through no fault of the Contractor, as a result of the shortage or unavailability of materials and equipment, or delays in shipping or delivery, Contractor shall not be liable for any additional costs or damages associated with such delay(s), the Contract Time shall be adjusted to the extent such delay(s) impact(s) the Schedule, and the Contractor shall be entitled to a Change Order for its costs incurred as a result of such delay(s).

§ 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 the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

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

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such

agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. ~~If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.~~

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect ~~in accordance with~~ established in Section 9.8.1.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

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

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

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

§ 9.2 Schedule of Values

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

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed

construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

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

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an

obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

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

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

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

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for

that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.11 Payment Instructions

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

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

Crossland Construction Company, Inc.

Attn: Accounts Receivable

833 S. East Avenue

P.O. Box 45

Columbus, KS 66725

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the

Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

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

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

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

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

§ 11.5 Adjustment and Settlement of Insured Loss

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

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

allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

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

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or Suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial uncured breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and

- .3** Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1** that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2** that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1** cease operations as directed by the Owner in the notice;
- .2** take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3** except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than ~~105~~ years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. ~~Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.~~

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the

Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the

parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A CONTRACT, WITH CROSSLAND CONSTRUCTION, FOR PHASE 1 PRECONSTRUCTION MANAGEMENT OF THE PARKS MAINTENANCE FACILITY, IN AN AMOUNT NOT TO EXCEED SIXTEEN THOUSAND FIVE HUNDRED DOLLARS (\$16,500.00); AND FOR OTHER PURPOSES.

WHEREAS, Bentonville Parks and Recreation requests approval of a contract with Crossland Construction to provide preconstruction management for the future parks maintenance facility;

WHEREAS, Crossland Construction was selected in accordance with A.C.A. §14-58-1001, applicable to construction management for projects which exceed two million dollars; and

WHEREAS, this is a budgeted expense.

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

Section 1: The Mayor and City Clerk are authorized to enter into a contract with Crossland Construction, for preconstruction management of the parks maintenance facility, in an amount not to exceed sixteen thousand five hundred dollars (\$16,500.00);

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 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 this _____ day of _____, 2023.

APPROVED:

ATTEST:

STEPHANIE ORMAN, MAYOR

KIRBY ROMINES, CITY CLERK



Agenda Item Form

Date of City Council Meeting	5/23/2023
Department	Parks and Recreation
Submitted by	Josh Stacey
Phone	(479) 696-0200

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 Flincto LLC, in the amount of \$35,000.00 plus reimbursable expenses, to provide preconstruction services for the development of the Adult Recreation Center. No budget adjustment is needed.					

Estimated Cost	\$35,000
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: Josh Stacey, Recreation Services Manager
Date: May 9, 2023
Re: Resolution for contracting with Flintco for Construction Management of the future Adult Recreation Center

Resolution – Staff requests City Council approval for a Resolution authoring the Mayor and City Clerk to enter into a professional services agreement with Flintco, LLC to provide preconstruction service of the development of the future Adult Recreation Center Project for an amount not to exceed \$35,000 plus reimbursable expenses.

Upon contract execution Flintco, LLC will collaborate with the project designer Hight Jackson 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.

Funding for this project comes from a grant provided by Bentonville Revitalization Inc.

If you have any questions regarding this item, please call me at 479.696.0204 or email jstacey@bentonvillear.com.

Attachments:
Agreement with Flintco



PROPOSAL

City of Bentonville Wellness Center

RFQ-23-13

purchasing@bentonvillear.com

City of Bentonville Administrative Services
Attn: Purchasing Office, 2nd Floor
1000 SW 14th Street
Bentonville, AR 72712

April 3, 2023

184 Fantinel Dr., Springdale, AR 72762 | flintco.com

Ability to Achieve Project Goals

Brief summary of the firm's ability to achieve the City's project goals.

In the last five years, Flintco's Arkansas office has delivered or is delivering \$1.25 billion worth of Construction Management at Risk (CMaR) work. This experience delivers proven results to the City of Bentonville and has resulted in Flintco ranking **No. 1 in the region** for successful delivery of CMaR projects.

Flintco is fully transparent throughout the CMaR process and the following allows you the opportunity to see how Flintco can achieve your project and budget goals.

Ninety-five percent of project savings are achieved during the preconstruction phase. We can help you maximize every dollar.

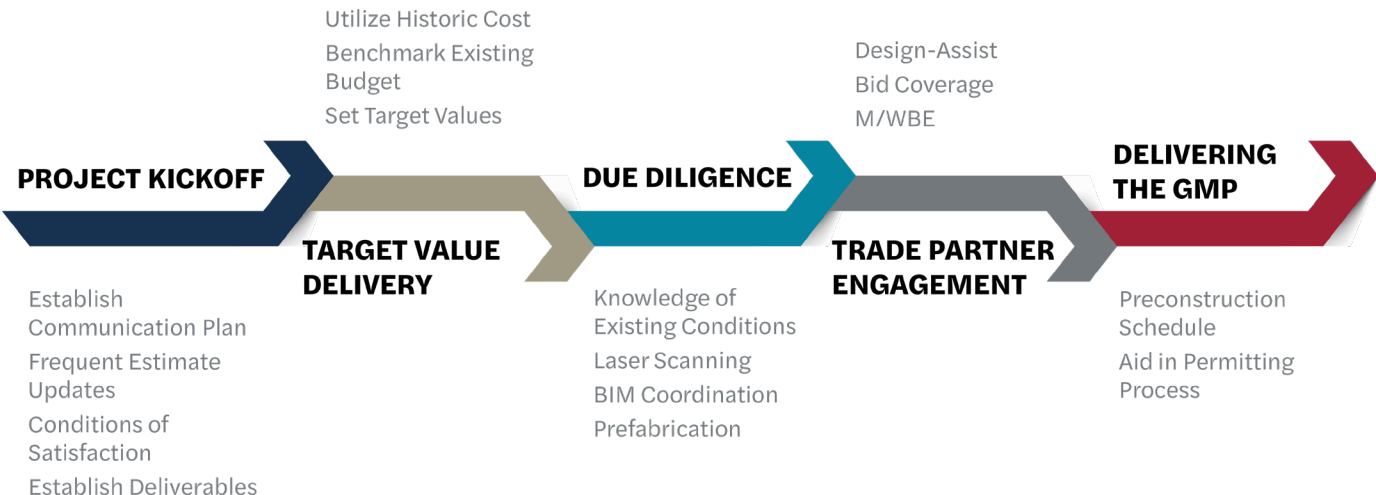
Preconstruction Services

To maximize project value, Flintco will begin collaborating with all project stakeholders to establish project Conditions of Satisfaction as early as possible, to ensure team alignment on cost, schedule and other important criteria critical to project success.

These Conditions of Satisfaction include more parameters than On-Time and In-Budget. They work to define the ideal construction experience from each stakeholders' perspective and include key non-negotiables for each stakeholder. We use the Conditions of Satisfaction to help guide the preconstruction and construction phases to make sure that every decision is in alignment with the City of Bentonville's mission and project goals.

Our preconstruction team works with the City of Bentonville and Hight Jackson Architects to work within the City's established project budget and overall project schedule. This starts with an analysis of the site conditions, project constraints and phasing requirements. For early site analysis,

PRECONSTRUCTION PROCESS



Flintco utilizes drones to quickly provide an accurate view of the site. We share this information with design engineers to assist with building placement, site logistics, phasing requirements and balancing the site.

Flintco works with stakeholders to establish, maintain and track the overall project schedule. This schedule includes milestone and deliverable dates critical for the preconstruction phase. These dates include: key owner decision dates, drawings and design package deliverable dates, team meetings and milestone budget review and approval dates. This schedule holds team members accountable to ensure that construction starts and finishes on time. We know that every day during preconstruction is just as important as a day during construction.

Flintco provides detailed project budgets for review so you know your dollars are used as they're intended. Budgets are organized in the Construction Specifications Institute (CSI) Master format by CSI Division and also include summary reports that group costs by building systems.

In addition to the summary reports and detailed line item pricing, subsequent budgets also include a side by side analysis of previous budgets so that changes from one budget to the next can quickly be identified. **Each budget update also includes a cost trend log at the end of each report that helps to isolate budget changes and market trends to guide key decisions through the preconstruction phase.**

Flintco believes in continuous cost estimating in addition to providing milestone budget updates. This is so key decisions can be made between milestone budget updates in lieu of waiting for the next drawing package to be issued.

As part of our value analysis process, we look at systems and materials that could be combined, reduced or eliminated as well as ensuring that current systems are sufficient for the intended uses. **Sometimes little changes can have a BIG impact on project cost with zero impact on quality, performance, or functionality.**

Design Phase Coordination

We review and communicate technical specifications to ensure design intent is consistent with construction planning.

Flintco's preconstruction staff creates highly detailed bid packages that supplement the contract documents to further clarify the scope, as well as identify and create options to maximize value. **We focus on eliminating scope gaps during buy-out, which has a positive effect on both project budget and schedule.** After an extensive solicitation effort, trade partners are procured by competitively bidding portions of the work using qualified bidders when possible.

ESTIMATING PROCESS



The initial estimate includes the identification of applicable scope specific bid packages required for the completion of the project. All project quantity surveys are cross categorized between the typical Construction Specifications Institute (CSI) format (as well as by systems) and the project specific bid packages, thereby allowing for:

- Confidence that all elements of the project scope are accurately accounted for
- Application of site specific scope of work requirements (i.e. sequencing issues, etc.),
- Comparison with historical cost metrics

The budgets and bid packages are continuously refined and updated as decisions are made during design, providing an accurate leading indicator of final construction cost.

The bid packages are also incrementally developed into comprehensive packages as the basis for trade partner proposals.

Flintco combines the bid packages with all other relevant project information – project schedule, bonding requirements and bid forms – in the Project Bid Manual for trade partner reference. **We cast the widest net possible for potential bidders.** The project is advertised publicly, through minority/trade focused groups, and through an industry based bidding systems.

Additionally, Flintco hosts project focused pre-proposal conferences to maximize local interest with the intent of ensuring a minimum of three qualified bidders for each package. However, we

know that the best value for the project is not always the lowest bidder. We employ our rigorous vetting process for each proposal that includes evaluations of items such as cost, bonding rates, past safety records, and past experience. This is supplemented by an interview process intended to identify any proposal inconsistencies and/or potential core competency concerns.

Upon identification of the best value trade partner for each bid package, Flintco submits a letter of recommendation to the City of Bentonville, detailing the results of the vetting process and the logic of the recommendation.

Upon approval of the recommendation, Flintco begins the subcontracting process with the best value bidder.

Target Value Delivery (TVD) is a highly collaborative process that embraces the entire project team and plays an essential role in our team’s ability to implement and coordinate design and construction.

Your Flintco project team has continuous interaction that allows corresponding refinement of the cost during design. By engaging Flintco early as your construction manager, we can participate in the earliest phases of TVD – business case and validation – as well as the value delivery phase, when design and construction takes place. **Because of Flintco’s extensive historical database of previously completed projects we can benchmark projected costs for the City of Bentonville, and for any variety of “what-if” scenarios that will inform the final configuration and location.**



PROJECT EXAMPLE: LOCAL ESTIMATING ACCURACY			
Project	30% Est. Budget	GMP Budget	% Variance
Bentonville Public Library	\$13,000,000	\$12,912,603	(0.67%)
Rogers Athletic Facilities	\$27,001,421	\$26,890,705	(0.41%)
Gentry Sports Complex	\$4,107,906	\$4,067,820	(0.99%)

After validating the project and moving forward as a team with the target cost, our preconstruction department helps define the costs associated with the options for materials and systems under consideration by the design team.

Our primary role is to ensure we can communicate the scope included in the cost model in a clear and concise manner, so that the entire team knows precisely what cost is associated with each option, ensuring each set can be correctly assessed in value prior to making a decision on a single option. Benchmarks for major systems such as foundations, super-structure and exterior enclosure are established to provide target cost parameters without limiting or dictating design solutions.

Constructability Review

At its roots, Flintco is a 'builder'. It is that foundation and accumulated project knowledge that our team brings to the constructability effort. **We couple this knowledge with a library of relevant lessons-learned, detailed constructability checklists and superior relationships with critical subcontracted trades.** We will involve our key construction phase personnel in this effort to ensure capturing the best field knowledge possible.

In collaboration with the project team, we will review the specific needs of the site, the planned work, adjacent facility considerations and the skill sets/capabilities of the subcontractors. **With this knowledge, we will map out how the project is best subdivided, phased and constructed. This allows us to effectively work with the design**

team to produce clear, biddable documents premised on the most effective and efficient work plan possible.

The initial document review will be led by Preconstruction Director Klint Kimball and Project Director Patrick Horath. As they compile the Target Value Design Estimate, they will work with Hight Jackson Architects to communicate the extent of architectural and engineering information needed for each component of the estimate.

As more detail begins to appear on the documents, Klint and Patrick will engage specific field expertise from Superintendent Elvin Huber. They will comment specifically on constructability and clarity of the documents, so that the final construction documents are as consistent and complete as possible for competitive bids.

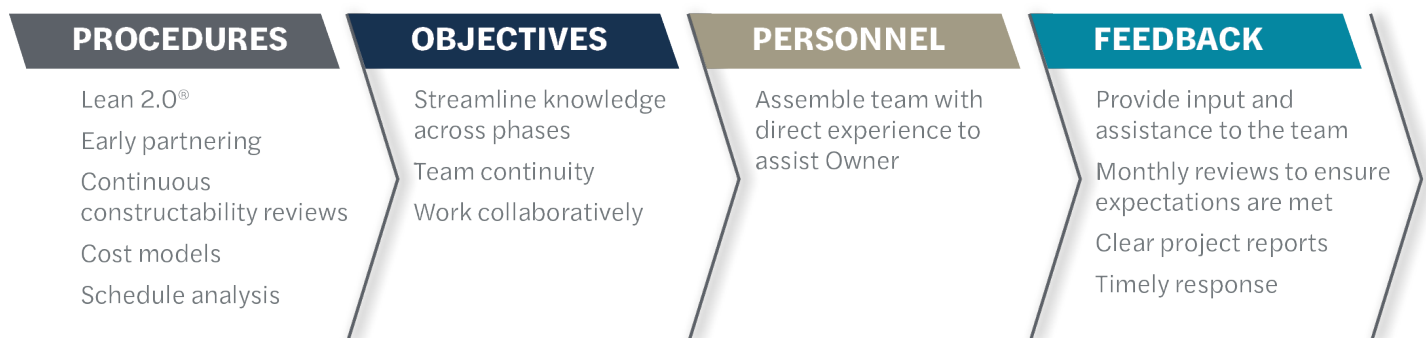
Klint will conduct a final review of the documents to look for potential gaps in scope prior to the documents being approved to release as bid documents. **When bids are received for each of the bid packages and the bid evaluation process is underway, bidders' comments will be incorporated into the final subcontracts. This will help to avoid conflict or cost issues as the installation progresses in the field.**

Value Engineering Review

To perform this task, Flintco will immediately engage to understand what specific systems are under consideration for the project. We will test

CONSTRUCTABILITY PROGRAM

Maintaining project budgets without sacrificing quality.



those systems against comparable approaches and make recommendations respective of current market considerations, long-term operational and life cycle costs.

Cost Estimating Services

The single most important factor when measuring project “success” is maintaining the budget and doing so in a fully transparent manner.

We embrace an approach of continuous team interaction and refinement of the cost estimate through a dynamic estimating process. This is a fundamental component of our TVD methodology. Within the TVD framework, we establish target estimates for the major elements of work such as foundations, super-structure, exterior enclosure and interior construction to provide cost parameters without limiting or dictating design solutions.

Because of our experience in this market, our team is able to forecast and develop accurate budgets. Our estimating approach incorporates the following:

- Listening critically, understanding and anticipating your project goals
- Taking advantage of our seasoned professionals with extensive field and construction experience
- Using 3-D modeling and estimating software to provide the most in-depth, accurate estimates
- Leveraging our historical project experience.

Cost Modeling

The Flintco cost modeling process provides realistic detailed pricing, appropriate contingencies and a standing guarantee to commit to a GMP at any time during design.

Flintco uses Sage Timberline which contains an extensive database of Flintco and industry historical costs. We create a summary cost estimate sorted by CSI divisions based on certain general parameters of your project, which provides a preliminary view approximating cost.

Our process has proven very effective during conceptual design, and continues into SD and DD as more information is available. Throughout your project, we ensure ultimate transparency around costs to allow for the best-educated decisions. Flintco delivers an early conceptual budget to verify, and accurately price assumptions. We follow-up with a series of phased GMP documents that deliver a final GMP that meets your budget parameters.

We work with Hight Jackson Architects to prioritize the items that have the greatest impact on the final GMP for your project. Trend estimates, our assumptions/clarifications and constructability reviews, help confirm that the contract documents and the GMP align with your objectives. We request feedback from the subcontractor and supplier community as a check during completion of the GMP. As a team, we prioritize information to

PROJECT CASE STUDY

Value Analysis Results in Project Savings

Extensive value analysis of the project was conducted with the University of Oklahoma, design team and key trade partners. This resulted in \$18M worth of cost savings options to review. Of these, \$9M in savings items were accepted and incorporated into the project. This helped to keep the project in budget and allowed the university to add new features in athletic program spaces and fan experience areas.



produce accurate documentation early for critical, high-value items.

Prior to the issuance of the agreed upon GMP set of design documents, we collaborate closely with the A/E to confirm requirements for drawing detail, specifications and schedule information to ensure that appropriate and accurate information informs the GMP.

Our GMP is based on realistic and competitive numbers provided by our subcontractors. We continuously manage your project so that it stays on budget, and the final design aligns with the scope of the GMP.

At every step, Flintco will leverage our longstanding relationship with Hight Jackson to mitigate your risk. Following delivery of the GMP, Flintco updates costs as the 100 percent construction documents are completed. We encourage a reasonable contingency so any future modifications do not affect the overall GMP.

Our goal is to build your project within the value of the GMP less construction contingency. Our commitment to you is to:

- Price and construct a design that maximizes your budget
- Manage preconstruction/ construction efficiently, effectively and safely
- Avoid unnecessary sacrifices during design development

Bid and Award Phase Services

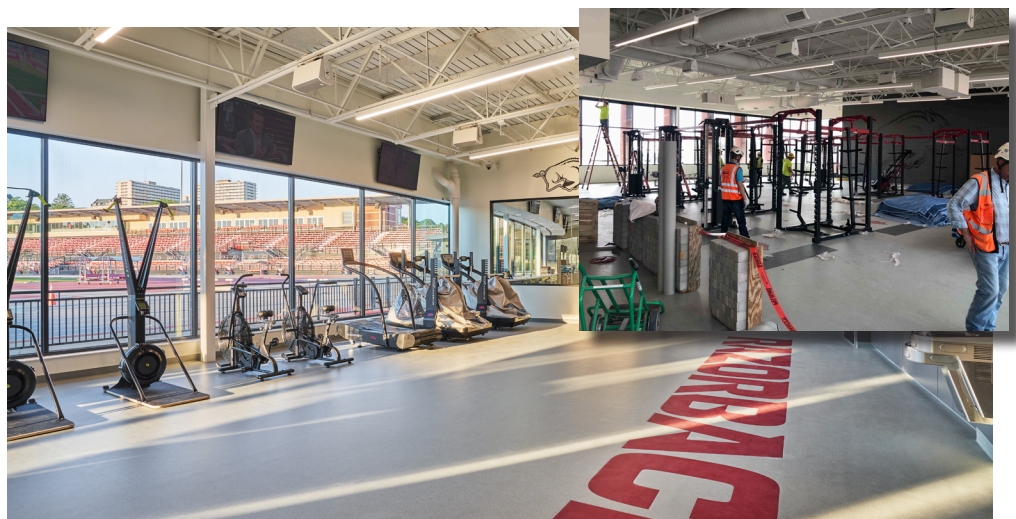
We put together bid packages that attract the greatest number of bidders and provide you the best value.

We will share these bid packages with the City of Bentonville and Hight Jackson Architects and incorporate input from each prior to publishing to the subcontractor market.

We have a unique presence in Arkansas from being in the region for 115 years. We also have great success attracting interest and bidders from other states. Subcontractors want to work with Flintco and will push aside other projects for an opportunity to bid a Flintco job. This benefits you by ensuring high levels of subcontractor participation so that you know you are getting competitive market pricing.

We will confirm the subcontractor bidders list with the City of Bentonville prior to sending out invitations. When the bids come in, we invite the City of Bentonville to attend the bid opening. Receiving and reviewing bids is a transparent and open book process. You'll know the numbers when we know the numbers.

After bids are received, Flintco will conduct in-depth scope review meetings with trade contractors to confirm pricing and accuracy of scope. This helps to reduce the amount of contingency needed once the project moves to a GMP. A GMP can be reached from 100% construction documents within three weeks. A Fast Track approach can accelerate the delivery of a GMP by issuing early release site, structure, shell and MEP packages. This allows the major scopes of work to be bought out before the interior design is completed. A Fast Track GMP can be delivered before 100% construction drawings are completed.



The UA Frank O'Mara Track and Field project had several challenges due to unanticipated events, but the team proceeded to deliver a state-of-the-art facility equal to the most successful track program in NCAA history.

Continuous Cost Control

Even after getting the project through the design and preconstruction phase while under budget, sometimes it's a balancing act to keep it there, as much art as it is science. Our tools help us, but it's our people and our approach that set us apart.

We don't view cost control as a static thing limited to the preconstruction phase, and we don't stop when the GMP is established. We continuously look for ways to do things better, faster and more economically, because we know at any time you might have a change that's necessary or important to the success of your project. We work with you to find creative ways to maintain your budget.

Our preconstruction and project management professionals are the front line of controlling cost and maximizing value for each of our clients. That team is supported by a Financial Manager and a Financial Coordinator who review and process all project expenses and handle all accounting information. This means you have trained and certified accounting professionals handling every financial aspect of your project. Our project management staff focuses on construction while still maintaining accountability for the bottom line. We have implemented eCMS as our accounting system, which allows us to review and approve invoices electronically, provides up-to-the-minute cost information and can easily produce project-specific reports.

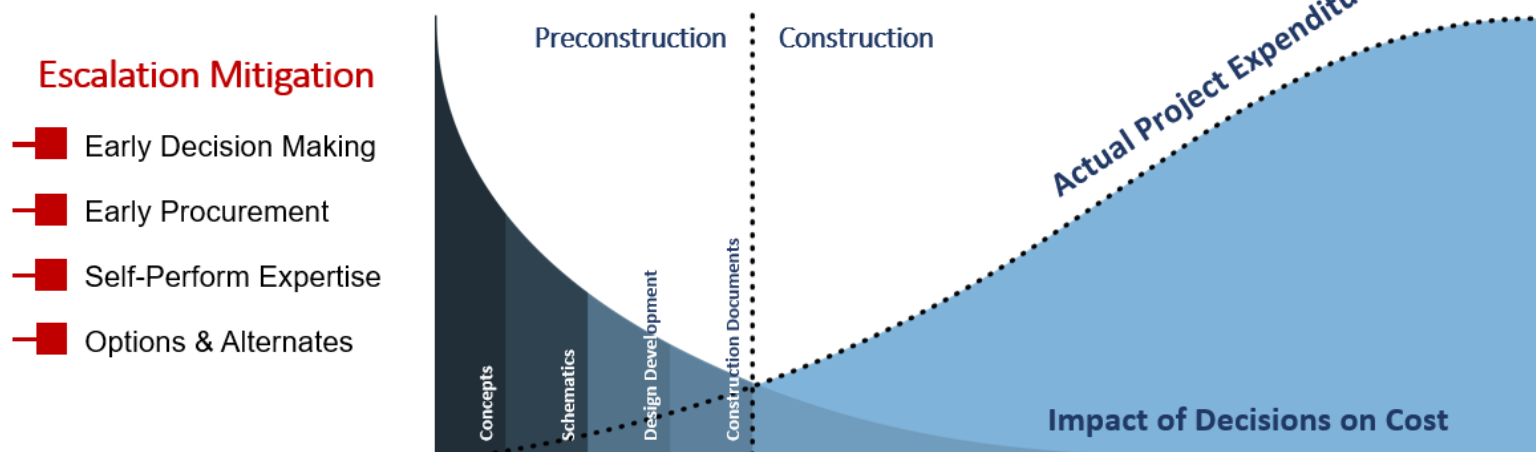
The most critical components to cost control are the approach to accounting – accuracy and transparency. Managing project cost and potential changes begins at the start of preconstruction

through closeout. We approach your project with a blending of technical expertise, experience and service. Success means delivering a predictable and reliable outcome, starting with early conceptual estimating and continuing through cost management during construction and into closeout.

Preconstruction is much more than a back-of-house department or front-end activity. It is an inclusive, iterative and collaborative approach that establishes the foundation to successfully execute your project. We view and deliver preconstruction as an invaluable service in which every member of the project team is engaged early to ensure the smooth and successful execution of the project. From conceptual estimating to project turnover and closeout, every member of the team has an important role in delivering consistency and continuity by managing cost from beginning to end.

Our collaborative and communicative approach to preconstruction, along with our iterative, but non-invasive “looks over the shoulder” throughout the life of the design process, allow us to keep tabs and keep track of your project. We stay in tune with the progressing design and in touch with the design team. When something appears to be going off track or over budget, we offer solutions. Using our approach of establishing what is non-negotiable – you absolutely must have it – and challenging the rest, we flag things that can push a project over the budget. We seek alternative solutions to give you what you and the design team want, for the budget that we must maintain.

Each cost item is defined by labor, materials, equipment and subcontracts, with the appropriate



unit costs assigned to each item. Costs are organized by the CSI Master Format system using specification sections as the major categories, with the option to show estimates using the UniFormat breakdown for evaluation. Our detailed estimates allow us to define cost for each line item and pinpoint cost identification with the objective of defining the cost constraints. This methodology of Target Value Design is a Lean Construction practice that allows us to provide streamlined information to you and the entire project team, so that the cost model or detailed estimate can be used to inform decisions during the design process.

Scheduling Services

Faced with consistently poor labor productivity, many large construction companies within the last 10 years embraced Lean as a project delivery approach hoping to reverse that trend. Further exasperating the industry's productivity issues, 80% of national construction firms report difficulty filling hourly craft positions that represent the bulk of the construction workforce*.

Because of inconsistent application, and lack of commitment to doing Lean the right way, companies lost millions of dollars through poor execution.

While Flintco has historically exceeded the industry productivity average and attracted a talented workforce to staff our projects, our implementation of Lean2.0 has resulted in projects surpassing our scheduling goals.

We manage and maintain your project schedule through each milestone, starting with the design phase, using Lean principles and the Last Planner® System (LPS). Our project teams use LPS for production and schedule management to:

- Establish milestone schedules
- Develop phase plans that identify the ideal sequence or activities, milestone-to-milestone
- Produce look-ahead/make-ready schedules
- Gain commitments from the Last Planners at the weekly planning stage
- Conduct daily huddles to keep tasks on track

With Lean principles informing our daily approach to construction, our project teams have embraced a proactive mindset to anticipate challenges, and take corrective action before issues affect production, budget and the quality of your project.

Lean Coaches and Champions work together to oversee implementation of the Flintco 5+1 Lean practices:

- Establish Conditions of Satisfaction
- Facilitate pull planning
- Train and coach project teams
- Manage co-location
- Implement Last Planner System
- Plus 1 elective practice – application of Lean practices to site logistics, use of prefabrication, or a similar activity.

*Autodesk and the AGC of America

The pull-plan session below is an example of visual communication, teamwork, engagement and accountability. Rather than a general contractor “dictating” the schedule, trade partners work across disciplines to arrive at a plan that works for the project and therefore have ownership and “buy-in” to the plan.



Preconstruction Fee

Flintco's Preconstruction Fee for City of Bentonville Wellness Center is \$35,000.

ETHOS I WILL HONOR AND RESPECT THE FLINTCO HERITAGE.
I WILL NOT LET MY PAST SUCCESSES LEAD ME
TO BELIEVE WHAT WE DID YESTERDAY IS GOOD

ENOUGH FOR TOMORROW. COMPLACENCY IS NOT PART OF OUR CULTURE.

I AM COMMITTED TO THE SUCCESS OF MY COMPANY, MY TEAMMATES AND

MYSELF. I AM HUMBLE. I AM RESULTS DRIVEN AND BELIEVE IF WE ARE NOT

WINNING, WE ARE LOSING. I WILL UNDERTAKE ALL OF MY RESPONSIBILITIES

WITH THE UTMOST HONESTY AND INTEGRITY. I WILL APPROACH EVERY TASK

WITH PASSION, RESPONSIBILITY, CREATIVITY AND INNOVATION. I WILL

SUCCEED. I BELIEVE THAT **MEDIOCRITY IS UNACCEPTABLE** AND MY TRAINING

IS NEVER DONE - THERE IS NO FINISH LINE. I ENCOURAGE A FLEXIBLE

APPROACH TO ACCOMPLISHING MILESTONES BUT I AM INFLEXIBLE IN MY

EXECUTION. SAFETY AND QUALITY ARE PARAMOUNT. I WILL **POSITIVELY**

CONTRIBUTE TO OUR CULTURE AND COMMUNITY. I EXPECT LEADERSHIP

AT EVERY LEVEL. I AM IN CONTROL OF MY ENVIRONMENT BECAUSE I OWN

MY ACTIONS. I AM ACCOUNTABLE. I BELIEVE IT IS A PRIVILEGE TO BE

A MEMBER OF THE FLINTCO

COMMUNITY. THIS HONOR

MUST BE EARNED EVERY DAY.

I AM FLINTCO.



flintco.com

AIA® Document A133® – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the 10th day of May in the year 2023
(In words, indicate day, month, and year.)

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

City of Bentonville, Arkansas
305 SW A Street
Bentonville, AR 72712

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

Flintco, LLC
184 East Fantinel Blvd
Springdale, AR 72762

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

City of Bentonville – Adult Wellness Center Project
215 SW A Street
Bentonville, AR 72712

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

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

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

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

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

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

Init.

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User Notes:

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EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

The project scope is based on information provided in the City of Bentonville Adult Wellness Center Feasibility Study dated 05/02/2022. Final scope to be determined.

§ 1.1.2 The Project's physical characteristics:

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

Project anticipated area (square footage): approximately 30,949 SF addition with 8,220 SF interior renovation and site improvements; final SF to be determined.

§ 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.)

Total project value is estimated to be between 12.6M to 13.9M.

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

.1 Design phase milestone dates, if any:

100% Construction Documents October 31, 2023

.2 Construction commencement date:

Approximately January 2024

.3 Substantial Completion date or dates:

TBD at Time of GMP, current target March 2025

.4 Other milestone dates:

N/A

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

(Identify any requirements for fast-track scheduling or phased construction.)

N/A

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

See 1.1.7

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

§ 1.1.7 Other Project information:

(Identify special characteristics or needs of the Project not provided elsewhere.)

RFQ-23-13 Construction management services to the City of Bentonville for the Adult Wellness Center and Flintco's response dated April 3, 2023.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:

(List name, address, and other contact information.)

Josh Stacey
Recreation Services Manager
1101 SW Citizens Circle
Bentonville, AR 72712
(479) 696-0204

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

To be determined by Owner at a later date

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

.1 Geotechnical Engineer:

To be determined at a later date

.2 Civil Engineer:

Retained by Architect:

EDG

Brahm Driver

501-944-3090

.3 Other, if any:

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

N/A

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

Jorge Andrade
jandrade@hjarch.com
479-799-1266

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

Brent Farmer
184 E. Fantinel Blvd
Springdale, AR 72762
(479) 306-6259
bfarmer@flintco.com

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

Not applicable

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

Not applicable

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

None

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

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

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

§ 2.3 General Conditions

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

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

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201–2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

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§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

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

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

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

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

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

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

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

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

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

§ 3.1.11 Subcontractors and Suppliers

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

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

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

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 Other Preconstruction Services

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

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

Init.

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of all trade construction contracts, including allowances and contingencies described in Section 2.2.4, the General Conditions, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 [Reserved]

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The Owner and the Construction Manager acknowledge that the contingency is included in the Guaranteed Maximum Price proposal for costs, which have not been taken into precise account in the establishment of the Guaranteed Maximum Price, including, but not limited to those resulting from:

- (1) scope gaps between trade contractors;
- (2) costs due to subcontractor failure that are not paid under applicable subcontractor default insurance;
- (3) excess costs due to major weather events;
- (4) damage to the Work not recoverable from another party or insurance policy; or
- (5) any other increase in the Cost of the Work due to an unforeseen event or occurrence that is not under the Construction Manager's control.

The Construction Manager's contingency may be applied by the Construction Manager, at its sole discretion, to any item of cost described above or as defined by the Cost of the Work without the necessity of a modification, without constituting a change in the Work, and without resulting in any change in the Guaranteed Maximum Price. The Construction Manager shall advise the Architect and the Owner in writing when applying a part of the Construction Manager's contingency as allowed by the Contract Documents.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect.

The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

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

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

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 3.3 Construction Phase

§ 3.3.1 General

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

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

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information reasonably required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as required by the Contract Documents or otherwise agreed to in writing by the parties.

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, restrictive covenants, plats, deeds showing current ownership of the real property making up the site, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

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

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section

4.2.1 of A201–2017, the Architect does not have such authority. The term “Owner” means the Owner or the Owner’s authorized representative.

§ 4.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner’s needs and interests.

§ 4.3 Architect

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

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager’s Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

A lump sum amount of \$35,000

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager’s Consultants and Subcontractors, if any, are set forth below.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

None

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

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within Eight Months (8) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager’s compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

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

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager’s invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)
Wall Street Journal Prime Rate plus 2%, as published in the printed version of the Wall Street Journal, not to exceed ten percent (10%) per annum.

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.

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§ 6.1.2 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

Five percent (5.0%) of the Cost of the Work

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

Five percent (5.0%) of the Cost of the Work

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

To be established with Contract Documents

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed one hundred percent (100 %) of the current edition of the "AED Green Book" standard rate.

§ 6.1.6 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

Not applicable

§ 6.1.7 Other:

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

All savings to be returned to the Owner

§ 6.2 Guaranteed Maximum Price

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

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

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

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

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

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

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager’s Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager’s Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7. The Construction Manager shall include in the Guaranteed Maximum Price proposal as part of the Cost of the Work a lump sum amount for General Conditions that shall include all costs of Construction Manager’s supervisory and administrative personnel including all associated costs of insurance, taxes, benefits, vehicle allowances, cell phones, radios, telecommunications, computers, software, other miscellaneous office costs, office trailer rental, office utilities, and any other costs required to maintain a construction office at the site. This lump sum amount for General Conditions shall be billed and paid in equal monthly installments commencing with the calendar month next following the date of commencement of construction of the Project through the month of the date of anticipated Substantial Completion. The monthly installment amount may be prorated for part of a calendar month at the commencement of construction. The Construction Manager will provide Owner a General Conditions budget during the Preconstruction Phase.

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

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

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner’s prior approval, at off-site workshops. Provided, however, that the wages and salaries for such construction workers while performing construction work as part of a self-perform trade scope of work awarded to the Construction Manager shall be included in the Construction Manager’s lump sum price for that scope of work.

§ 7.2.2 Wages or salaries of the Construction Manager’s supervisory and administrative personnel are included in the General Conditions and shall not be charged separately as part of labor

§ 7.2.2.1 Wages or salaries of the Construction Manager’s supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

§ 7.2.3 Wages and salaries of the Construction Manager’s supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work are included in the General Conditions and shall not be charged separately as part of labor costs.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions (collectively referred to as "Construction Worker Burden"). The Construction Worker Burden shall be at the fixed rate of 49% of wages and salaries included in the Cost of the Work under Sections 7.2.1.

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

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors/Trade Contractors in accordance with the requirements of the subcontracts or trade construction contracts awarded pursuant to the Act and payments due to the Construction Manager for any self-performed portions of the Work.

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

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

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

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

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. Rates of Construction Manager-owned equipment shall be one hundred percent (100%) of the current edition of the "AED Green Book" standard rate.

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

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies. Costs of document reproductions within the Construction Manager's office at the site, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the Construction Manager's site office are included in the General Conditions and shall not be charged separately as part of temporary facilities costs.

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

§ 7.6 Miscellaneous Costs

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

§ 7.6.1.1 [Reserved]

§ 7.6.1.2 [Reserved]

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

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

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

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

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

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

§ 7.6.7 Costs of document reproductions and delivery charges.

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

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

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

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

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval. If the Construction Manager self-performs any scope of the work as a trade contractor, upon approval by the Owner, the scope of the work will be performed on a lump sum basis, and shall be paid on a percentage of completion basis according to the schedule of values provided by the Construction Manager on Applications for Payment.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

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

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

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

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager’s personnel stationed at the Construction Manager’s principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager’s principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager’s capital expenses, including interest on the Construction Manager’s capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7; and
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded

(Paragraph Deleted)

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction

Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 The Construction Manager shall solicit bids for all portions of the Work including portions that the Construction Manager customarily performs with the Construction Manager's own personnel. The Construction Manager shall solicit bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents in accordance with the mandatory provisions of the Act. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 [Reserved]

§ 9.2 [Reserved]

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. Upon execution of a mutually acceptable non-disclosure agreement by the Construction Manager, the Owner and the Owner's auditors, the Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law. The Owner agrees that (i) lump sum amounts for General Conditions, the lump sum amounts for self-perform work, Subcontractor lump subcontract amounts, rates, multipliers and other fixed percentages and amounts it has agreed that the Construction Manager may charge as a Cost of the Work are subject to the Owner's audit rights only for the Owner to confirm that such lump sum amounts, rates, multipliers, percentages or amounts have been charged by the Construction Manager in accordance with the Contract Documents, and (ii) the composition of such rates, multipliers, percentages or amounts is not subject to audit by the Owner or the Owner's auditors.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 1st day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the 15th day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than fifteen (15) days after the Architect receive the Application for Payment.

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

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

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

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

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

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

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

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

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

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

- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

5% of all subcontracted amounts.

§ 11.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

Amounts attributable to fee, general conditions, directly purchased materials, field services, insurance and bonds.

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

Not applicable

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

Not applicable

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

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

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

§ 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

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account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

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

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

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

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

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

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 15 days after the issuance of the Architect's final Certificate for Payment

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

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

(Insert rate of interest agreed upon, if any.)

Wall Street Journal Prime Rate plus 2%, as published in the printed version of the Wall Street Journal, not to exceed ten percent (10%) per annum

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 12.2 Binding Dispute Resolution

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

☐ Arbitration pursuant to Article 15 of AIA Document A201–2017

☐ Litigation in a court of competent jurisdiction

☒ Other: *(Specify)*

Mediation

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

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement by Owner pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 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:

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- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

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

§ 13.2.1 Termination

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

§ 13.2.2 Termination by the Owner for Cause

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

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager'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;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

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

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

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term “profit” shall be understood to mean the Construction Manager’s Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner’s rights and both past and future obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

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

§ 14.3.1.1 Commercial General Liability with policy limits of not less than two million (\$ 2,000,000) for each occurrence and four million (\$ 4,000,000) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than one million (\$ 1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

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

§ 14.3.1.4 Workers’ Compensation at statutory limits and Employers Liability with policy limits not less than one million (\$ 1,000,000) each accident, one million (\$ 1,000,000) each employee, and one million (\$ 1,000,000) policy limit.

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§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than one million (\$ 1,000,000) per claim and one million (\$ 1,000,000) in the aggregate.

§ 14.3.1.6 Other Insurance

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

Coverage	Limits
Not applicable	

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

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

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

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

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

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

§ 14.5 Other provisions:

In the event of significant delay or significant price increase of material occurring during the performance of the Work through no fault of the Construction Manager, the Contract Sum and time of performance shall be equitably adjusted by Change Order in accordance with the procedures of the Contract Documents. A change in price of an item of material shall be considered significant when the price of an item increases 5% percent between the date of this Agreement and the date of installation.

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

1. AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
2. AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed

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- .3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds
.4 AIA Document A201™–2017, General Conditions of the Contract for Construction

| *(Paragraphs Deleted)*

| *(Table Deleted)*

| *(Paragraphs Deleted)*

This Agreement is entered into as of the day and year first

OWNER *(Signature)*

Stephanie Orman Mayor of Bentonville
(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

Brent Farmer Area Manager, Vice President
(Printed name and title)

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AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

City of Bentonville – Adult Wellness Center Project
215 SW A Street
Bentonville, AR 72712

THE OWNER:

(Name, legal status and address)

City of Bentonville, Arkansas
305 SW A Street
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THE ARCHITECT:

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent

consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

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

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

§ 1.7 Digital Data Use and Transmission

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

§ 1.8 Building Information Models Use and Reliance

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

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

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

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

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

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

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements,

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

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

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§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

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§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

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

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the

Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the

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Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

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

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations

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and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor,

prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

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

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work,

promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

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- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

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

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

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

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

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

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

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

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

§ 9.2 Schedule of Values

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

unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

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

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

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

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

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

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

- § 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from
- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
 - .2 failure of the Work to comply with the requirements of the Contract Documents;
 - .3 terms of special warranties required by the Contract Documents; or
 - .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

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§ 11.3 Waivers of Subrogation

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

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

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

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

§ 11.5 Adjustment and Settlement of Insured Loss

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

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to

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

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

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

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance,

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the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the

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Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

Additions and Deletions Report for AIA® Document A201® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:13:05 ET on 05/09/2023.

PAGE 1

City of Bentonville – Adult Wellness Center Project
215 SW A Street
Bentonville, AR 72712

...

City of Bentonville, Arkansas
305 SW A Street
Bentonville, AR 72712

...

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

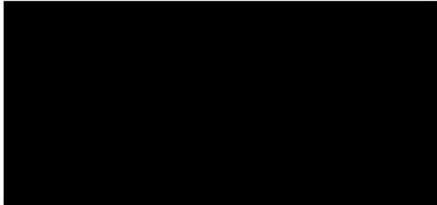
PAGE 10

ARTICLE 1 GENERAL PROVISIONS

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Brent Farmer, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:13:05 ET on 05/09/2023 under Order No. 2114355466 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, other than those additions and deletions shown in the associated Additions and Deletions



(Title)

VP, Area Manager

(Dated)

5-10-23

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A CONTRACT, WITH FLINTCO, FOR CONSTRUCTION MANAGEMENT OF THE FUTURE ADULT RECREATION CENTER, IN AN AMOUNT NOT TO EXCEED THIRTY-FIVE THOUSAND DOLLARS (\$35,000.00) PLUS REIMBURSABLE EXPENSES; AND FOR OTHER PURPOSES.

WHEREAS, Bentonville Parks and Recreation requests approval of a contract with Flintco to provide construction management for the future Adult Recreation Center;

WHEREAS, Crossland Construction was selected in accordance with A.C.A. §14-58-1001, applicable to construction management for projects which exceed two million dollars; and

WHEREAS, this is a budgeted expense.

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

Section 1: The Mayor and City Clerk are authorized to enter into a contract with Flintco, for construction management of the Adult Recreation Center, in an amount not to exceed thirty-five thousand dollars (\$35,000.00) plus reimbursable expenses;

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 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 this ____ day of _____, 2023.

APPROVED:

ATTEST:

STEPHANIE ORMAN, MAYOR

KIRBY ROMINES, CITY CLERK



Agenda Item Form

Date of City Council Meeting	5/23/2023
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):					
Ordinance amending the 2023 Pay Plan and approving a Budget Adjustment by moving \$167,390.88 from account 105030-41110 Part Time Salaries to Full Time Salaries/Wages. This will create six new full time positions with monies from unused budgeted part time salaries. A budget adjustment is needed to appropriate the already budgeted funds.					

Estimated Cost	\$0
Is this Item Budgeted?	☒ Yes ☐ No
If no, please explain how item will be funded (briefly explain in space below) :	





Budget Adjustment Request

Date of City Council Meeting	5/23/2023
Department	Parks and Recreation
Submitted by	Josh Stacey
Phone	(479) 696-0204

Purpose of Budget Adjustment <i>(Enter purpose in space below):</i> 2023 Parks and Recreation budget adjustment moving \$167,390.88 from Part Time Labor to Full Time Labor with the intent create six new full time positions for recreation services.
--

General Ledger Account Information*				
Org (Department)	Object	Account Description	Revenue + (-)	Expense + (-)
105030	41110	Part Time Salaries/Wages		\$167,390.88
105030	41010	Full Time Salaries/Wages	\$ 105,907.20	
105030	41510	FICA/Medicare	\$ 8,101.90	
105030	41810	APERS	\$ 16,224.98	
105030	41710	Health Ins	\$ 30,966.60	
105030	41740	Dental	\$ 2,308.20	
105030	41750	Vision	\$ 132.00	
105030	41712	H.S.A Contribution	\$ 3,750.00	
		Totals	\$ 167,390.88	\$ 167,390.88
		Net Impact on Fund Balance	\$ -	
*Final Account Number will be determined by Accounting Department after approval and purchase				



Memo



To: City Council, Mayor Orman

Thru: David Wright, Parks and Recreation Director

From: Josh Stacey, Recreation Services Manager

Date: April 12, 2023

Re: City Council approval of a Budget Adjustment to the 2023 budget moving \$167,390.88 from account 105030-41110 Part Time Salaries/Wages to Full Time Salaries/Wages accounts with the intent to create six new full time positions for recreation services.

Parks and Recreation staff is requesting City Council's approval of a Budget Adjustment to the 2023 budget moving \$167,390.88 from account 105030-41110 Part Time Salaries/Wages to Full Time Salaries/Wages accounts with the intent to create six new full time positions for recreation services.

Parks and Recreation is also requesting City Council's approval of an Ordinance for the addition of the Recreation Services Representative I (grade 15) and Recreation Services Representative II (grade 16) job family.

Over the last three years, it has become more and more difficult to hire and retain part time staff. Not only is it difficult to recruit staff but a common trend we are seeing is our team interviewing a potential staff member, offering a position, starting the hiring process, only for the new employee to quit within two weeks or never even make it to their first day on the job. This happened 17 times in 2022 alone. By transitioning some of our part time positions into full time, we will be able to hire quality staff with less turnover while also cutting our total head count.

While less turnover and a lower head count are great benefits of this transition, there are many others. We will be able to offer better customer service with more consistent policy enforcement, have safer cash handling processes, and improve our staff training. These new positions will also allow our current full time staff to reduce their over time hours by an estimate of 364 hours at a cost savings of \$12,000 for the remainder of this year. This savings will continue to benefit the city for years to come.

The new full time positions will continue to carry most of the same job duties and responsibilities as our part time positions, primarily working with customers on the front line. The new positions will include one new full time staff member at the Downtown Activity Center front desk, two new full time staff at the Bentonville Community Center front desk, one at the Wellness Desk at the BCC, and two Aquatic leadership positions.

If you have questions concerning this item, please email me at jstacey@bentonvillear.com or call 479.696.0204.

Attachments:

Recreation Services Representative Job Descriptions

JOB DESCRIPTION

Job Title: Recreation Services Representative I
Department: Parks and Recreation
Reports To: Recreation Program Supervisor
FLSA Status: Non-Exempt
Safety Status: None
Pay Status: Hourly

SUMMARY

Responsible for the daily operations and customer service responsibilities for recreation services and facilities.

ESSENTIAL DUTIES AND RESPONSIBILITIES

Reporting relationships, work assignments, and work schedules may be subject to change in order to meet City needs or operational requirements. Attendance at work and the ability to get along with the public, supervisors, and co-workers are essential elements of this position. Other duties may be assigned.

When Assigned Duties at Reception Desks

- Welcomes customers and answers phones and emails.
- Sells memberships and daily admissions.
- Registers participants for programs and events.
- Reserves rentable spaces for patrons.
- Executes facility policies and procedures.
- Basic bookkeeping, filing, and clerical duties.
- Opening and closing duties for the facility depending on shifts.
- Assists with staff trainings and development.
- Supervises part time recreation workers at the reception desk.
- Implementing emergency action plans when necessary.
- Ensures the reception area is tidy.
- Assists in ensuring the facility surrounding grounds remains a safe, clean environment for the public to utilize for recreational activities.
- Performs a wide variety of other duties as assigned.

When Assigned Duties at the Wellness Desk

- Welcomes customers and answers phones and emails.
- Enters fitness classes into the registration system.
- Ensures fitness classes operate effectively.
- Basketball and lock checkouts.
- Gymnasium and fitness floor walkthroughs and orientations.
- Maintaining fitness equipment.
- Organize fitness floor closets and equipment.
- Setup pickle ball, badminton, and volleyball equipment at the designated times.
- Report incidents and accidents on the fitness floor.
- Light housekeeping that includes vacuuming, wiping equipment, and folding towels.
- Basic bookkeeping, filing, and clerical duties.
- Opening and closing duties for the facility depending on shifts.
- Assists with staff trainings and development.
- Supervises part time recreation workers at the wellness desk.

- Implementing emergency action plans when necessary.
- Ensures the gymnasium and fitness spaces area tidy.
- Assists in ensuring the facility surrounding grounds remains a safe, clean environment for the public to utilize for recreational activities.
- Performs a wide variety of other duties as assigned.

When Assigned Duties in Aquatics

- Identify potential accident hazards.
- Enforce pool rules to all participants.
- Addressing customer service concerns and issues.
- Remain physically able to demonstrate and perform rescues and lifesaving skills.
- Directly supervise part time aquatic staff.
- Assists with staff trainings and development.
- Daily chemical testing and participant head count when needed.
- Able to perform all aquatic duties; roving, climbing into guard chair, sitting in rescue ready position, and overall cleanliness of pool area.
- Take hourly head counts, journal them, transfer them to excel documents on a daily, weekly, monthly basis.
- Run daily chemical checks and document them.
- Evaluate any potential hazards and either remove them or report them to the proper supervisor to care for the situation.
- Assists in ensuring the facility surrounding grounds remains a safe, clean environment for the public to utilize for recreational activities.
- Performs a wide variety of other duties as assigned.

QUALIFICATIONS To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

EDUCATION and/or EXPERIENCE Bachelor's degree (B. A.) in Park and Recreation Administration or closely related field and and/or training in Parks and Recreation management, including supervisory experience; or equivalent combination of education and experience.

LANGUAGE SKILLS Ability to read, analyze, and interpret general business periodicals, professional journals, technical procedures, or governmental regulations. Ability to write reports, business correspondence, and procedure manuals. Ability to effectively present information and respond to questions from groups of managers, clients, customers, and the general public.

MATHEMATICAL SKILLS Ability to work with mathematical concepts such as probability and statistics and the ability to apply concepts such as fractions, percentages, ratios, and proportions to practical situations. Must also have the ability to perform basic budget management.

REASONING ABILITY Ability to solve practical problems and deal with a variety of concrete variables in situations where only limited standardization exists. Ability to interpret a variety of instructions furnished in written, oral, diagram, or schedule form.

CERTIFICATES, LICENSES, REGISTRATIONS **Aquatics**

Must have and maintain a valid driver's license, the ability to become a certified First Responder by the American Red Cross and must pass a background security check. Must be able to obtain Lifeguard Certification.

Reception Desk

Must have and maintain a valid driver's license, the ability to become a certified First Responder by the American Red Cross and must pass a background security check.

Wellness Desk

Must have and maintain a valid driver's license, the ability to become a certified First Responder by the American Red Cross and must pass a background security check.

PHYSICAL DEMANDS The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is regularly required to use hands to finger, handle, or feel; reach with hands and arms; and talk or hear. The employee frequently is required to stand, walk, and sit. The employee is occasionally required to climb or balance; stoop, kneel, crouch, or crawl; and taste or smell. The employee must regularly lift and/or move up to 10 pounds and occasionally lift and/or move up to 50 pounds. Specific vision abilities required by this job include close vision, distance vision, color vision, peripheral vision, depth perception, and ability to adjust focus.

WORK ENVIRONMENT The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is frequently exposed to outside weather conditions. The employee is occasionally exposed to moving mechanical parts; high, precarious places; fumes or airborne particles; toxic or caustic chemicals; risk of electrical shock; and vibration. The noise level in the work environment is usually quiet.

JOB DESCRIPTION

Job Title: Recreation Services Representative II
Department: Parks and Recreation
Reports To: Recreation Program Supervisor
FLSA Status: Non-Exempt
Safety Status: None
Pay Status: Hourly

SUMMARY

Responsible for the daily operations and customer service responsibilities for recreation services and facilities.

ESSENTIAL DUTIES AND RESPONSIBILITIES

Reporting relationships, work assignments, and work schedules may be subject to change in order to meet City needs or operational requirements. Attendance at work and the ability to get along with the public, supervisors, and co-workers are essential elements of this position. Other duties may be assigned.

When Assigned Duties at Reception Desks

- All duties of a Recreation Services Representative I and additionally:
 - o Assists with the planning and coordination of staff trainings and development.
 - o Assists with part time recreation worker performance evaluations.
 - o Assists in managing memberships and patron accounts.
 - o Performs a wide variety of other duties as assigned.

When Assigned Duties at the Wellness Desk

- All duties of a Recreation Services Representative I and additionally:
 - o Schedules classes in the Technogym software.
 - o Offers tutorials and trainings of the Technogym software.
 - o Enters instructor, class, and other information into the Technogym software.
 - o Assists with the planning and coordination of staff trainings and development.
 - o Assists with part time recreation worker performance evaluations.
 - o Performs a wide variety of other duties as assigned.

When Assigned Duties in Aquatics

- All duties of a Recreation Services Representative I and additionally:
 - o Assists with the planning and coordination of staff trainings and development.
 - o Assists with part time recreation worker performance evaluations.
 - o Leads or assists with Red Cross classes such as Babysitting Certification, CPR and First Aid Certification, and Lifeguard and Swim Instructor Certification.
 - o Performs a wide variety of other duties as assigned.

QUALIFICATIONS To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

EDUCATION and/or EXPERIENCE Bachelor's degree (B. A.) in Park and Recreation Administration or closely related field and and/or training in Parks and Recreation management, including supervisory experience; or equivalent combination of education and experience.

LANGUAGE SKILLS Ability to read, analyze, and interpret general business periodicals, professional journals, technical procedures, or governmental regulations. Ability to write reports, business correspondence, and procedure manuals. Ability to effectively present information and respond to questions from groups of managers, clients, customers, and the general public.

MATHEMATICAL SKILLS Ability to work with mathematical concepts such as probability and statistics and the ability to apply concepts such as fractions, percentages, ratios, and proportions to practical situations. Must also have the ability to perform basic budget management.

REASONING ABILITY Ability to solve practical problems and deal with a variety of concrete variables in situations where only limited standardization exists. Ability to interpret a variety of instructions furnished in written, oral, diagram, or schedule form.

CERTIFICATES, LICENSES, REGISTRATIONS

Aquatics

Must have and maintain a valid driver's license, the ability to become a certified First Responder by the American Red Cross and must pass a background security check. Must be able to obtain Lifeguard Certification and a Lifeguard Instructor Certification.

Reception Desk

Must have and maintain a valid driver's license, the ability to become a certified First Responder by the American Red Cross and must pass a background security check.

Wellness Desk

Must have and maintain a valid driver's license, the ability to become a certified First Responder by the American Red Cross and must pass a background security check.

PHYSICAL DEMANDS The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is regularly required to use hands to finger, handle, or feel; reach with hands and arms; and talk or hear. The employee frequently is required to stand, walk, and sit. The employee is occasionally required to climb or balance; stoop, kneel, crouch, or crawl; and taste or smell. The employee must regularly lift and/or move up to 10 pounds and occasionally lift and/or move up to 50 pounds. Specific vision abilities required by this job include close vision, distance vision, color vision, peripheral vision, depth perception, and ability to adjust focus.

WORK ENVIRONMENT The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is frequently exposed to outside weather conditions. The employee is occasionally exposed to moving mechanical parts; high, precarious places; fumes or airborne particles; toxic or caustic chemicals; risk of electrical shock; and vibration. The noise level in the work environment is usually quiet.

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE PAY PLAN FOR THE CITY OF BENTONVILLE PARKS AND RECREATION DEPARTMENT TO ADD THE POSITIONS OF RECREATION SERVICES REPRESENTATIVE I AND RECREATION SERVICES REPRESENTATIVE II; AMENDING THE 2023 BUDGET TO APPROPRIATE ONE HUNDRED SIXTY-SEVEN THOUSAND THREE HUNDRED NINETY DOLLARS AND EIGHTY-EIGHT CENTS (\$167,390.88) TO VARIOUS PAYROLL ACCOUNTS; PROVIDING FOR THE EMERGENCY CLAUSE; AND FOR OTHER PURPOSES.

WHEREAS, the Parks and Recreation department budgeted one hundred sixty-seven thousand three hundred ninety dollars and eighty-eight cents (\$167,390.88) in part time salaries/wages;

WHEREAS, due to high turnover and difficulty hiring part-time staff, the Department requests these funds be used to create six (6) full-time positions;

WHEREAS, the addition of these full-time positions will reduce overtime hours accrued and allows the Department to offer consistency in customer service; and

WHEREAS, a budget adjustment is required to properly appropriate the funds.

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 the following:

Position Addition:

Recreation Services Representative I	Grade 15
Recreation Services Representative II	Grade 16

Section 2 - Emergency Clause: The need to make this change is immediate, so as to fill these positions and not delay implementation, an emergency is hereby declared to exist, and this Ordinance shall be in full force and effect from the date of its passage and approval;

Section 3: The 2023 Budget is adjusted to appropriate monies from Account #105030-41110 – Part Time Salaries/Wages as shown below:

Org (Department)	Object	Account Description	Revenue + (-)	Expense + (-)
105030	41110	Part Time Salaries/Wages		\$ (167,390.88)
105030	41010	Full Time Salaries/Wages		\$ 105,907.20
105030	41510	FICA/Medicare		\$ 8,101.90
105030	41810	APERS		\$ 16,224.98
105030	41710	Health Ins		\$ 30,966.60
105030	41740	Dental		\$ 2,308.20
105030	41750	Vision		\$ 132.00
105030	41712	H.S.A Contribution		\$ 3,750.00
		Totals	\$ -	\$ (0.00)
		Net Impact on Fund Balance	\$ 0.00	

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; and

Section 5 - 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 _____, 2023.

APPROVED:

STEPHANIE ORMAN, Mayor

Attest:

KIRBY ROMINES, City Clerk



Agenda Item Form

Date of City Council Meeting	5/23/2023
Department	Parks and Recreation
Submitted by	David Wright
Phone	479.271.6813

Item Type: (Check Applicable Item Type)					
☒ Budget Adjustment	☐ Change Order	☐ Informational	☐ Ordinance	☒ Resolution	☐ Bid Award
Recommendation/Suggested Action (Enter recommendation in space below):					
Resolution authorizing the Mayor to enter into a grant agreement with the Walton Family Foundation, in the amount of \$1,502,800.00, funding the design of the 8th Street Gateway Park Project and entering into an amended contract with Port for said design. A budget adjustment is needed to recognize grant funds.					

Estimated Cost	
Is this Item Budgeted?	☐ Yes ☒ No
If no, please explain how item will be funded (briefly explain in space below) :	
Grant Funds from Walton Family Foundation Design Excellence program.	





Budget Adjustment Request

Date of City Council Meeting	5/23/2023
Department	Parks and Recreation
Submitted by	David Wright
Phone	479.271.6813

Purpose of Budget Adjustment (Enter purpose in space below):
Recognize funds from Walton Family Foundation allowing Parks and Rec to increase total of grant agreement to finalize construction documents for upcoming construction projects.

General Ledger Account Information*				
Org (Department)	Object	Account Description	Revenue + (-)	Expense + (-)
105030	33810	Local Grants	\$ 1,502,800.00	
105030	47390	Improv Other than Bldg / Other		\$ 1,502,800.00
		Totals	\$ 1,502,800.00	\$ 1,502,800.00
		Net Impact on Fund Balance	\$ -	
*Final Account Number will be determined by Accounting Department after approval and purchase				



Memo



To: City Council, Mayor Orman

From: David Wright, Parks and Recreation Director

Date: May 10, 2023

Re: Council approval of grant from the Walton Family Foundation, in the amount of \$1,502,800.00, for the 8th Street Gateway Park Project.

Parks and Recreation Staff is requesting approval of a design excellence grant, in the amount of \$1,502,800. This allows for the amendment to the existing design contract with Port to move forward through Design Development and the creation of contract documents. This request / contract is fully funded via the Walton Family Foundation Design Excellence Program.

As stated in an earlier item, this amendment accounts for the added value and amenities in the projects. For example, our master plan included bridges, skate parks, pump tracks and amenities that when we started the project, we did not know if we would be able to afford. Now we have finalized the project budget and are funded to construct the entire master plan, we need to fully design all elements of the project. This amendment accounts for MEP for restrooms and pavilions, structural engineers for bridges, playgrounds, skate parks and all other amenities.

This grant award will take us through final design and into bidding. From there, we will utilize the \$5MM of bond funding. The remaining funds for the project will come from private funding.

If you have any questions regarding this item, please call me at 6813 or email dwright@bentonvillear.com.

Memo



To: City Council, Mayor Orman

From: David Wright, Parks and Recreation Director

Date: May 10, 2023

Re: Council approval of contract amendment with Port for 8th Street Gateway Park, in the value of \$1,502,800 bringing the total agreement to \$1,998,800.

Parks Staff is requesting approval of a contract amendment, in the amount of \$1,502,800, for the 8th Street Gateway Park. This request is fully funded by a grant via the Walton Family Foundation Design Excellence Program.

As you are aware, our team has been working on the design of the 8th Street Gateway Park with the intent to bring this project out of the ground in early 2024. We currently are at the 50% mark of the design development phase and will shortly be beginning construction documents. We hope to bid the project by the end of the year.

This amendment accounts for the added value and amenities in the projects. For example, our master plan included bridges, skate parks, pump tracks and amenities that when we started the project, we did not know if we would be able to afford. Now we have finalized the project budget and are funded to construct the entire master plan, we need to fully design all elements of the project. This amendment accounts for MEP for restrooms and pavilions, structural engineers for bridges, playgrounds, skate parks and all other amenities.

To date, this project has been 100% funded by the Design Excellence Program via the Walton Family Foundation. This grant award will take us through final design and into bidding. From there, we will utilize the \$5MM of bond funding. The remaining funds for the project will come from private funding.

If you have any questions regarding this item, please call me at 6813 or email dwright@bentonvillear.com.

May 9, 2023

Stephanie Orman
City of Bentonville
305 SW A Street
Bentonville, AR, 72712

RE: Grant 00108594

Dear Stephanie,

At the Walton Family Foundation, we work to tackle tough social and environmental problems with urgency and a long-term approach to create access to opportunity for people and communities. To do this, we know we must work with individuals and groups closest to these challenges because they often have the most thoughtful, insightful solutions.

As we support efforts to improve education, protect our rivers and oceans and the livelihoods they support, and promote quality of life in our Home Region, we look to groups like yours. I am pleased to inform you that your grant request has been approved in the amount of \$1,502,800.00 to complete the design for the 8th Street Gateway Park in Bentonville. The attached grant agreement outlines the details.

On behalf of the Walton Family Foundation, I express my appreciation for what your organization has accomplished so far and my optimism for your future success. Together, we can have an impact that improves lives today and that will last to benefit future generations.

Sincerely,

Christie Yang
Secretary and General Counsel

Grant Agreement

May 9, 2023

Grant 00108594

The Walton Family Foundation, Inc. ("Foundation" or "WFF") has approved a grant in the amount of \$1,502,800.00 to City of Bentonville ("Grantee"). The project term will be May 8, 2023 to March 15, 2024. This grant is subject to the following terms and conditions:

1. **Purpose:** The purpose of the grant is to complete the design for the 8th Street Gateway Park in Bentonville. This grant is more fully described in Grantee's proposal dated February 8, 2023. 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: \$1,502,800.00 USD**

Grant payments will be made as follows:

Installment	Amount	Requirement	Date
1	\$751,400.00	Signed Grant Agreement	May 2023
2	\$751,400.00	Email update on progress sent to jpate@wffmail.com	On or around November 15, 2023

3. **Payable:** Initial installment of \$751,400.00 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 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 Date
Email update on progress sent to jpate@wffmail.com	November 1, 2023
Final Report	March 15, 2024

Success will be measured against the outputs and outcomes described in Appendix A.

All reports (except where noted), 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 00108594 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.
 - d. Grantee does not support, directly or indirectly, terrorist activities or violence of any kind, and takes reasonable steps to ensure that:
 - i. Grantee's board, staff and volunteers have no dealings with, and do not support, terrorist activities or violence of any kind, and
 - ii. grant funds will not ultimately be used to support terrorist activities or violence of any kind.
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 determines that Grantee will be unable to achieve the purposes for which the grant was made;
- f. 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;
- g. 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
- h. 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, please contact the Foundation by email at HomeRegion@wffmail.com. Please reference Grant 00108594 in your communication.

By electronically signing this 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 is not completed by May 23, 2023 the Foundation will consider the Grantee to have declined the grant.

Walton Family Foundation, Inc.

By:

Christie Yang
Secretary and General Counsel

City of Bentonville

By:

Stephanie Orman
Mayor

Appendix A: City of Bentonville

Performance Measures

Goal: The City of Bentonville will finalize the design for the 8th Street Gateway Park, to include programming for open/flexible spaces, plazas, play spaces, a skatepark, pavilions and restrooms.			
Outputs And Outcomes			
Category	Who will do what and how much?	By when?	Measured or evaluated by?
Output	The grantee and design team will host a final design presentation to stakeholders to review and provide final input before the project goes to construction bidding.	12/31/2023	Copy of Presentation
Outcome	100% of stakeholders will approve the final design, budget and schedule to move the project into final construction phase.	03/15/2024	Written confirmation
Output	The grantee and design team will compile a written report describing relevant Design Excellence program goals and principles, what they mean in the context of the public space project, and how they were integrated into the overall design.	03/15/2024	Copy of report
Outcome	Formal funding commitments will be made and documented for 100% of the construction costs of the park, based on the final approved designs.	03/15/2024	List of funding sources and amounts

AIA® Document B101® – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the 14 day of February in the year Twenty-Two-Three
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

The City of Bentonville, Arkansas
Parks and Recreation
215 SW A Street
Bentonville, AR 72712

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

PORT Architecture and Urbanism LLC
53 W. Jackson Blvd., Suite 830
Chicago, IL 60604
(312) 519-1103

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

8th Street Gateway Park
Bentonville, Arkansas
Design Development, Construction Documents, Bidding and Permit Services

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

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

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

Init.

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User Notes:

(1496340566)

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Parks and Recreation
215 SW A Street
Bentonville, AR 72712

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

PORT Architecture and Urbanism LLC
53 W. Jackson Blvd., Suite 830
Chicago, IL 60604
(312) 519-1103

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User Notes:

(1496340566)

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2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	SUPPLEMENTAL AND ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
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12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

The Master Plan and Schematic Design for 8th Street Gateway Park was developed for the Client by the Architect under a previous contract. As accepted by the Client, the 8th Street Gateway Park Master Plan and Schematic Design set forth the park program, conceptual plan and construction budget for the Design Development, Construction Documents, Bidding & Permitting scope of services. The owner's program, as described in the Master Plan and Schematic Design document, is summarized as follows:

Circulation

The Park Master plan includes 12.66 miles of trails and walks. Nearly 6 miles of this circulation is soft surface beginner mountain bike trails. Primary bike and pedestrian circulation through the park are via a shared use concrete path with a decomposed granite side path for running. This primary circulation runs east-west along a central spine connecting to the 8th Street and I Street intersection on the east. On the west the central spine ties in at grade at the 8th Street and Arrowhead Dr. intersection. A spur also tunnels below 8th Street and provides a direct connection to the Applegate trail to the north. To the south, the primary shared use route connects to 14th Street. Primary east-west vehicular circulation occurs along 8th Street which runs .80 miles along the length of the park. 8th Street is reconfigured with two primary circulation sections that accommodate a 2-way cycle track and a soft-surface mountain bike trail running the length of the 8th Street through park.

Melissa Drive runs north south and its length through the park is reconfigured to calm traffic and provide more continuity to the park. A new Park Drive runs along the southern edge of the site connecting Melissa Drive to 14th

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Street. This low-speed park drive has new perpendicular parking distributed along its length. Additional parking is found in a small lot in the northeast section of the park, along portions of 8th Street near the Park Core and along Melissa Drive. Automobile, bike and pedestrian signage and wayfinding elements will be distributed throughout the park.

While the circulation program is distributed throughout the entire site, the Master Plan for 8th Street Gateway Park elaborates site specific enhancements within three park sub-areas: the West Park, East Park, and Park Core.

The West Park includes a small plaza for markets and food trucks, a balance bike course, a playground, and games area. The plaza is anchored by a small pavilion comprised of restrooms and a concession area within a larger canopy structure. The balance bike course creates a loop that weaves between planted mounds. The track will be asphalt with striping with a crushed stone offshoot loop. The hillside playground includes sloped topography, a boulder scramble, mulch and stainless-steel slides. West Park includes areas for small courts and games, including ping pong tables, bocce ball and pickleball. A Great Lawn is set within a prairie landscape established along the entirety of the west park perimeter. The Great Lawn is ringed by a stabilized aggregate 1/4 mile running track. The West Park contains two predominant planting types— new canopy tree planting and new prairie planting throughout the periphery of the park. New native understory planting will be implemented as part of stream restoration between the West Park and Park Core.

The East Park landing features a small community gathering area, parking, and bicycle trail head amenities. South of 8th Street, East Park improvements are focused on water quality improvements and stream enhancement, including a wet filtration garden with boardwalks at its periphery. The Cycle Ring and Gateway Bridges define a ¾-mile bike and pedestrian circulation loop feature encircling the East Park. The circular path is 12'-wide and ranges from at-grade, berm and elevated conditions, including two bridge structures spanning 8th Street. East Park planting includes woodland canopy enhancement, stream restoration and floodplain understory enhancement.

Melissa Drive bisects the Park Core area. The East Side of Melissa Drive is primarily passive and southern portion of this area is the site of the Pet Resource Center, being developed by others under a separate contract. Flanking the west side of Melissa just south of 8th Street is the Park Core Landing includes large custom urban furniture and shaded comfort station pavilion. The pavilion opens out to a plaza space adjacent to a large wheel sports garden. The central playground in the Park Core emphasizes the use of natural components— wood + log structures, boulders, mulch surfacing— with accents of color and synthetic materials— rubber surfacing, painted metal— distributed throughout. Planting at the Park Core consists of multiple planting types— canopy and evergreen tree planting, woodland planting at the playground, entry planting at the Melissa Dr. intersection, and wet meadow planting.

§ 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.)

Existing Site Conditions— General

The 8th Street Gateway Park site comprises 109.1 acres between I Street to the east and the Krystal Heights neighborhood to the west. It is comprised of 5 individual parcels including a small parcel that extends south to 14th St. The site sits west of Walmart's (current) home office and downtown Bentonville and east of expanding residential neighborhoods to the west. South of the site is the Northwest Arkansas Classical Academy, a K-8 charter school, various light-industrial tenants, and the Benton County Jail. The Applegate Trail that connects north to Coler Preserve currently terminates at 8th St. Three major drainage courses run through the site and form the headwaters of the McKisic Creek—Sugar Creek watershed. In addition to these natural features, the park site includes a few existing structures including a vacant single-family residence and a sheet metal barn, as well as an overhead power line easement running east to west through the center of the project site. The park's namesake, 8th Street, runs the entire 0.83 miles east to west length of the site and comprises 5.9 acres of pavement.

West Park— Existing Conditions

The existing West Park site area includes a large hill that slopes gently north, east and south. This large open landscape is interspersed with stands of trees and is currently sown with hay. An existing house and barn lie along the ridge line that bisects the parcel and are connected by a long asphalt driveway that connects to 14th Street to the south. The

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eastern extent of the West Park is defined by a low lying and wooded stream. The western and southern edges are defined by woodland adjacent to residential properties. The West park lies higher than 8th Street to the north with a steep slope separating the two.

East Park- Existing Conditions

The parcels north and south of 8th Street in the East Park differ substantially in existing character. The north parcel gently slopes from the northern edge of the site down to 8th Street. It is largely defined by sparse clusters of early successional canopy tree species and understory that is cleared and mown. By contrast, the southern parcel is low-lying and defined by an existing scoured creek running east-west through the parcel's northern third. A denser tree canopy with greater species diversity is present on this parcel with the densest portions along the creek bed. Like the northern parcel the understory is cleared and often mown. The creek bed is receiving a significant amount of runoff from urbanized areas to the east of the site and the low-lying portions of the site are occasionally inundated.

Park Core- Existing Conditions

The Center of the park is bisected by Melissa Drive and is immediately adjacent to the Northwest Arkansas Classical Academy. The parcel is defined by two large areas of unmanaged meadow. The western portion of the parcel is presently inaccessible across an existing stream bed, but is dotted with early successional tree species, predominantly cedar, and scrub shrub. The western side of the parcel also has a large artificial mound, possibly from fill from the construction of 8th Street. This western area shows significant signs of disturbance from grading or other previous construction equipment activity.

Survey, Utilities + Geotechnical

The Client acknowledges that the Master Plan is not based on any detailed topographic survey, traffic study, utility study, geotechnical information or exact locations of any public and private site utilities and services. Under separate contracts, the Client will commission site surveys and geotechnical reports for the Architect's use during the Schematic Design and Design Development scopes of work.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:
(Provide total and, if known, a line item breakdown.)

\$37,000,000 US Dollars

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

.1 Design phase milestone dates, if any:

Schematic Design Phase – (complete)
Design Development Phase – 20 Weeks (anticipated)
Construction Documents Phase – 24 Weeks (anticipated)
Bidding & Permitting – 16 Weeks (anticipated)

.2 Construction commencement date:

Unknown at the time of execution

.3 Substantial Completion date or dates:

Unknown at the time of execution

.4 Other milestone dates:

N/A

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

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Competitive Bid anticipated; Multiple Bid Packages or Phased Construction Scope is unknown at the time of execution

§ 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.)

N/A

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™-2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204-2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204-2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:
(List name, address, and other contact information.)

N/A

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

TBD

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

.1 Geotechnical Engineer:

Unknown at the time of execution; TBD by Owner

(Paragraph deleted)

.2 Civil Engineer / Geotechnical / Site Survey:

Unknown at the time of execution; TBD by Owner

(Paragraph deleted)

.3 Construction Manager / Project Manager:

Crossland Construction

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:
(List name, address, and other contact information.)

Andrew Moddrell
53 W. Jackson Blvd. Suite 830
Chicago, Illinois 60604
312-519-1103
moddrell@porturbanism.com

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:
(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

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Apex Engineers, Inc.
1625 Locust St
Kansas City, MO 64108

.2 Mechanical, Electrical and Plumbing Engineer:

PRIGM Engineering
310 W. Dickson St. Suite 210
Fayetteville, AR 72701

.3 Consulting Architect:

Polk Stanley Wilcox Architects
801 South Spring Street
Little Rock, AR 72201

.4 Civil and Ecological Engineering:

Ecological Design Group
120 S. Izard Street
Little Rock, AR 72201

.5 Skate Garden Consultant:

California Skate Parks
273 N. Benson Ave
Upland, CA 91786

§ 1.1.11.2 Consultants retained under Supplemental Services:

N/A

§ 1.1.12 Other Initial Information on which the Agreement is based:

N/A

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

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

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

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ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.5.1 Commercial General Liability with policy limits of not less than one million dollars (\$ 1,000,000) for each occurrence and two million dollars (\$ 2,000,000) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than 1 million dollars (\$ 1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than five hundred thousand dollars (\$ 500,000) each accident, five hundred thousand dollars (\$ 500,000) each employee, and five hundred thousand (\$ 500,000) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than one million dollars (\$ 1,000,000) per claim and two million dollars (\$ 2,000,000) in the aggregate.

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

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

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ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 Schematic Design Phase Services (Complete)

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

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§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 Negotiated Proposals (NOT INCLUDED IN THIS CONTRACT)

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:

- .1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 Construction Phase Services (NOT INCLUDED IN THIS CONTRACT)

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201-2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

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§ 3.6.2 Evaluations of the Work (NOT INCLUDED IN THIS CONTRACT)

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor (NOT INCLUDED IN THIS CONTRACT)

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals (NOT INCLUDED IN THIS CONTRACT)

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the

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approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work (NOT INCLUDED IN THIS CONTRACT)

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion (NOT INCLUDED IN THIS CONTRACT)

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

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§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service.

Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Programming	Completed During Master Plan Process
§ 4.1.1.2 Multiple preliminary designs	Completed During Master Plan Process
§ 4.1.1.3 Measured drawings	Not Provided
§ 4.1.1.4 Existing facilities surveys	Not Provided
§ 4.1.1.5 Site evaluation and planning	Completed During Master Plan Process
§ 4.1.1.6 Building Information Model management responsibilities	Not Provided
§ 4.1.1.7 Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.8 Civil engineering	Architect
§ 4.1.1.9 Landscape design	Architect
§ 4.1.1.10 Architectural interior design	Not Provided
§ 4.1.1.11 Value analysis	Not Provided
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Not Provided
§ 4.1.1.13 On-site project representation	Not Provided
§ 4.1.1.14 Conformed documents for construction	Not Provided
§ 4.1.1.15 As-designed record drawings	Not Provided
§ 4.1.1.16 As-constructed record drawings	Not Provided
§ 4.1.1.17 Post-occupancy evaluation	Not Provided
§ 4.1.1.18 Facility support services	Not Provided
§ 4.1.1.19 Tenant-related services	Not Provided
§ 4.1.1.20 Architect's coordination of the Owner's consultants	Not Provided
§ 4.1.1.21 Telecommunications/data design	Not Provided

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Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.22 Security evaluation and planning	Not Provided
§ 4.1.1.23 Commissioning	Not Provided
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.25 Fast-track design services	Not Provided
§ 4.1.1.26 Multiple bid packages	Not Provided
§ 4.1.1.27 Historic preservation	Not Provided
§ 4.1.1.28 Furniture, furnishings, and equipment design	Not Provided
§ 4.1.1.29 Other services provided by specialty Consultants	Architect
§ 4.1.1.30 Other Supplemental Services	Not Provided

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

Supplemental Design Development, Construction Documents, Bidding & Permitting services for Landscape Architecture, Civil, Ecological, and Transportation Engineering are included in the Architect's Scope and Fee for Basic Services

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

N/A

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- 1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- 2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- 3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b)

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contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;

- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of entities providing bids or proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 N/A () reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 N/A () visits to the site by the Architect during construction
- .3 N/A () inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 () inspections for any portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within N/A (N/A) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

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§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

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§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

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ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

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§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box.)

- | ☒ [X] Arbitration pursuant to Section 8.3 of this Agreement
- ☐ [] Litigation in a court of competent jurisdiction
- ☐ [] Other: (Specify)

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

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.1 Termination Fee:

None

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

None

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably

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necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

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

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

- .1 Stipulated Sum
(Insert amount)

\$1,998,800
- .2 Percentage Basis
(Insert percentage value)

N/A () % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.
- .3 Other
(Describe the method of compensation)

N/A

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Not Provided

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

According to Architect Staff Hourly Rate Table (below) or by Client-approved Sub-Consultant Additional Services Contract Proposal

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus ten percent (10 %), or as follows:
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

N/A

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	N/A	percent (	N/A	%)
Design Development Phase	N/A	percent (	N/A	%)

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Construction Documents Phase	N/A	percent (	N/A	%)
Procurement Phase	N/A	percent (	N/A	%)
Construction Phase	N/A	percent (	N/A	%)
Total Basic Compensation	one hundred	percent (	100	%)

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

Partner	\$195
Design Professional/Senior Associate	\$155
Associate	\$130
<i>(Table deleted)</i>	
Designer	\$115
Intern	\$85
Admin	\$75

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project. Transportation and authorized out of town travel and subsistence are included in the consultant fee. Reimbursable expenses are as follows:

- .1 Permitting and other fees required by authorities having jurisdiction over the Project;
- .2 Printing, reproductions, plots, and standard form documents;
- .3 Postage, handling, and delivery;
- .4 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .5 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .6 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;

(Paragraphs deleted)

- .7 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus five percent (5 %) of the expenses incurred.

§ 11.9 **Architect's Insurance.** If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)

Init.

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of N/A (\$ N/A) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of N/A (\$ N/A) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid sixty (60) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

N/A % N/A

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

ARTICLE 13 SCOPE OF THE AGREEMENT

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

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B101™–2017, Standard Form Agreement Between Owner and Architect

(Paragraphs deleted)

- .2 Exhibits:

(Check the appropriate box for any exhibits incorporated into this Agreement.)

☐
(Paragraphs deleted)

N/A ☐

Other Exhibits incorporated into this Agreement:

(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

- .3 Other documents:

(List other documents, if any, forming part of the Agreement.)

Init.

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This Agreement entered into as of the day and year first written above.

- See attached Signature Page-

OWNER *(Signature)*

Stephanie Orman, Mayor, City of Bentonville
(Printed name and title)

ARCHITECT *(Signature)*

Andrew Moddrell, Partner
(Printed name, title, and license number, if required)

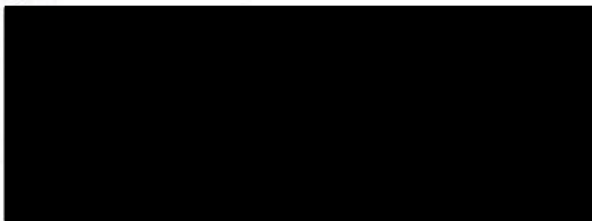
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Signatures Page



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Additions and Deletions Report for

AIA® Document B101® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 20:50:54 ET on 02/14/2023.

PAGE 1

AGREEMENT made as of the 14 day of February in the year Twenty-Twenty-Three

...

The City of Bentonville, Arkansas
Parks and Recreation
215 SW A Street
Bentonville, AR 72712

...

PORT Architecture and Urbanism LLC
53 W. Jackson Blvd., Suite 830
Chicago, IL 60604
(312) 519-1103

...

8th Street Gateway Park
Bentonville, Arkansas
Design Development, Construction Documents, Bidding and Permit Services

PAGE 2

The Master Plan and Schematic Design for 8th Street Gateway Park was developed for the Client by the Architect under a previous contract. As accepted by the Client, the 8th Street Gateway Park Master Plan and Schematic Design set forth the park program, conceptual plan and construction budget for the Design Development, Construction Documents, Bidding & Permitting scope of services. The owner's program, as described in the Master Plan and Schematic Design document, is summarized as follows:

Circulation

The Park Master plan includes 12.66 miles of trails and walks. Nearly 6 miles of this circulation is soft surface beginner mountain bike trails. Primary bike and pedestrian circulation through the park are via a shared use concrete path with a decomposed granite side path for running. This primary circulation runs east-west along a central spine connecting to the 8th Street and I Street intersection on the east. On the west the central spine ties in at grade at the 8th Street and Arrowhead Dr. intersection. A spur also tunnels below 8th Street and provides a direct connection to the Applegate trail to the north. To the south, the primary shared use route connects to 14th Street. Primary east-west vehicular circulation occurs along 8th Street which runs .80 miles along the length of the park. 8th Street is reconfigured with two primary circulation sections that accommodate a 2-way cycle track and a soft-surface mountain bike trail running the length of the 8th Street through park.

Melissa Drive runs north south and its length through the park is reconfigured to calm traffic and provide more continuity to the park. A new Park Drive runs along the southern edge of the site connecting Melissa Drive to 14th

Street. This low-speed park drive has new perpendicular parking distributed along its length. Additional parking is found in a small lot in the northeast section of the park, along portions of 8th Street near the Park Core and along Melissa Drive. Automobile, bike and pedestrian signage and wayfinding elements will be distributed throughout the park.

While the circulation program is distributed throughout the entire site, the Master Plan for 8th Street Gateway Park elaborates site specific enhancements within three park sub-areas: the West Park, East Park, and Park Core.

The West Park includes a small plaza for markets and food trucks, a balance bike course, a playground, and games area. The plaza is anchored by a small pavilion comprised of restrooms and a concession area within a larger canopy structure. The balance bike course creates a loop that weaves between planted mounds. The track will be asphalt with striping with a crushed stone offshoot loop. The hillside playground includes sloped topography, a boulder scramble, mulch and stainless-steel slides. West Park includes areas for small courts and games, including ping pong tables, bocce ball and pickleball. A Great Lawn is set within a prairie landscape established along the entirety of the west park perimeter. The Great Lawn is ringed by a stabilized aggregate 1/4 mile running track. The West Park contains two predominant planting types– new canopy tree planting and new prairie planting throughout the periphery of the park. New native understory planting will be implemented as part of stream restoration between the West Park and Park Core.

The East Park landing features a small community gathering area, parking, and bicycle trail head amenities. South of 8th Street, East Park improvements are focused on water quality improvements and stream enhancement, including a wet filtration garden with boardwalks at its periphery. The Cycle Ring and Gateway Bridges define a 3/4-mile bike and pedestrian circulation loop feature encircling the East Park. The circular path is 12'-wide and ranges from at-grade, berm and elevated conditions, including two bridge structures spanning 8th Street. East Park planting includes woodland canopy enhancement, stream restoration and floodplain understory enhancement.

Melissa Drive bisects the Park Core area. The East Side of Melissa Drive is primarily passive and southern portion of this area is the site of the Pet Resource Center, being developed by others under a separate contract. Flanking the west side of Melissa just south of 8th Street is the Park Core Landing includes large custom urban furniture and shaded comfort station pavilion. The pavilion opens out to a plaza space adjacent to a large wheel sports garden. The central playground in the Park Core emphasizes the use of natural components– wood + log structures, boulders, mulch surfacing– with accents of color and synthetic materials– rubber surfacing, painted metal– distributed throughout. Planting at the Park Core consists of multiple planting types– canopy and evergreen tree planting, woodland planting at the playground, entry planting at the Melissa Dr. intersection, and wet meadow planting.

PAGE 3

Existing Site Conditions– General

The 8th Street Gateway Park site comprises 109.1 acres between I Street to the east and the Krystal Heights neighborhood to the west. It is comprised of 5 individual parcels including a small parcel that extends south to 14th St. The site sits west of Walmart's (current) home office and downtown Bentonville and east of expanding residential neighborhoods to the west. South of the site is the Northwest Arkansas Classical Academy, a K-8 charter school, various light-industrial tenants, and the Benton County Jail. The Applegate Trail that connects north to Coler Preserve currently terminates at 8th St. Three major drainage courses run through the site and form the headwaters of the McKisic Creek–Sugar Creek watershed. In addition to these natural features, the park site includes a few existing structures including a vacant single-family residence and a sheet metal barn, as well as an overhead power line easement running east to west through the center of the project site. The park's namesake, 8th Street, runs the entire 0.83 miles east to west length of the site and comprises 5.9 acres of pavement.

West Park– Existing Conditions

The existing West Park site area includes a large hill that slopes gently north, east and south. This large open landscape is interspersed with stands of trees and is currently sown with hay. An existing house and barn lie along the ridge line that bisects the parcel and are connected by a long asphalt driveway that connects to 14th Street to the south. The eastern extent of the West Park is defined by a low lying and wooded stream. The western and southern edges are defined by woodland adjacent to residential properties. The West park lies higher than 8th Street to the north with a steep slope separating the two.

East Park– Existing Conditions

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The parcels north and south of 8th Street in the East Park differ substantially in existing character. The north parcel gently slopes from the northern edge of the site down to 8th Street. It is largely defined by sparse clusters of early successional canopy tree species and understory that is cleared and mown. By contrast, the southern parcel is low-lying and defined by an existing scoured creek running east-west through the parcel's northern third. A denser tree canopy with greater species diversity is present on this parcel with the densest portions along the creek bed. Like the northern parcel the understory is cleared and often mown. The creek bed is receiving a significant amount of runoff from urbanized areas to the east of the site and the low-lying portions of the site are occasionally inundated.

Park Core- Existing Conditions

The Center of the park is bisected by Melissa Drive and is immediately adjacent to the Northwest Arkansas Classical Academy. The parcel is defined by two large areas of unmanaged meadow. The western portion of the parcel is presently inaccessible across an existing stream bed, but is dotted with early successional tree species, predominantly cedar, and scrub shrub. The western side of the parcel also has a large artificial mound, possibly from fill from the construction of 8th Street. This western area shows significant signs of disturbance from grading or other previous construction equipment activity.

Survey, Utilities + Geotechnical

The Client acknowledges that the Master Plan is not based on any detailed topographic survey, traffic study, utility study, geotechnical information or exact locations of any public and private site utilities and services. Under separate contracts, the Client will commission site surveys and geotechnical reports for the Architect's use during the Schematic Design and Design Development scopes of work.

PAGE 4

\$37,000,000 US Dollars

...

Schematic Design Phase – (complete)
Design Development Phase – 20 Weeks (anticipated)
Construction Documents Phase – 24 Weeks (anticipated)
Bidding & Permitting – 16 Weeks (anticipated)

...

Unknown at the time of execution

...

Unknown at the time of execution

...

N/A

PAGE 5

Competitive Bid anticipated; Multiple Bid Packages or Phased Construction Scope is unknown at the time of execution

...

N/A

...

N/A

...

TBD

...

Unknown at the time of execution; TBD by Owner

~~.2~~ Civil Engineer: .2 Civil Engineer / Geotechnical / Site Survey:

Unknown at the time of execution; TBD by Owner

~~.3~~ Other, if any: .3 Construction Manager / Project Manager:
~~(List any other consultants and contractors retained by the Owner.)~~
Crossland Construction

...

Andrew Moddrell
53 W. Jackson Blvd. Suite 830
Chicago, Illinois 60604
312-519-1103
moddrell@porturbanism.com

PAGE 6

Apex Engineers, Inc.
1625 Locust St
Kansas City, MO 64108

.2 Mechanical, Electrical and Plumbing Engineer:

PRIGM Engineering
310 W. Dickson St. Suite 210
Fayetteville, AR 72701

.3 Consulting Architect:

Polk Stanley Wilcox Architects
~~.2 Mechanical Engineer:~~ 801 South Spring Street
Little Rock, AR 72201

.4 Civil and Ecological Engineering:

Ecological Design Group
120 S. IZARD STREET
LITTLE ROCK, AR 72201

~~.3~~ Electrical Engineer:

.5 Skate Garden Consultant:

California Skate Parks
273 N. Benson Ave
Upland, CA 91786

...

N/A

...

N/A

PAGE 7

§ 2.5.1 Commercial General Liability with policy limits of not less than one million dollars (\$ 1,000,000) for each occurrence and two million dollars (\$ 2,000,000) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than 1 million dollars (\$ 1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

...

§ 2.5.5 Employers' Liability with policy limits not less than five hundred thousand dollars (\$ 500,000) each accident, five hundred thousand dollars (\$ 500,000) each employee, and five hundred thousand (\$ 500,000) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than one million dollars (\$ 1,000,000) per claim and two million dollars (\$ 2,000,000) in the aggregate.

PAGE 8

§ 3.2 Schematic Design Phase Services (Complete)

PAGE 10

§ 3.5.3 Negotiated Proposals (NOT INCLUDED IN THIS CONTRACT)

...

§ 3.6 Construction Phase Services (NOT INCLUDED IN THIS CONTRACT)

PAGE 11

§ 3.6.2 Evaluations of the Work (NOT INCLUDED IN THIS CONTRACT)

...

§ 3.6.3 Certificates for Payment to Contractor (NOT INCLUDED IN THIS CONTRACT)

...

§ 3.6.4 Submittals (NOT INCLUDED IN THIS CONTRACT)

PAGE 12

§ 3.6.5 Changes in the Work (NOT INCLUDED IN THIS CONTRACT)

...

§ 3.6.6 Project Completion (NOT INCLUDED IN THIS CONTRACT)

PAGE 13

§ 4.1.1.1 Programming	<u>Completed During Master Plan Process</u>
§ 4.1.1.2 Multiple preliminary designs	<u>Completed During Master Plan Process</u>

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User Notes:

(1496340566)

§ 4.1.1.3	Measured drawings	<u>Not Provided</u>
§ 4.1.1.4	Existing facilities surveys	<u>Not Provided</u>
§ 4.1.1.5	Site evaluation and planning	<u>Completed During Master Plan Process</u>
§ 4.1.1.6	Building Information Model management responsibilities	<u>Not Provided</u>
§ 4.1.1.7	Development of Building Information Models for post construction use	<u>Not Provided</u>
§ 4.1.1.8	Civil engineering	<u>Architect</u>
§ 4.1.1.9	Landscape design	<u>Architect</u>
§ 4.1.1.10	Architectural interior design	<u>Not Provided</u>
§ 4.1.1.11	Value analysis	<u>Not Provided</u>
§ 4.1.1.12	Detailed cost estimating beyond that required in Section 6.3	<u>Not Provided</u>
§ 4.1.1.13	On-site project representation	<u>Not Provided</u>
§ 4.1.1.14	Conformed documents for construction	<u>Not Provided</u>
§ 4.1.1.15	As-designed record drawings	<u>Not Provided</u>
§ 4.1.1.16	As-constructed record drawings	<u>Not Provided</u>
§ 4.1.1.17	Post-occupancy evaluation	<u>Not Provided</u>
§ 4.1.1.18	Facility support services	<u>Not Provided</u>
§ 4.1.1.19	Tenant-related services	<u>Not Provided</u>
§ 4.1.1.20	Architect's coordination of the Owner's consultants	<u>Not Provided</u>
§ 4.1.1.21	Telecommunications/data design	<u>Not Provided</u>
§ 4.1.1.22	Security evaluation and planning	<u>Not Provided</u>
§ 4.1.1.23	Commissioning	<u>Not Provided</u>
§ 4.1.1.24	Sustainable Project Services pursuant to Section 4.1.3	<u>Not Provided</u>
§ 4.1.1.25	Fast-track design services	<u>Not Provided</u>
§ 4.1.1.26	Multiple bid packages	<u>Not Provided</u>
§ 4.1.1.27	Historic preservation	<u>Not Provided</u>
§ 4.1.1.28	Furniture, furnishings, and equipment design	<u>Not Provided</u>
§ 4.1.1.29	Other services provided by specialty Consultants	<u>Architect</u>
§ 4.1.1.30	Other Supplemental Services	<u>Not Provided</u>

PAGE 14

Supplemental Design Development, Construction Documents, Bidding & Permitting services for Landscape Architecture, Civil, Ecological, and Transportation Engineering are included in the Architect's Scope and Fee for Basic Services

...

N/A

PAGE 15

- .1 N/A () reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 N/A () visits to the site by the Architect during construction
- .3 N/A () inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents

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User Notes:

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...

§ 4.2.5 If the services covered by this Agreement have not been completed within N/A (N/A) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

PAGE 19

[X] Arbitration pursuant to Section 8.3 of this Agreement

PAGE 21

None

...

None

PAGE 22

\$1,998,800

...

N/A () % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

...

N/A

...

Not Provided

...

According to Architect Staff Hourly Rate Table (below) or by Client-approved Sub-Consultant Additional Services Contract Proposal

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus ~~percent~~ (~~ten percent (10 %)~~), or as follows:

...

N/A

...

Schematic Design Phase	<u>N/A</u>	percent (	<u>N/A</u>	%)
Design Development Phase	<u>N/A</u>	percent (	<u>N/A</u>	%)
Construction Documents Phase	<u>N/A</u>	percent (	<u>N/A</u>	%)
Procurement Phase	<u>N/A</u>	percent (	<u>N/A</u>	%)
Construction Phase	<u>N/A</u>	percent (	<u>N/A</u>	%)

PAGE 23

<u>Partner</u>	<u>\$195</u>
<u>Design Professional/Senior Associate</u>	<u>\$155</u>
<u>Associate</u>	<u>\$130</u>

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User Notes:

(1496340566)

Employee or Category	Rate (\$0.00)
Designer	\$115
Intern	\$85
Admin	\$75

...

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the ~~Project~~, as follows:

- ~~1~~ 1 Transportation and authorized out of town travel and subsistence; ~~Project~~. Transportation and authorized out of town travel and subsistence are included in the consultant fee. Reimbursable expenses are as follows:
- ~~2~~ 2 Long distance services, dedicated data and communication services, teleconferences, ~~Project web sites, and extranets;~~
- ~~3~~ 1 Permitting and other fees required by authorities having jurisdiction over the Project;
- ~~4~~ 2 Printing, reproductions, plots, and standard form documents;
- ~~5~~ 3 Postage, handling, and delivery;
- ~~6~~ 4 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- ~~7~~ 5 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- ~~8~~ 6 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- ~~9~~ 7 All taxes levied on professional services and on reimbursable expenses;
- ~~10~~ 8 Site office expenses;
- ~~11~~ 9 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- ~~12~~ 10 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus five percent (5 %) of the expenses incurred.

PAGE 24

§ 11.10.1.1 An initial payment of N/A (\$ N/A) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of N/A (\$ N/A) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

...

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid sixty (60) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

...

N/A % N/A

...

~~.2~~ AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

~~(Insert the date of the E203 2013 incorporated into this agreement.)~~

~~.3~~

~~.2~~ Exhibits:

...

[] ~~AIA Document E204™ 2017, Sustainable Projects Exhibit, dated as indicated below:~~

~~(Insert the date of the E204 2017 incorporated into this agreement.)~~

~~[N/A]~~ Other Exhibits incorporated into this Agreement:

...

~~.4~~ ~~.3~~ Other documents:

PAGE 25

8th Street Gateway Park Master Plan, December 8th, 2020

...

Stephanie Orman, Mayor, City of Bentonville

Andrew Moddrell, Partner

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 20:50:54 ET on 02/14/2023 under Order No. 2114408110 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ – 2017, Standard Form of Agreement Between Owner and Architect, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

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User Notes:

(1496340566)

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A GRANT AGREEMENT WITH THE WALTON FAMILY FOUNDATION IN THE AMOUNT OF ONE MILLION FIVE HUNDRED TWO THOUSAND EIGHT HUNDRED DOLLARS (\$1,502,800.00); ADJUSTING THE 2023 BUDGET TO RECOGNIZE SAID FUNDS TO ACCOUNT #105030-33810 – LOCAL GRANTS; APPROPRIATING THE SAME INTO ACCOUNT #105030-47390 – IMPROVEMENT OTHER THAN BUILDING; ENTERING INTO A CONTRACT AMENDMENT WITH PORT; AND FOR OTHER PURPOSES.

WHEREAS, this design excellence grant will fund final design for the 8th Street Gateway Park Project;

WHEREAS, a contract amendment with Port is needed to include the design of added value and amenities to the Project; and

WHEREAS, there is no matching portion for this grant amendment.

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

Section 1: The Mayor and City Clerk are authorized to enter into a grant agreement with the Walton Family Foundation in the amount of one million five hundred two thousand eight hundred dollars (\$1,502,800.00) to fund continued design of the 8th Street Gateway Park Project;

Section 2: The 2023 Budget is adjusted to recognize one million five hundred two thousand eight hundred dollars (\$1,502,800.00) of grant funds into Account #105030-33810 – Local Grants and appropriate the same to Account #105030-47390 – Improvement other than Building;

Section 3: The Mayor and City Clerk are authorized to enter into a contract amendment with Port, for continued design on the 8th Street Gateway Park Project, in the increased amount of one million five hundred two thousand eight hundred dollars (\$1,502,800.00) for a total contract amount of one million nine hundred ninety-eight thousand eight hundred dollars (\$1,998,800.00);

Section 4 - 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 5 - 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 this _____ day of _____, 2023.

APPROVED:

STEPHANIE ORMAN, MAYOR

ATTEST:

KIRBY ROMINES, CITY CLERK



Agenda Item Form

Date of City Council Meeting	5/23/2023
Department	Animal Services
Submitted by	Ray Shastid / David Wright
Phone	479.271.6813

Item Type: (Check Applicable Item Type)					
☐ Budget Adjustment	☒ Change Order	☐ Informational	☐ Ordinance	☐ Resolution	☐ Bid Award
Recommendation/Suggested Action (Enter recommendation in space below):					
Bentonville Animal Services requests approval of a budget adjustment, in the amount of \$50,949.43, for Furniture, Fixtures and Equipment (FF&E) costs for the new Animal Services Adoption Center. Though this has been included in the overall project cost, the funds were never formally moved into the correct expense account. A budget adjustment is needed.					

Estimated Cost	
Is this Item Budgeted?	☐ Yes ☒ No
If no, please explain how item will be funded (briefly explain in space below) :	





Budget Adjustment Request

Date of City Council Meeting	5/23/2023
Department	Parks and Recreation
Submitted by	David Wright/Chief Ray Shastid
Phone	479.271.6813

Purpose of Budget Adjustment (Enter purpose in space below): Furniture, Fixtures and Equipment (FF&E) for Animal Service Adoption Center.
--

General Ledger Account Information*				
Org (Department)	Object	Account Description	Revenue + (-)	Expense + (-)
105030	47430	Furniture and Fixtures		\$ 50,949.43
		Totals	\$ -	\$ 50,949.43
		Net Impact on Fund Balance	\$ (50,949.43)	

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



www.bentonvillear.com

PLEASE RECYCLE



Memo



To: City Council, Mayor Orman

From: David Wright, Parks and Recreation Director
Ray Shastid, Chief of Police

Date: May 23, 2023

Re: Council approval of a budget adjustment for FFE costs, in the amount of \$50,949.43, for the Bentonville Animal Services & Adoption Center.

Bentonville Animal Services requests City Council approval of a budget adjustment for the Bentonville Animal Services & Adoption Center.

When council voted to move forward with this project in 2020, the projected FF&E (Furniture, Fixtures and Equipment) budget was \$600,000. While we discussed this number, we never approved a budget adjustment for this dollar figure. Instead, when we bid the project, we placed some of the FF&E, such as kennels, into the project budget to allow contractor to order and install. Additionally, we placed computers, printers and security cameras into the 2022 operational budget to allow our IT to manage ordering and installation of this equipment.

The final piece of FF&E was office and lobby furniture, shelving, freezers, refrigerators, trash receptacles, wayfinding and sponsor signage and other building equipment. After finalizing each of these costs, the final budget adjustment is needed to reconcile the Parks and Recreation Budget – where the funds were allocated for the project. The value of this final budget adjustment is \$50,949.43.

If you have any questions regarding this item, please email dwright@bentonvillear.com.

RESOLUTION NO. _____

A RESOLUTION AMENDING THE 2023 BUDGET; APPROPRIATING FIFTY THOUSAND NINE HUNDRED FORTY-NINE DOLLARS AND FORTY-THREE CENTS (\$50,949.43) FROM GENERAL FUND RESERVES TO ACCOUNT #105030-47430 – FURNITURE AND FIXTURES, FOR FFE COSTS AT THE BENTONVILLE ANIMAL SERVICES & ADOPTION CENTER; AND FOR OTHER PURPOSES.

WHEREAS, the projected FFE budget for the Animal Services and Adoption Center was six hundred thousand dollars (\$600,000.00);

WHEREAS, the majority of this amount was placed into the construction contract or added into the 2022 IT budget; and

WHEREAS, a budget adjustment is needed to formally move the remaining funds into the correct expense account now that costs have been finalized.

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

Section 1: The 2023 Budget is adjusted to appropriate fifty thousand nine hundred forty-nine dollars and forty-three cents (\$50,949.43) from General Fund Reserves into Account #105030-47430 – Furniture and Fixtures to fund the remaining FFE needs at the Bentonville Animal Services and Adoption Center;

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 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 this _____ day of _____, 2023.

APPROVED:

STEPHANIE ORMAN, MAYOR

ATTEST:

KIRBY ROMINES, CITY CLERK



Agenda Item Form

Date of City Council Meeting	5/23/2023
Department	Animal Services
Submitted by	Ray Shastid / David Wright
Phone	479.271.6813

Item Type: (Check Applicable Item Type)					
☐ Budget Adjustment	☒ Change Order	☐ Informational	☐ Ordinance	☒ Resolution	☐ Bid Award
Recommendation/Suggested Action (Enter recommendation in space below):					
Bentonville Animal Services requests approval of a Resolution for final closeout change order, deducting \$536.39 from the final contract and allowing for the project to be finalized and closed out. No budget adjustment is needed.					

Estimated Cost	
Is this Item Budgeted?	☐ Yes ☐ No
If no, please explain how item will be funded (briefly explain in space below) :	



Memo



To: City Council, Mayor Orman

From: David Wright, Parks and Recreation Director
Ray Shastid, Chief of Police

Date: May 23, 2023

Re: Council approval of Change Order #6 – a final closeout change order, deducting \$536.39 from the final contract and allowing for project closeout for the Animal Services Facility.

Bentonville Animal Services requests City Council approval of a final closeout change order for the new Bentonville Animal Services & Adoption Center.

Change Order #6 (labeled as PCCO #7) addresses increases for the fire alarm cell dialer, gate siren, and roofing materials. However, it also addresses a credit for building vinyl graphics. The increases are a total of \$1,195.00 (fire alarm cell dialer), \$925.00 (gate siren), and \$1,695.10 (roofing materials). The unused graphics allowance is a total of \$4,733.00; the difference between all items is a credit of \$536.39.

We have officially taken ownership of the building and held a grand opening/ribbon-cutting on April 8, 2023. We have requested closeout documents, but will hold the retainage until the adhesive flooring has been repaired.

If you have any questions regarding this item, please call me at 6813 or email dwright@bentonvillear.com.



PCCO #007

C.R. Crawford Construction, LLC
1102 S. Happy Hollow Road
Fayetteville, Arkansas 72701
Phone: (479) 251-1161
Fax: (479) 571-1161

Project: 21-020 - Bentonville Animal Services
801 SW 41st St
Bentonville, Arkansas 72712

Prime Contract Change Order #007: Credit for Building Plaque/ Vinyl Graphics Allowance and City Required Items

TO:	City of Bentonville (Customer) 117 W Central Bentonville, Arkansas 72712	FROM:	C.R. Crawford Construction, LLC 1102 S. Happy Hollow Road Fayetteville, Arkansas 72701
DATE CREATED:	1/25/2023	CREATED BY:	Kaysha Stogsdill (C.R. Crawford Construction, LLC)
CONTRACT STATUS:	Pending - In Review	REVISION:	0
DESIGNATED REVIEWER:	Aaron McDonnell (C.R. Crawford Construction, LLC)	REVIEWED BY:	
DUE DATE:		REVIEW DATE:	
INVOICED DATE:		PAID DATE:	
SCHEDULE IMPACT:		EXECUTED:	No
		SIGNED CHANGE ORDER RECEIVED DATE:	
CONTRACT FOR:	21020:Bentonville Animal Services Prime Contract	TOTAL AMOUNT:	(\$536.39)

DESCRIPTION:

1. Deduct building plaque/vinyl graphics
2. Fire Alarm Cell Dialer
3. Additional Gate Siren
4. Install break metal/soffit metal

ATTACHMENTS:

POTENTIAL CHANGE ORDERS IN THIS CHANGE ORDER:

PCO #	Title	Schedule Impact	Amount
007	Credit for Building Plaque/ Vinyl Graphics and City Required Items		(\$536.39)
Total:			(\$536.39)

CHANGE ORDER LINE ITEMS:

PCO # 007: Credit for Building Plaque/ Vinyl Graphics and City Required Items

#	Budget Code	Description	Amount
1	10-050.M Signage.Materials	Credit for Building Plaque and Vinyl Graphics Allowance	\$(4,733.00)
2	16-600.S Fire Alarm Sub.Subcontract	Cell Dialer for Fire Alarm	\$1,195.00
3	16-100.S Electrical Sub.Subcontract	Added Gate Siren	\$925.00
4	7-500.S Roofing Sub.Subcontract	Break Metal and Soffit	\$1,695.10
Subtotal:			\$(917.90)
OH&P (~ -41.56% Applies to all line item types.):			\$381.51
Grand Total:			\$(536.39)

The original (Contract Sum)	\$3,568,512.00
Net change by previously authorized Change Orders	\$191,424.00
The contract sum prior to this Change Order was	\$3,759,936.00
The contract sum would be changed by this Change Order in the amount of	(\$536.39)
The new contract sum including this Change Order will be	\$3,759,399.61
The contract time will not be changed by this Change Order.	

Randall Hurban (Hight-Jackson Associates, PA)

5201 Village Parkway #300
 Rogers, Arkansas 72758

City of Bentonville (Customer)

117 W Central
 Bentonville, Arkansas 72712

C.R. Crawford Construction, LLC

1102 S. Happy Hollow Road
 Fayetteville, Arkansas 72701

2.23.23

DATE

SIGNATURE

DATE

SIGNATURE

DATE

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A CHANGE ORDER WITH CR CRAWFORD, FOR THE FINAL CLOSEOUT OF THE BENTONVILLE ANIMAL SERVICES & ADOPTION CENTER; AND FOR OTHER PURPOSES.

WHEREAS, Bentonville Animal Services requests a final closeout change order for the new Bentonville Animal Services and Adoption Center; and

WHEREAS, this change order reflects a credit of five hundred thirty-six dollars and thirty-nine cents (\$536.39).

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 final closeout change order with CR Crawford for the Bentonville Animal Services and Adoption Center;

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 _____, 2023.

APPROVED:

STEPHANIE ORMAN, Mayor

Attest:

KIRBY ROMINES, City Clerk



Agenda Item Form

Date of City Council Meeting	5/23/2023
Department	Administration
Submitted by	Dennis Hayes
Phone	(479) 271-3127

Item Type: (Check Applicable Item Type)					
☐ Budget Adjustment	☐ Change Order	☐ Informational	☐ Ordinance	☒ Resolution	☐ Bid Award

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

Resolution authorizing the Mayor and City Clerk to enter into a Software Agreement with Heartland Business Systems for cyber security monitoring services including managed detection and response in the amount of \$163,235.61. This is a 2023 budgeted item.

Estimated Cost	
----------------	--

Is this Item Budgeted?	☒ Yes ☐ No
------------------------	---

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

--



Memo

To: Mayor Stephanie Orman and City Council

From: Dennis Hayes, IT Director

cc: Patrick Johndrow, Finance Director; Bonnie Bridges, Staff Attorney; Gladys Shoemake, Purchasing Manager.

Date: 5/18/2023

Re: Heartland Business Systems Agreement for Arctic Wolf Cyber Security Monitoring Detection and Response.

Attached is our service agreement renewal from Heartland Business Systems who partners with Artic Wolf to provide managed cyber security monitoring detection and response.

This service is part of the IT Department's initiative to protect our assets and data from cybersecurity threats.

This initiative was initially implemented in 2022 utilizing ARPA funding. The intent was to use and review the services for a year to ascertain if they would be of benefit to the city.

Services were provided in three main categories for 2022 Agreement:

- Managed Detection and Response (Real time monitoring of city network for cyber threats)
- Managed Risk (Network scans to find potential issues and vulnerabilities)
- Cyber Security Awareness (Cyber Security Testing and Education for City Staff)

After review we found that Managed Detection and Response plus Managed Risk Services to be excellent. The Cyber Security Awareness was deemed low in features for the cost and so this

item has been dropped from this year's agreement. We have identified another product for this which is currently in implementation.

The amount of \$163,235.61 is currently in the 2023 Budget under the description Cyber Security & Awareness and is split between Administration (101010) & Utilities (503530)

The intention would be to continue to budget this renewal for forthcoming years but will be assessed and reviewed each year for relevancy.

Respectfully,

Dennis Hayes

Information Technology Director

HBS Security Center Powered by Arctic Wolf - Renewal

Quote #285747 v2

Prepared For:

Bentonville, City of
 Dennis Hayes
 1000 SW 14th Street
 Bentonville, AR 72712

P: (479) 271-3127

E: dhayes@bentonvillear.com

Prepared By:

Fayetteville, AR Office
 Jennifer Bricker
 3775 N Mall Ave Suite 4
 Fayetteville, AR 72703

P: 4793326945

E: jbricker@hbs.net

Date Issued:

05.16.2023

Expires:

05.31.2023

Managed Detection & Response + Managed Risk - Annual Pay	Price	Qty	Ext. Price
(MSPP) HBS Security Center Powered by Arctic Wolf - MDR - 1 Year Billed Annually	\$118,786.83	1	\$118,786.83
(MSPP) HBS Security Center Powered by Arctic Wolf - Managed Risk - 1 Year Billed Annually	\$44,448.78	1	\$44,448.78
Subtotal			\$163,235.61

Subscription Information	Price	Qty	Ext. Price
Billing Cycle: Annual Committed Term: 12 Months - 06/13/2023-06/12/2024			

	Price	Qty	Ext. Price
TIPS Contract #220105			

Quote Summary	Amount
Managed Detection & Response + Managed Risk - Annual Pay	\$163,235.61
Total:	\$163,235.61

This quote may not include applicable sales tax, shipping, handling and/or delivery charges. Final applicable sales tax, shipping, handling and/or delivery charges are calculated and applied at invoice. The above prices are for hardware/software only, and do not include delivery, setup or installation by Heartland ("HBS") unless otherwise noted. Installation by HBS is available at our regular hourly rates, or pursuant to a prepaid HBSFlex Agreement. This configuration is presented for convenience only. HBS is not responsible for typographical or other errors/omissions regarding prices or other information. Prices and configurations are subject to change without notice. HBS may modify or cancel this quote if the pricing is impacted by a tariff. A 15% restocking fee will be charged on any returned part. Customer is responsible for all costs associated with return of product and a \$25.00 processing fee. No returns are accepted by HBS without prior written approval. This quote expressly limits acceptance to the terms of this quote, and HBS disclaims any additional terms. By providing your "E-Signature," you acknowledge that your electronic signature is the legal equivalent of your manual signature, and you warrant that you have express authority to execute this agreement and legally bind your organization to this proposal and all attached documents. Any purchase that the customer makes from HBS is governed by HBS' Standard Terms and Conditions ("ST&Cs") located at <http://www.hbs.net/standard-terms-and-conditions>, which are incorporated herein by reference. The ST&Cs are subject to change. When a new order is placed, the ST&Cs on the above-stated website at that time shall apply. If customer has signed HBS' ST&Cs version 2018.v2.0 or later, or the parties have executed a current master services agreement, the signed agreement shall supersede the version on the website. Any order(s) that exceeds the credit limit assigned by HBS shall require upfront payment from customer in an amount determined by HBS. HBS shall make this determination at the time of the order, unless customer has previously submitted the required onboarding paperwork. In such event, HBS shall make this determination at the time of quoting. QT.2021.v1.0

Acceptance

Fayetteville, AR Office

Bentonville, City of

Jennifer Bricker

Signature / Name

05/16/2023

Date

Signature / Name

Initials

Date

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO
ENTER INTO AN AGREEMENT WITH HEARTLAND BUSINESS
SYSTEMS RENEWING CYBER SECURITY MONITORING; AND FOR
OTHER PURPOSES.**

WHEREAS, this agreement is part of the Information Technology Departments initiative to protect the City from cyber security threats; and

WHEREAS, this is a budgeted item.

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

Section 1: That the Mayor and City Clerk are hereby authorized to enter into an agreement with Heartland Business Systems renewing cyber security monitoring, in the amount of one hundred sixty-three thousand two hundred thirty-five dollars and sixty-one cents (\$163,235.61);

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 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 this _____ day of _____, 2023.

APPROVED:

Stephanie Orman, Mayor

ATTEST:

Kirby Romines, City Clerk